



# STATE OF CONNECTICUT

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION  
PUBLIC UTILITIES REGULATORY AUTHORITY  
TEN FRANKLIN SQUARE  
NEW BRITAIN, CT 06051

**DOCKET NO. 11-12-06 JOINT PETITION BY THE CONNECTICUT LIGHT AND  
POWER COMPANY AND THE UNITED ILLUMINATING  
COMPANY FOR APPROVAL OF THE SOLICITATION  
PLAN FOR THE LOW AND ZERO EMISSIONS  
RENEWABLE ENERGY CREDIT PROGRAM**

April 4, 2012

By the following Directors:

John W. Betkoski, III  
Kevin M. DelGobbo

**DECISION**

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>A. BACKGROUND .....</b>	<b>1</b>
<b>B. CONDUCT OF PROCEEDING.....</b>	<b>2</b>
<b>C. PARTICIPANTS.....</b>	<b>2</b>
<b>II. THE ENERGY ACT .....</b>	<b>2</b>
<b>A. ZREC PROGRAM ESTABLISHMENT .....</b>	<b>2</b>
<b>B. LREC PROGRAM ESTABLISHMENT .....</b>	<b>3</b>
<b>III. COMPANIES' PROGRAM PROPOSALS .....</b>	<b>4</b>
<b>A. PROGRAM PARAMETERS .....</b>	<b>4</b>
<b>B. PROCUREMENT OF LREC AND ZREC PROJECTS .....</b>	<b>6</b>
1. Proposed Solicitation Plan.....	6
2. Annual Procurement Target.....	9
3. Methodology for Bid Evaluation .....	9
4. Class I RPS Qualification .....	10
<b>C. COMPANIES' REQUEST FOR FINDINGS AND APPROVAL .....</b>	<b>10</b>
<b>D. PUBLIC COMMENT .....</b>	<b>11</b>
1. Constellation NewEnergy.....	11
2. Renewable Energy and Efficiency Business Association, Inc.....	11
3. Optiwind.....	12
4. Dennis Cleary, Wolcott, CT .....	12
5. Ansonia Copper & Brass.....	12
6. The Pat Munger Construction Company, Inc .....	13
7. Borrego Solar Systems, Inc .....	13
8. The Chanler Group .....	13
9. FuelCell Energy, Inc.....	13
10. SunEdison, LLC .....	14
11. UTC Power.....	14
12. Solar Connecticut, Inc. ....	14
13. Clean Water Action .....	15
14. GrowJobsCT.....	15
15. District Lodge 26.....	15
16. Connecticut AFL-CIO.....	15
17. Bloom Energy Corporation .....	15
<b>IV. AUTHORITY ANALYSIS.....</b>	<b>15</b>
<b>A. SOLICITATION PLAN.....</b>	<b>16</b>
<b>B. STANDARD CONTRACT.....</b>	<b>17</b>
1. Cover Page .....	17
2. Section 1.56 - Regulatory Approval.....	17
3. Section 4.1.5 – Interconnection Agreement.....	18
4. Section 4 - Connecticut Technologies .....	18
5. Section 7.2 – Excess LRECs or ZRECs.....	18
6. Section 7.3 – Banking of Excess RECs.....	19
7. Section 8.4 – Netting and Setoff of Contract Payments .....	19

8.	Section 9.2 – Return of Performance Assurance .....	19
9.	Section 10.3.1 – Seller and Buyer Covenants.....	20
10.	Section 11.1 – Prohibition on Assignments .....	20
11.	Section 11.3 – Change of Control Over Seller .....	21
12.	Section 11.2 – Assignments by Seller.....	21
13.	Section 11.6 – Permitted Assignment by Buyer.....	22
14.	Section 13.3.3(b) – Termination Due to Failure to Begin Generation ..	22
15.	Section 15.1 - Force Majeure.....	23
16.	Section 18.4 – Site Access .....	23
17.	Section 18.9 - Governing Law; Venue; Waiver of Jury Trial.....	24
18.	Attachments to the Standard Contract .....	24
C.	PROGRAM BUDGET AND COST RECOVERY .....	24
1.	Program Budget.....	24
2.	Program Cost Recovery .....	26
D.	PROGRAM ADMINISTRATION .....	26
E.	DECLINING ANNUAL INCENTIVES .....	27
F.	BID PREFERENCE FOR CONNECTICUT TECHNOLOGIES.....	28
G.	FIXED PRICE METHODOLOGY AND BID EVALUATION PROCESS.....	29
H.	ZREC FUNDING APPORTIONMENT .....	29
I.	CLASS I RPS EXPEDITED QUALIFICATION PROCESS .....	30
J.	PROJECT SIZE.....	31
K.	PERFORMANCE ASSURANCE .....	33
L.	REPORTING REQUIREMENTS.....	34
1.	Report to the General Assembly .....	34
2.	Annual LREC/ZREC Program Reports .....	35
3.	Other Reporting .....	36
V.	FINDINGS OF FACT .....	36
VI.	CONCLUSION AND ORDERS.....	37
A.	CONCLUSION.....	37
B.	ORDERS.....	38

## DECISION

### I. INTRODUCTION

#### A. BACKGROUND

Pursuant to §§107, 108, and 110 of Public Act 11-80, An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut's Energy Future (Energy Act), The Connecticut Light and Power Company (CL&P) and The United Illuminating Company (UI together, Companies) are required to procure Class I renewable energy credits (RECs)<sup>1</sup> under 15-year contracts with owners or developers of renewable energy projects in Connecticut (the Low and Zero Emissions Renewable Energy Credit Program, herein, the Program). The Program allows qualifying projects such as a customer's rooftop solar panels, or a fuel cell, to sell their Class I RECs to the Companies at a fixed price for a period of 15 years. Petition, pp. 1 and 2. The production of one megawatt hour (MWh) of electricity from a Class I renewable energy source will create one REC.

Section 16-1(a)(26) of the General Statutes of Connecticut (Conn. Gen. Stat.) defines a Class I renewable energy source as:

(A) energy derived from solar power, wind power, a fuel cell, methane gas from landfills, ocean thermal power, wave or tidal power, low emission advanced renewable energy conversion technologies, a run-of-the-river hydropower facility provided such facility has a generating capacity of not more than five megawatts, does not cause an appreciable change in the river flow, and began operation after July 1, 2003, or a sustainable biomass facility with an average emission rate of equal to or less than .075 pounds of nitrogen oxides per million BTU of heat input for the previous calendar quarter, except that energy derived from a sustainable biomass facility with a capacity of less than five hundred kilowatts that began construction before July 1, 2003, may be considered a Class I renewable energy source, or (B) any electrical generation, including distributed generation, generated from a Class I renewable energy source.

On December 9, 2011, CL&P and UI submitted to the Public Utilities Regulatory Authority (PURA or Authority) a joint petition (Petition) which includes their proposed six-year Solicitation Plan for the Program. Specifically, the Petition and Proposed Solicitation Plan: (1) sets forth the means by which the Companies would satisfy the various provisions and requirements of §§107, 108 and 110 of the Energy Act; and (2) outlines the Companies plan to enter into 15-year contracts for the purchase of \$1.02 billion of RECs directly from customers, site owners and/or developers of clean energy

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<sup>1</sup> The Companies define Class I RECs as: certain New England Power Pool Generation Information System certificates and any and all other environmental attributes derived from the energy production of a generating facility that has been qualified by the Authority as a Connecticut Class I renewable resource under Conn. Gen. Stat. §16-1(a)(26), and shall represent title to and claim over all environmental attributes associated with the specified MWh of generation from such Connecticut Class I renewable resource. Solicitation Plan, Appendix C, p. 5.

projects. Of that amount, \$300 million is to be spent on RECs purchased from renewable energy sources that produce low emissions (LRECs), and \$720 million is to be spent on RECs purchased from renewable energy sources that produce zero emissions (ZRECs). Petition, pp. 1 and 2; Solicitation Plan, p. 1. Also included in their filing is their proposed Request for Proposal (RFP) form for soliciting bids as well as the proposed Standard Contract for the purchase and sale of Connecticut Class I RECs.

## **B. CONDUCT OF PROCEEDING**

By Notice of Hearing dated December 29, 2011, pursuant to Conn. Gen. Stat. §§16-2(c) and 16-8(a), the Authority held a public hearing on this matter on January 10, 2012, at its offices, Ten Franklin Square, New Britain, Connecticut. The hearing continued at the offices of the Authority on January 31, 2012, at which time, the hearing was closed.

## **C. PARTICIPANTS**

The Authority recognized the following as Participants to this proceeding: The Connecticut Light and Power Company; The United Illuminating Company; Office of Consumer Counsel (OCC); The Chanler Group (Chanler); Constellation NewEnergy, Inc. (Constellation); FuelCell Energy, Inc. (FCE); GreenSkies Renewable Energy, LLC; Renewable Energy and Efficiency Business Association, Inc. (REEBA); Solar Connecticut, Inc.; Prime Solutions, Inc.; and SunEdison, LLC (SunEdison).

## **II. THE ENERGY ACT**

Pursuant to §§107, 108, and 110 of the Energy Act, the Companies are required to procure Class I RECs under 15-year contracts with owners or developers of renewable energy projects in Connecticut. Sections 107 and 108 established the ZREC program and its requirements and §110 established the LREC program and its requirements. Under the Energy Act, the Companies are required to purchase LRECs and ZRECs only, and no other products. As required by the Energy Act, the purchase of RECs must be apportioned to the Companies based on their respective distribution system loads.

### **A. ZREC PROGRAM ESTABLISHMENT**

Section 107 of the Energy Act directs the Companies to conduct solicitations up to a six-year period and file with the PURA, for approval, one or more long-term contracts of 15 years for ZREC projects. ZREC-qualified projects are Connecticut generation projects of up to 1,000 kW, located behind company customer meters and serve the company's electric distribution system that achieve commercial operation on or after July 1, 2011, that emit no pollutants. Zero emission projects must qualify as Connecticut Class I renewable sources under Conn. Gen. Stat. §16-1(a)(26).

Section 107 of the Energy Act also prescribes that the aggregate procurement of ZRECs will be \$8 million in the first year's procurement and will increase by an additional \$8 million per year in procurement years two through four, inclusive. After year four, the Authority is required to review contracts entered into and if the costs of

the technologies included in such contracts have been reduced, the Authority is required to seek an additional \$8 million in annual procurement for years five and six. The Energy Act prescribes that the purchased RECs are to be apportioned to the Companies based on their respective distribution system loads at the commencement of the procurement period, as determined by the Authority. Section 107(a) of the Energy Act allows the Authority to give a preference to contracts for technologies manufactured, researched or developed in the state.

Other key parameters defined in §§107 and 108 of the Energy Act for the ZREC program are identified below.

- The price caps for the first solicitation of ZRECs solicitation are established at \$350/REC. The price cap for ZRECs may be lowered by the PURA in future solicitations.
- Separate ZREC procurement processes are to be conducted based on the following project size breakdown:
  - small: ≤ 100 kW;
  - medium: >100 kW and <250 kW; and
  - large: ≥ 250 kW and ≤ 1,000 kW.
- Preference is given to competitive bidding for projects of more than 100 kW (medium and large project classes).
- Projects less than 100 kW (small project class) will receive a specified price, which is based on the results of the most recent solicitation for the medium sized class plus 10%.
- The Companies are entitled to recover their reasonable and prudently incurred costs and fees associated with their approved Procurement Plans for ZRECs through a reconciling component of electric rates as determined by the PURA.

## **B. LREC PROGRAM ESTABLISHMENT**

The Energy Act does not require or make mention of a solicitation plan for LRECs. Section 110 of the Energy Act does establish a timeline where it specifically states that the electric distribution companies (EDCs) “shall solicit and file” long-term contracts for the purchase of LRECs with the PURA, “[c]ommencing on January 1, 2012, and within 180 days.” To meet this timeline, the Companies included LRECs in the Proposed Solicitation Plan. If the PURA does not approve the Proposed Solicitation Plan with sufficient lead time for the Companies to conduct the initial RFP for LRECs, then it may be necessary for the Companies to withdraw those portions of the Proposed Solicitation Plan pertaining to LRECs to meet the timing requirements of the Energy Act. Petition, p. 8.

Section 110 of the Energy Act requires that LREC projects: (1) be placed in service on, or after, July 1, 2011; (2) not be larger than 2,000 kW in size; (3) be on the customer side of the revenue meter; and (4) be connected to the distribution system of

the Company with which it contracts. It also requires that the LREC procurement be up to \$4 million in year one, and increase by up to an additional \$4 million per year in years two and three. After year three, the Authority is required to review the contracts entered into and if the cost of eligible technologies have been reduced, the Authority must seek new contracts for a total of five years. In this case, the aggregate increase for the procurement of LRECs will increase by an additional \$4 million per year in years four and five. In addition, the Energy Act caps the price for individual LRECs at \$200/REC in the first year's solicitation. Additionally, as with ZREC contracts, §110(a) of the Energy Act allows the Authority to give preference to contracts for technologies manufactured, researched or developed in the state.

Projects that qualify as an LREC must have emissions of no more than 0.07 pounds per MWh of nitrogen oxides, 0.10 pounds per MWh of carbon monoxide, 0.02 pounds per MWh of volatile organic compounds, and one grain per 100 standard cubic feet. Low emission projects must qualify as Connecticut Class I renewable sources under Conn. Gen. Stat. §16-1(a)(26).

### **III. COMPANIES' PROGRAM PROPOSALS**

Sections 107, 108, and 110 of the Energy Act tasked the Companies with the development and implementation of the Program to achieve the renewable energy objectives of the Energy Act. To that end, the Companies stated that they must balance their obligation to ratepayers who will ultimately pay for the Program, with interests of the customers, developers and site owners who will directly benefit from the 15-year contracts. The Companies believe that the Program, as set forth in the Proposed Solicitation Plan, is designed to appropriately balance these interests, and fulfills the intent of the Energy Act in an efficient and transparent manner. Petition, p. 6.

The Companies propose to recover their reasonable and prudently incurred costs and fees associated with the Program through the nonbypassable federally mandated congestion charge (NBFMCC), which is assessed on all customers. Petition, p. 13. The Companies do not support establishing a new charge on customer bills to recover Program costs, on a stand-alone basis. They stated that a new charge would add complexity to the bill, cause customer confusion, and create additional costs. Response to Interrogatory RA-12.

#### **A. PROGRAM PARAMETERS**

In addition to the program parameters established by the Energy Act (see, Section II. The Energy Act, above), the Companies have proposed further administrative and process details. They believe these additional details will allow the framework established in the Energy Act to function as a comprehensive and fully operational solicitation program. These additional program parameters are identified below.

- The Companies included LRECs in addition to ZRECs in the proposed Solicitation Plan. This approach ensures that procurement methodologies, including requests for proposals, form(s) of contracts and schedules are consistent for both.

- Projects may not receive funding from both the ZREC and LREC Program and from the Connecticut Energy Finance Investment Authority (CEFIA) or its predecessor the Connecticut Clean Energy Fund (CCEF). Specifically, a project which receives or has received grants or rebates from CEFIA or the CCEF for the installation or construction of any proposed project may not be eligible to sell ZRECs and LRECs for the same project. This prohibition does not include: (1) projects that receive(d) only predevelopment and/or feasibility funding from CEFIA, or (2) projects that receive(d) only financing in accordance with §99 of the Energy Act through CEFIA.
- The Companies determined that the Program's success is dependent upon projects being built, and not simply on the execution of contracts. Therefore, the Companies have set a 12-month limit on project in-service delays. If a project does not commence the production of energy within 12 months of its selected delivery term start date that will result in qualifying LRECs or ZRECs, the project's contract will be automatically terminated. Project owners who believe that their project was delayed due to conditions of force majeure may apply to the PURA for an extension beyond the 12-month limit, and the Companies will abide by the PURA rulings on such extension requests. However, a company would have the right to object to an extension request if, in the company's judgment, the delay was not the result of a legitimate claim of force majeure.
- The Companies determined that all LREC and ZREC projects must provide some form of performance assurance as further incentive to achieve timely commercial operation.
- Initially, the \$8 million/year funding level for ZREC contracts will be allocated into equal thirds for each size class of project. After each solicitation, the Companies will assess the procurement results and may adjust the ZREC funding level for each size class to best fit the market response.
- The Companies determined that setting defined contract start dates (Delivery Term Start Dates) for each RFP would be more effective for budgeting purposes than allowing each bidder to specify its own start date. Each bidder will be permitted to choose from the delivery term start dates defined for the annual solicitation in which they participate.
- A bidder whose project qualifies for both the LREC and ZREC programs cannot terminate its contract for the project and resubmit that project in response to a subsequent RFP (e.g., a project with a contract under the LREC solicitation cannot terminate and enter a bid for that same project under any future ZREC solicitation or vice versa).
- The Companies proposed to use a tariff rider for small ZREC projects, which are equal to or less than 100 kW. A tariff rider and associated 15-year service agreement will ease enrollment and administrative management of the small ZREC projects.

## **B. PROCUREMENT OF LREC AND ZREC PROJECTS**

### **1. Proposed Solicitation Plan**

The Companies worked collaboratively to design the proposed Solicitation Plan which encourages the development of diversity of projects in their respective service territories. It ensures that there are consistent qualifications, contract forms, procurement rules and proposal evaluations. Under the joint solicitation format, the Companies will work together only until bids are due. Thereafter, each company will receive and evaluate only the bids for projects in its respective service territory. During development of the Program, the Companies requested input from renewable energy developers, associations and marketers. Additionally, the Companies received input from the Department of Energy and Environmental Protection (DEEP) and CEFIA in the development of the proposed Solicitation Plan. The Companies took into consideration these suggestions and comments in the development of the Program. Petition, pp. 2 and 3. The proposed Solicitation Plan sets forth the Companies 6-year plan to procure RECs under the terms prescribed in §§107, 108, and 110 of the Energy Act.

While the Energy Act does not require or mention a solicitation plan for LRECs, the Companies included LRECs in the proposed Solicitation Plan because of the marketing, administrative and regulatory efficiencies that would be achieved in designing and administering similar programs.

As required by the Energy Act, the purchase of RECs must be apportioned to the Companies based on their respective distribution system loads. On that basis, the Companies determined that the annual allocation target for the \$8 million ZREC funding for each company will be approximately \$6.4 million for CL&P and approximately \$1.6 million for UI. The price for individual ZRECs will be capped at \$350/REC in the first year's solicitation, as specified in the Energy Act. In subsequent years, the Companies may decrease the price cap, subject to PURA approval of the Companies' proposal, based on the highest accepted bid in the prior year's solicitation. Petition, p. 7. For the \$4 million in LREC funding, the Companies determined that the annual allocation between the Companies will be approximately \$3.2 million for CL&P and approximately \$0.8 million for UI. Consistent with the Energy Act, the price cap for LRECs will be capped at \$200/REC in the first year's solicitation. Petition, p. 9. Each year, the Companies would solicit up to \$120 million worth of ZREC contracts (\$8 million per year for 15 years) and up to \$60 million of LREC contracts (\$4 million per year for 15 years). The Companies total Program spending target is \$1.020 billion utilizing 15-year contracts. Of this, \$300 million would be spent purchasing LRECs and \$720 million would be spent purchasing ZRECs. Solicitation Plan, p. 1.

The Companies proposed that the size of qualifying projects should be determined by the nameplate capacity. It is defined as the aggregate nameplate rating of all renewable generation behind a customer's revenue meter. The project must include a separate project production meter (REC meter) specifically used in the determination of the LRECs or ZRECs created in association with the project's energy output. Petition, p. 7.

The Companies also proposed that the \$8 million in annual ZREC funding be apportioned to the small, medium and large ZRECs in equal thirds. Funding for small ZREC projects would be adjusted for any excess or shortfall that remains after concluding the proposed Solicitation Plan for medium and large ZREC projects. At the conclusion of the first year's solicitations, the Companies intend to evaluate the market response to solicitations for each size class to determine whether it would be appropriate to change the funding allocation. Solicitation Plan, p. 2.

The Companies' proposed Solicitation Plan includes a price cap methodology for purposes of establishing declining annual incentives for ZRECs for each year of the Program, in accordance with §108(a)(2) of the Energy Act. The price cap methodology is based on the highest accepted ZREC bid in the prior year's solicitation. Specifically, the Companies proposed that for each year, the ZREC price cap for the medium and large ZREC projects decline to a dollar value equal to the highest accepted bid for the medium and large tiers from the previous year's competitive solicitations, subject to the 3% to 7% reduction range specified in §108(a)(2) of the Energy Act. The Companies believe this approach allows the market to determine the reduction in the price cap. Petition, pp. 15 and 16.

After the Companies receive PURA approval of the proposed Solicitation Plan, they will then carry out the approved Solicitation Plan, and each company will submit to the PURA for review and approval, the proposed long-term LREC and medium and large ZREC contracts. Petition, p. 9.

#### **a. LREC and Medium and Large ZREC Projects**

In accordance with the Energy Act, the Companies would procure ZRECs in three size classes (small, medium and large). The proposed Solicitation Plan calls for long-term (15-year) contracts for all selected LREC and selected medium and large ZREC projects. Solicitation Plan, p. 1. The Energy Act specifies that preference will be given to competitive bidding for medium and large ZREC projects. While the Energy Act does not require or mention a solicitation plan for LRECs, the Companies included them in the development of the proposed Solicitation Plan to provide consistency among the processes. Petition, p. 2. Further, the Companies believe that competitive bidding is the optimal approach for procuring LREC contracts. Therefore, the Companies propose to award all LREC and medium and large ZREC contracts through the RFP process. Solicitation Plan, p. 3. The same Standard Contract proposed for selected ZREC projects would be used for selected, qualifying LREC projects. Petition, p. 9.

The Companies filed for Authority approval, a copy of their proposed form RFP and Standard Contract. Both forms are to be used by qualifying medium and large ZREC projects and all LREC projects in the competitive bidding process. Appendix B RFP, p. 2. The RFP form contains such information as a: (1) LREC and ZREC Program information; (2) Program eligibility requirements for the project as well as the bidder; (3) description of RFP process; (4) bid instructions; (5) bid evaluation and award criteria; and (6) applicable forms such as the Notice of Intent to Bid Form, Bidder Response Form, and the Bid Evaluation Form. Solicitation Plan, Appendix B RFP.

The Companies plan to offer one joint RFP in the first solicitation year with a single bid submission date. In subsequent years, the Companies will issue RFPs at least once annually, or may issue annual RFPs with multiple bid submission dates. Solicitation Plan, p. 3.

Once the RFPs have been issued, the Companies will hold a bidders' conference to answer questions about the RFP. Bidders must submit their bid to the appropriate company in whose territory the project is located. Id., p. 3. All selected projects must obtain Class I approval from the Authority. However, such approval is not required for bid submission. RFP Part V. The evaluation criteria and timing of the bidding process will be the same for all bidders. Id., p. 9.

#### **b. Small ZREC Projects**

In accordance with the Energy Act, small ZREC projects would receive “on an ongoing and continuous basis, a renewable energy credit offer price equivalent to the weighted average accepted bid price in the most recent solicitation for systems greater than 100 kW but less than 250 kW, plus an additional incentive of ten per cent.” Therefore, in lieu of the Standard Contract proposed for LRECs and medium and large ZRECs, the Companies propose to administer small ZREC projects through a tariff rider and a 15-year service agreement. The tariff rider would provide the payment mechanism for ZRECs produced by the project. Solicitation Plan, p. 4. The Companies believe that a tariff rider and associated 15-year service agreement will ease enrollment and administrative management of the small ZREC projects. Id., p. 6. The Companies do not believe that it is necessary or appropriate to have small projects (for example, a qualifying customer's rooftop solar panels) execute the Standard Contract. Similar to small distributed generation projects, a tariff rider and associated 15-year service agreement provides the ease of enrollment and administrative management of such projects. The Companies will each subsequently submit their form of tariff riders and service agreements for the Authority's review and approval. The Companies suggest that the Authority establish a separate docket, or reopener, to approve the tariff riders for use with small ZREC projects. Solicitation Plan, pp. 17 and 18.

The tariff rider can only be offered to small ZREC projects after the ZREC Procurement Plan has been approved, along with the medium ZREC contracts that will be used to set the small ZREC tariff price. Id., p. 8. The underlying terms and conditions of the tariff rider and service agreement would be similar to the terms and conditions of the Standard Contract proposed by the Companies (discussed below in Section IV.B. Standard Contract) for approval in this Petition. Id., p. 10. The procurement of small ZRECs will be independently managed by each company. Solicitation Plan, p. 4.

The Companies do not intend to file with the Authority the service agreements for selected small ZREC projects. However, they would provide the Authority with an annual summary of the selected projects. Response to Interrogatory RA-7.

## **2. Annual Procurement Target**

The Companies believe the annual Program procurement target amount required by the Energy Act (\$8 million for ZRECs and \$4 million for LRECs) should be based on the contract commitment amount in a given year rather than based on actual dollars spent. For example, for ZRECs during 2012, the Companies would attempt to enter into 15-year contracts that are worth \$8 million per year. The Companies believe that this approach is needed because of the timing issues related to project start dates. Some projects may begin operating in 2012 and others in 2013. If the \$8 million was based on actual dollars spent in a calendar year, it would require having every contract start on January 1 of that contract year, which is not practical or feasible. As such, the Companies request that the Authority affirm that the annual procurement target amount represents the dollar value of the contract commitments so that the contracts can start when the projects come on-line naturally rather than requiring all contracts to start on the same day. Tr. 1/31/12, pp. 136 and 137.

## **3. Methodology for Bid Evaluation**

The Companies proposed to use the fixed price evaluation methodology to evaluate bid proposals for LREC and medium and large ZREC projects. Valid bid proposals would be ranked in order from lowest to highest REC price. Contracts would be awarded to the lowest REC price proposals first and will continue until the required annual expenditure amount (i.e., \$8 million for ZRECs and \$4 million for LRECs) is met. The fixed price evaluation would include the PURA preference for technologies that were “manufactured, researched or developed” in the state. The Companies would use a random selection process for qualified projects that propose the same REC price. Petition, p. 16.

The Companies believe that the proposed fixed price evaluation methodology is consistent with the requirements of §108(b) of the Energy Act, which allows the Authority to approve an alternative evaluation methodology if it is in the best interest of customers and the development of a competitive and self-sustaining market. Since it is simpler for bidders to understand, and administratively straightforward, yielding the same results as the net present value approach, the Companies believe that it is in the best interest of customers to utilize this approach. Additionally, since it is a methodology which all bidders can understand, it will attract bidders and promote the competitive market. Petition, pp. 16 and 17.

The proposed Solicitation Plan permits the Companies to accept or reject the next project in the bid stack depending on whether or not the applicable targeted payment amounts are less than 10% (in which case the next project in the bid stack would be accepted) or more than 10% (in which case the next project in the bid stack would not be accepted). If the next project in the bid stack is accepted, the small ZREC budget amount would be lowered by that amount. If the next project in the bid stack is rejected, the small ZREC budget amount would be increased. Solicitation Plan, p. 7; Brief, p. 6.

Also, in accordance with §§107(a) and 110(a) of the Energy Act, the Companies propose that a 5%<sup>2</sup> reduction in bid prices be used for evaluation purposes only, for proposals utilizing technologies that are manufactured, researched or developed in Connecticut. For example, a \$300 bid price per REC for a project that meets the in-state criteria as defined by the PURA would be evaluated using a bid price per REC of \$285 (even though the bidder would still receive \$300 per REC under the contract if selected). The Companies realize, however, that the definition of the terms “researched,” “developed” or “manufactured” may be subjective. Accordingly, to assist bidders and interested parties, the Companies request that the Authority define such terms. Petition, p. 17.

#### **4. Class I RPS Qualification**

Under the Program, all selected projects must obtain a Connecticut Class I Renewable Portfolio Standard (RPS) qualification from the Authority, pursuant to Conn. Gen. Stat. §16-1(a)(26). It is the sole responsibility of all selected projects to fulfill their obligation for obtaining Class I qualification. Petition, p. 11. The Authority currently processes Class I RPS qualification requests via declaratory ruling for generating facilities that are not yet operational or via application for those that are operational. The Authority typically establishes a docket for each application and may issue interrogatories or hold technical meetings and/or hearings prior to issuing a Decision. As a result of the Program and the potential for numerous Class I applications, the Companies request that the Authority establish an expedited process for qualifying selected LREC and ZREC projects. Petition, p. 12.

#### **C. COMPANIES’ REQUEST FOR FINDINGS AND APPROVAL**

The Companies request the following for findings and approval by the Authority:

- The Companies Solicitation Plan includes a timetable and methodology for the solicitation of 15-year contracts for the purchase of LRECs and ZRECs and meets the requirements of the Energy Act.
- The Companies’ form of request for proposal (RFP) and Standard Contract, inclusive of all Terms and Conditions, is consistent with the Companies’ Solicitation Plan and is approved by the Authority for use by the Companies for all selected LREC and medium and large ZREC projects.
- The Companies are entitled to full cost recovery of the Program through the NBFMCC.

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<sup>2</sup> As a point of reference, §109 of the Energy Act states that “(t)he Public Utilities Regulatory Authority shall provide an additional incentive of up to 5% of the then-applicable incentive provided pursuant to §106 of this act for the use of major system components manufactured or assembled in Connecticut...”

- The Companies request affirmation that the annual procurement dollars required by the Energy Act represent contract commitment dollars values as opposed to actual dollars spent.
- The Companies proposal to utilize tariff riders is consistent with the solicitation plan and shall be reviewed, and subject to approval by the Authority for use with all selected small ZREC projects.
- The Companies' methodology for establishing declining annual incentives for ZRECs is included in the Companies' Solicitation Plan and meets the requirements of the Energy Act.
- The Companies request that the Authority define Connecticut "manufactured, researched, or developed" technologies for the purpose of establishing preference in the bid evaluation process.
- The Companies' proposal to utilize Fixed Price Methodology to evaluate bids meets the requirements of the Energy Act.
- The Companies request that the Authority establish a fast track approval process for Class I qualifications of LREC and medium and large ZREC projects.
- The Companies request that the Authority establish a one-time extension process for projects which have legitimate claim of Force Majeure.

Petition, pp. 12-18; Tr. 1/31/12, pp. 136 and 137.

#### **D. PUBLIC COMMENT**

The Authority considers all public input as it deliberates its final rulings in this and other matters that come before it. The Authority thanks those individuals or Companies that provided public and/or written comments. The OCC did not file briefs or written comments in this proceeding.

##### **1. Constellation NewEnergy**

Regarding the Change of Control section of the Standard Contract, Constellation recommended that language should be added to clarify that this does not apply to a change in control at the parent company level. Regarding Indemnification, language should be added to clarify that this is limited to damages caused by the developer only. Regarding the use of "Products," a definition should be added. Written Comments, January 6, 2012.

##### **2. Renewable Energy and Efficiency Business Association, Inc.**

Regarding Program Funding Allocations for ZREC projects, REEBA recommended that instead of equal allocation of funds between size classes, there should be a 20% allocation for the small class, a 30% allocation for the medium class and 50% allocation for the large class to ensure that all project sizes will be adequately

funded. Regarding Job Creation and Retention Criteria, a similar 5% bid discount provision, as with the In-State Criteria, be added to the Plan for those projects that can demonstrate, via a sworn affidavit, permanent job creation or retention at the host site, as a result of the ZREC or LREC project being installed. Written Comments, January 10, 2012.

### **3. Optiwind**

Prior to the issuances of the RFP, Optiwind recommended that restrictions regarding §99 of the Energy Act through CEFIA be further clarified and detailed. Written Comments, January 19, 2012.

### **4. Dennis Cleary, Wolcott, CT**

Regarding the small ZRECs, Mr. Cleary recommended that the random selection process be amended. Projects that are in service should be selected first, followed by those that are just about completed and those that are proposed to be selected randomly. In addition, residential systems under 25 kW should be exempt from the guaranteed deposit requirement, as the administrative cost may outweigh the benefits. Written Comments, January 26, 2012.

Mr. Cleary stated that a modification of the Proposed Solicitation Plan was needed. He requested that the Authority amend the plan by striking a portion of the language on p. 6, Section 4.9, §106(c)(2) of the Energy Act, in part. Specifically, he recommended that CEFIA shall consider the available and estimated value of revenues from the sale of renewable energy credits. Mr. Cleary claimed that nothing in §§107, 108 or 109 of the Energy Act relating to ZRECs requires, allows or even recommends consideration of rebates or performance-based buy-downs in the competitive renewable energy credits program. Tr. 1/10/12, p. 9.

In the event that the Authority determines that his request would not be consistent with the Energy Act, Mr. Cleary submitted for consideration, alternative language to amend Section 4.9 of the proposed Solicitation Plan. That amendment would hold harmless homeowners that relied on the language of the Energy Act until public notice of the Proposed Solicitation Plan was filed with the PURA, and there was public notice of the restrictions and the future payments of renewable energy credits. Id.

### **5. Ansonia Copper & Brass**

Ansonia Copper & Brass recommended giving a bid preference of 10% on projects that would provide behind the meter renewable power to manufacturing facilities. Doing so would allow manufacturers to consider renewable energy options while saving on electric costs. Relief for Connecticut manufacturers means jobs for Connecticut citizens instead of businesses closing down or moving. Tr. 1/31/12, p. 141.

## **6. The Pat Munger Construction Company, Inc**

The Pat Munger Construction Company Inc. (Munger Construction) opposed any modification to the equal thirds distribution of funds between classes. In addition, Munger Construction requested that the Authority act with urgency to finalize the offering. Written Comments, January 27, 2012.

## **7. Borrego Solar Systems, Inc**

Borrego Solar Systems, Inc. (Borrego) recommended that each of the ZREC size classes should receive an apportionment of 20%, and that the remaining 40% would be apportioned based on the competitiveness of bids received within the classes. In addition, Borrego recommended more than one solicitation per year and re-classifying a 250 kW installation from the large ZREC class to the medium ZREC class. Borrego offered comments on the Standard Contract, specifically the issues of force majeure, contract assignment, change of control, and rights of seller's financing parties. Written Comments, 1/24/12.

## **8. The Chanler Group**

Regarding the proposed Solicitation Plan, Chanler stated that it is biased against small ZREC projects and referred to the small ZREC class as a residential program. Chanler stated that the plan expedites the proposal process and prioritizes the programs for medium and large projects. Chanler expressed concern that commercial businesses may enter the small ZREC program "either by reducing the project to 100 kW by taking off panels or otherwise, or even without changing the nameplate capacity but just submitting an application for fewer credits than its project's capacity." Written Comments, January 24, 2012.

## **9. FuelCell Energy, Inc.**

FCE recommended that the Authority include the following limitation in any ZREC or LREC solicitation: "No more than one-half of the dollars awarded in any solicitation shall be awarded to a single developer or any one Class I technology manufacturer." Also, that the number of kW's bid into a solicitation, and not the nameplate capacity of a project, be the factor used in determining whether or not the size of a project exceeds the cap. This recommendation does not comport with the Energy Act. Section 107(a) of the Energy Act states that ZREC "generation projects" that are "less than one thousand kilowatts in size," and §110(a) states that LREC "generation projects" are "less than 2 MW in size." FCE seeks to allow variable pricing (i.e., allowing bidders to offer prices and quantities that vary over the life of the contract). Finally, the Energy Act does not require fixed pricing or fixed maximum annual quantities. FCE proposed that the unused funds that may occur due to under-production by facilities and not due to under-procurement be rolled into future solicitations. Written Comments, January 24, 2012.

## **10. SunEdison, LLC**

SunEdison recommended a varying apportionment of funds wherein each of the three size classes would receive an apportionment of 20%, and the remaining 40% would be apportioned based on a market neutral competitive basis. “Banking” of excess RECs would allow overproduction in one year to be carried forward to the next year. In addition, SunEdison proposed a reallocation of funds to oversubscribed segments if others are undersubscribed. Further, the utilities should be required to monitor project fulfillment in order to ensure that projects selected on the basis of their claims of using Connecticut-based technologies actually use such technologies. Written Comments, January 23, 2012.

## **11. UTC Power**

UTCP Power (UTCP) recommended that the proposed Solicitation Plan define the process of determining the cost of renewable energy and the subsequent cost reduction requirement, in percent, with regard to the Authority’s ability to terminate LREC procurement after three years if the program’s cost reduction goals are not met. It also seeks “clarification” that zero-emission technologies be excluded from qualifications for LREC contracts. UTCP commented that preferential treatment be given for technologies that can operate locally and provide local power in the event of an outage. UTCP expressed having the same 10% band applied to LREC contract selection that is applied to medium and large ZREC contract selection in Section 7 of the proposed Solicitation Plan. Written Comments, January 23, 2012.

UTCP requested that “Selected Delivery Term Start Date” be defined in the proposed Solicitation Plan. UTCP expressed concern over the Companies’ proposal to allow actual market results determine the annual decline in the ZREC price cap. UTCP requested that additional information be included in the draft RFP and Bidder Response Form. Further, Section 2.6.6 of the plan define the number of days the bidder has to provide an attestation form to qualify for the 5% in-state bid discount. Id.

## **12. Solar Connecticut, Inc.**

Solar Connecticut (Solar CT) supported the proposed 1/3 funding allocation among the small, medium and large ZREC segments and opposed any mechanism that would compromise the 1/3 allocation as a result of prices set in other segments. It stated that there is a high demand for solar within the small and medium-sized commercial property owners. Solar CT also supported using the year one Program performance as a gage for any change in the funding allocation in year two. Regarding solar project performance assurance, Solar CT supported the Companies’ proposed threshold. However, it encouraged consideration as to whether small and medium sized projects proposed by veteran photovoltaic (PV) installers who previously worked with CEFIA on PV installations be required to set aside project funds. Written Comments, January 23, 2012.

### **13. Clean Water Action**

Clean Water Action (CWA) supported the proposed 1/3 funding allocation among the small, medium and large ZREC segments. CWA asked that if any consideration is given to requests of particular entities for special treatment, that these entities have a clear public benefit and purpose. Written Comments, January 31, 2012.

### **14. GrowJobsCT**

GrowJobsCT supported a 10% bid advantage for projects that provide on-site power to a manufacturing facility. This bid advantage would take tangible steps in getting the maximum return on renewable energy dollars spent in the state and would strongly link renewable energy investments and jobs. Connecticut manufacturers pay premium prices for electricity. This inhibits economic growth, restricts employment opportunities, discourages firms from locating in the state, and contributes to plant shutdowns and companies moving to other states or countries. Written Comments, January 31, 2012.

### **15. District Lodge 26**

District Lodge 26 supported a bid advantage for projects that would provide behind the meter electric power to manufacturing facilities. By providing a modest advantage to manufacturers who plan to locate renewable energy power generation on their site would acknowledge the contributions of manufacturing to the state. Written Exceptions, January 31, 2012.

### **16. Connecticut AFL-CIO**

Connecticut AFL-CIO supported a bid discount of 10% for medium and large size projects that provide power behind the meter to manufacturing facilities. Offering incentives to projects that generate below market power to state manufacturers would result in reduced costs and increased competitiveness. Written Comments, January 31, 2012.

### **17. Bloom Energy Corporation**

Bloom Energy Corporation requests that the final Decision include a 5% reduction for evaluating bid prices not just for technologies manufactured in Connecticut, as was stated in the draft Decision, but for technologies researched or developed in Connecticut as well. Written Comments, March 16, 2012, p. 2.

## **IV. AUTHORITY ANALYSIS**

The Authority addresses the Companies' request for findings and approval as well as other issues below.

## A. SOLICITATION PLAN

The Authority approves, with modifications, the proposed Solicitation Plan, including the proposed RFP process for LRECs and medium and large ZRECs. The Authority finds that the Solicitation Plan and RFP comply with the requirements set forth in §§107, 108 and 110 of the Energy Act. The Authority also finds that, if the Solicitation Plan and RFP are executed as designed, the procurement process should be transparent, open to competitive bidding, non-discriminatory and fair.

It is the Authority's goal to utilize as much of the annual funding in each specific REC procurement year as soon as feasibly possible and as cost effectively as possible, rather than to roll uncommitted (procurement funds that have not been contractually allocated to a project) ZREC funds into the next year's procurement. Therefore, the Companies will conduct only one solicitation per year in April for LRECs and medium and large ZRECs, unless a second solicitation for any of these REC categories is warranted as discussed below. For the first year, the solicitation will be conducted as soon as practical. The Authority disagrees with the Companies' proposed 10% payment bandwidth for the bid stack. Instead, if uncommitted funds remain in the medium and large ZREC categories after the first solicitation is completed, the Companies will aggregate some or all of those remaining ZREC funds in an attempt to accommodate the next project in the bid stack for either of the two ZREC categories. If the aggregated funding can accommodate one or more project(s), the bid(s) will be accepted. If it cannot, the remaining funds will be rolled into the small ZREC category for immediate availability. For LRECs, any uncommitted funds in any given year will roll into the next year's available LREC funds. All ZREC funds will remain within the ZREC categories and all LREC funds will remain in the LREC category.

The Companies will offer a second solicitation for LRECs or medium or large ZRECs only in the event that after the first solicitation, significant funding remains uncommitted in any of these REC categories and there are no bids left in the bid stack queue. The second solicitation will be conducted in October. The Companies will be directed to notify the Authority 30 days prior to the execution of a second solicitation when one will be conducted. Following that solicitation, medium and large ZREC funds may be aggregated to accommodate bids in either group if the funds in either category cannot accommodate the next bid in the bid stack. Any uncommitted medium and large ZREC funds will be rolled into the small ZREC category for immediate availability.

Section 107(3) of the Energy Act directs the Authority to examine lowering the renewable energy credit price cap under certain conditions following notice and opportunity for public comment. Since the new price cap must be in place 90 days before each solicitation, the Authority will require latest bid information from each company at least 180 days prior to a new solicitation. Given this time schedule, the Authority finds that only one solicitation period per year is practical. Additionally, the language of §107(3) of the Energy Act clearly discusses "annual" solicitations only. To assist the Authority with its annual price cap evaluation, the Companies will be required to submit the information discussed in Section IV.L Reporting Requirements, below.

**B. STANDARD CONTRACT**

Included with their proposed Solicitation Plan, the Companies submitted for approval, the Standard Contract that would be used for medium and large ZREC projects and all LREC projects. The Standard Contract establishes the rights, duties and obligations of the Buyer of the ZRECs or LRECs, CL&P or UI, and the Seller over the course of contract term. The Authority reviewed the Companies' proposed Standard Contract, and comments submitted by docket participants, including but not limited to those submitted by SunEdison and Borrego Solar Systems. Solicitation Plan, Appendix C.

The Authority finds that Connecticut ratepayers and their program funding are not exposed to the same level of risk in the ZREC and LREC Program as they are with most other types of programs. Specifically, where a certain sum of money is committed to be paid to a provider or project in advance of performance anticipation that a projected level of performance or benefits will then be delivered by the provider or program project at a later date. Sellers of ZRECs and LRECs are only paid under the contracts required by §§107, 108 and 110 of the Energy Act if they actually perform by producing and delivering Class I RECs to the Companies. If Sellers do not meet their contractual obligations to deliver RECs to the Companies, the only cost to Connecticut ratepayers, who will fund the ZREC and LREC programs through an increase in the NBFMCC on their bill, will be the Companies' administrative expenses associated with their role in implementing the ZREC and LREC programs. The Authority, therefore, finds that the Standard Contract's incentive mechanism of paying projects only for performance sufficiently reduces the Companies' and ratepayers' potential for economic risk of harm due to non-performance. It also provides adequate protection assurance to the Companies' and ratepayers' interests in ensuring that qualified projects will deliver the anticipated benefits. The Authority reviewed the Companies' proposed Standard Contract in light of these principles.

Subject to the modifications described below, the Authority approves the Standard Contract submitted with the Petition for use with medium and large ZREC and all LREC projects.

**1. Cover Page**

Any and all proposed substantive material changes to the ZREC and LREC contract approved in this proceeding will require Authority approval, unless the contract by its express terms provides otherwise. To eliminate any ambiguity regarding this intent, the Companies are directed to strike the language on the cover page stating that "The Companies reserve the right to make further changes to this Standard Contract up to final issuance, which changes may or may not be subject to PURA review or approval."

**2. Section 1.56 - Regulatory Approval**

The Authority directs that the Companies revise Section 1.56 defining "Regulatory Approval" to read: "Regulatory Approval" means the approval of this Agreement by the Authority and such approval is final and not subject to appeal."

### **3. Section 4.1.5 – Interconnection Agreement**

Section 4 of the proposed Standard Contract filed with the Companies' petition lists certain terms and conditions the Seller must satisfy before the Buyer is obligated to buy RECs from the Seller. The Authority directs the Companies to revise Section 4.1.5. as proposed in the Companies Brief: "The Facility has a fully executed Interconnection Agreement." Brief, p. 17. As noted by the Companies, this change will require a conforming change to the definition of Interconnection Agreement, by deleting "means an agreement between Seller and the Interconnecting Utility" and replacing it with "means an agreement with the Interconnecting Utility." The intent of this wording is to clarify that the Seller does not need to be a signatory or party to an Interconnection Agreement.

### **4. Section 4 - Connecticut Technologies**

To facilitate the credit reflecting a preference for bidders using Connecticut manufactured, researched or developed technologies, the Authority directs the Companies to modify Section 4. The Companies can draft a new subsection or add language to an existing subsection of Section 4 to require Sellers receiving bid preferences for using Connecticut manufactured, researched or developed generation technology to provide an affidavit and accompanying proof that they actually later installed Connecticut manufactured, researched or developed technologies. The effect of this added language is that the Buyer will not be obligated to buy RECs from a Seller that received a preference for using Connecticut manufactured, researched or developed technology until proof is provided that such technology was actually installed. Moreover, the added language will ensure that noncompliance will also constitute an Event of Default by the Seller under Section 13.2.2, and can serve as a basis for terminating the Agreement, if proof is not furnished within 12 months of the Delivery Term Start Date. See also, Section IV.F. Bid Preference for Connecticut Technologies, below.

### **5. Section 7.2 – Excess LRECs or ZRECs**

Section 7.2 deals with the Seller's and Buyer's options for selling and buying excess RECs. The Authority finds that the intent of this section as presently worded is clear. The purpose of this section is to explain that neither party has an obligation to sell or purchase additional LRECs or ZRECs in excess of the Maximum Annual Quantities. The intent of this section is to make clear that the Companies have the option, but not the obligation, to offer to purchase additional LRECs or ZRECs. The Companies' option to purchase is a function of the annual budgets for ZRECs and LRECs. The Companies will only be able to procure additional ZRECs and LRECs from projects when there is room for such purchases within the annual budget. Further, if there is room in the annual budget for additional purchases, the Companies would offer to purchase from lower priced suppliers first, and work up the "price chain" until either the budget is filled, or all additional production that suppliers are willing to sell is purchased. Brief, p. 18.

The Authority finds that there is value in providing further clarification on a related issue and directs the Companies to revise Section 7.2 to add a sentence clarifying that

“The Seller may offer to sell any RECs in excess of the Maximum Annual Quantity to persons other than the Buyer.”

#### **6. Section 7.3 – Banking of Excess RECs**

The Companies’ propose amending the draft Standard Contract to include a Section 7.3 that permits banking of excess ZRECs and LRECs. Brief, p. 19. The Authority approves this language for inclusion in the Standard Contract. The current Section 7.3 Purchase Price will be revised to be Section 7.4.

#### **7. Section 8.4 – Netting and Setoff of Contract Payments**

Section 8.4 covers netting and setting off of monthly payments between the Buyer and Seller. The provision provides that if a Buyer and Seller are required to pay any amount under this ZREC or LREC contract on the same day or in the same month, then such amounts with respect to each party may be aggregated and the parties may discharge their obligations to pay through netting. In this case the party, if any, owing the greater aggregate amount shall pay to the other party the difference between the amounts owed. The provisions also specify that each party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Agreement and/or any other contract between the Buyer and Seller, if any, may be offset against each other, set off or recouped therefrom.

SunEdison objected to Section 8.4 “[b]ecause different investors invest in different projects, they are generally not willing to accept a right of setoff against amounts that might be due under a contract in which they have no interest. As such, we suggest deleting the cross-contract set off rights altogether.” SunEdison Written Comments, January 23, 2012, Attachment 1. The Companies opine that some developers may find this provision attractive for the purpose of administering payments and reducing paperwork. The Companies note that this provision is worded as permissive as opposed to prescriptive. Only if both parties to the Standard Contract wish to allow for netting and/or set off will the provision be employed. Companies’ Brief, p. 20.

In an effort to address SunEdison’s concerns, the Companies filed a revised version of Section 8.4, which attempts to make clear that this provision can be exercised only upon mutual agreement, and any netting and/or setoff shall be limited to LREC/ZREC Program contracts. Companies’ Brief, p. 20 and Attachment 1. The Authority approves the version of Section 8.4 submitted with the Companies’ Brief.

#### **8. Section 9.2 – Return of Performance Assurance**

SunEdison stated that: “Performance assurance should also be returned if the contract is terminated for a Buyer default.” SunEdison Written Comments, January 23, 2012, p. 15 and Attachment 1. The Companies agree to clarify that any unused Performance Assurance provided under the Standard Contract that may still be held by the Buyer would be returned to the Seller. This is after such Performance Assurance

had been used to satisfy any outstanding obligations of Seller in existence at the time of the expiration or termination of the Agreement. Companies' Brief, pp. 20 and 21.

In their Written Exceptions dated March 16, 2012, CL&P and UI requested that the Authority determine: (1) Section 9.2 should specify that the unused portion of the Performance Assurance is returned to the Seller due to an Event of Default by the Buyer, not Termination of the Agreement by the Buyer; and (2) that the Companies have no obligation to return the Performance Assurance if the Seller defaults. Written Exceptions, pp. 3 and 4.

The Authority confirms the Companies requested clarification that the Performance Assurance is to only be returned to the Seller if the Buyer defaults and not any and all times that the Buyer terminates the Agreement. Based on the foregoing, the Authority approves the following language for Section 9.2 of the Standard Contract.

Performance Assurance shall be returned to Seller at the earlier of (i) thirty (30) days after the In-Service Date, (ii) termination of this Agreement for failure to receive Regulatory Approval, (iii) termination of this Agreement because the Facility was not constructed due to a Force Majeure Event, or (iv) termination of the Agreement due to Event of default by the Buyer. For purposes of clarification, Buyer has no obligation to return Performance assurance if the Agreement is terminated due to an Event of Default by Seller.

#### **9. Section 10.3.1 – Seller and Buyer Covenants**

The Authority approves the Companies proposed clarifying revisions to Section 10.3.1 regarding the description of the RECs the Seller must provide to the Buyer. Brief, pp. 21 and 21.

#### **10. Section 11.1 – Prohibition on Assignments**

Based on the principle that the Standard Contract only pays the Seller for delivering RECs, the Authority finds that there is less need for stringent oversight and control by the Companies over assignments by the Seller. The Authority directs the Companies to revise Section 11.1 as follows:

Prohibition on Assignments. Except as permitted under this Article 11, this Agreement may be assigned by the Seller, unless the Buyer notifies the Seller in writing, within thirty days of receipt of written notice of the Seller's intent to make an assignment, that the Buyer has reasonably determined that such assignment will have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement and notifies the Seller in writing that the Buyer does not consent to the assignment. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment,

pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledger, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledger, or transferor from its obligations thereunder.

#### **11. Section 11.3 – Change of Control Over Seller**

Section 11.3 governs changes of control over the Seller. Based on the same rationale for modifying Section 11.1, above, the Companies are directed to revise Section 11.3 as follows to provide automatic consent for changes in control unless the Buyer reasonably determines that that change of control will have a material adverse effect on the Seller's ability to perform its obligations under the Agreement.

Change of Control over Seller. Buyer's consent shall be required for any "Change of Control" (as defined below) over Seller. Buyer's consent shall be deemed provided within forty-five days of Buyer's receipt of the Seller's notice of its intent to Change Control unless the Buyer notifies the Seller in writing, within thirty days of receipt of Seller's written notice of intent to make a Change of Control, that the Buyer has reasonably determined that such a Change of Control will have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement and that the Buyer does not consent to such Change of Control. If Buyer does not consent to a Change of Control requested by Seller resulting from a bona-fide, good faith transaction entered into by Seller for a Change of Control within such forty-five day period, Seller may terminate this Agreement upon sixty (60) days' notice to Buyer. For the purposes of this Section 11.3, "Change of Control" shall mean either (a) change in ownership of more than fifty percent (50%) of the equity interest of Seller in the Facility, either directly or indirectly, or (b) a change of control in fact of Seller.

#### **12. Section 11.2 – Assignments by Seller**

Section 11.2 governs assignment of the facility, the Agreement or the revenues from the Agreement by the Seller. The Authority encourages customers and project developers to have access to financing behind-the-meter small renewable generation on as favorable terms as possible. To achieve that end, the Authority finds that this provision must be revised to provide adequate assurance to lenders that they will be able to recoup their loan. The Authority also finds that it will be beneficial for the Seller to be able to assign the facility, the Agreement or the revenues earned under the Agreement to a lender. The Companies will revise the Section 11.2 to read as follows:

Seller may pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lender as security for the project financing or tax equity financing of the Facility provided, however, that the Facility shall remain at all times located at the original site.

**13. Section 11.6 – Permitted Assignment by Buyer**

The Authority approves the following language for Section 11.6.

Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller in connection with any merger, consolidation, exchange of all of the common stock or other equity interests or other similar transactions involving the Buyer that is approved by the Authority.

**14. Section 13.3.3(b) – Termination Due to Failure to Begin Generation**

Section 13.3.3 of the proposed Standard Contract addresses remedies upon Events of Default by the Buyer or Seller. Specifically, it covers Buyers' remedies for Events of Default by Seller.

Section 13.3.3(b) of the proposed Standard Contract contained language that would permit the Seller, based on the reason of force majeure, to seek the Authority's approval for an extension of time to begin generation at a facility where generation had already not begun delivering ZRECs or LRECs within 12 months of the Delivery Term Start Date of the Agreement.

The Companies' requested that the Authority approve a regulatory process to address requests for an extension of time by selected projects that are not producing energy that will result in LRECs or ZRECs within 12 months of the applicable selected delivery term start date(s) due to a force majeure event. Specifically, if a selected project is not producing generation that would result in Class I RECs within 12 months, the contract would automatically terminate. The Companies proposed that selected projects be afforded a one-time extension request opportunity through the Authority, if the basis for the request is a force majeure claim that was accepted by the PURA. The Companies reserved the right to challenge the claim of force majeure, if submitted by a project. Petition, pp. 18 and 19. The Companies believe it is important to emphasize that they have a fiduciary obligation to limit the financial and operational risk to which they and customers are exposed. Reply to Written Comments, January 30, 2012, p. 2.

Borrego stated that the force majeure provision should include specific items beyond the control of the bidder. This included circumstances where the project is unable to be locally permitted despite best efforts of the bidder due to constraints with zoning, conservation commission, wetlands, environmental species restrictions, planning board or the Connecticut Siting Council. Written Comments, January 24, 2012, p. 4. The Authority does not consider Borrego's force majeure examples related to zoning and permitting as acts of God or force majeure events but are normal business prerequisites and risks for operating a generator under local regulations.

The Authority rejects the proposal to permit an extension of time by selected projects that are not producing LRECs or ZRECs within 12 months of the applicable selected Delivery Term Start Date due to a force majeure Event. The Authority finds that permitting a delay beyond the Delivery Term Start Date is: (1) inconsistent with the intent of this legislation to achieve rapid deployment of behind-the-meter renewable

generation; (2) not necessary given the short amount of time required to install these small generators; and (3) based on the Authority's experience, likely to only delay the inevitable failure of a project that most probably could not achieve operation for reasons in addition to the force majeure excuse offered.

Any project contract that is terminated due to failure to deliver ZRECs or LRECs within 12 months of the Delivery Term Start Date, even if caused in part by delays in regulatory reviews and approvals, is free to participate in a future year's solicitation. The Authority finds that it does not further the intent of these provisions to permit projects to be under contract and not perform under the contract for a substantial period of time tying up funding that could go toward projects that are ready to begin operation and perform in conformity with their contract and the legislative intent.

Based on the foregoing, the Authority approves the following language for 13.3.3(b): "With respect to a Seller default pursuant to Section 13.2.2 (generation from the Facility has not begun within twelve (12) months of the Delivery Term Start Date), this Agreement shall terminate immediately."

#### **15. Section 15.1 - Force Majeure**

Consistent with the determination above regarding Section 13.3.3(b), the Authority approves the following language for Section 15.1:

15.1 Force Majeure. (a) Except as otherwise set forth in this Agreement, neither Party shall be liable to the other Party for failure or delay in the performance of any obligation under this Agreement during the Term if and to the extent that such delay or failure is due to a Force Majeure Event. The Party claiming Force Majeure shall notify the other Party of the occurrence thereof as soon as possible and shall use reasonable efforts to resume performance immediately. (b) In no event shall a claim of Force Majeure or a Force Majeure Event operate to extend the Delivery Term Start Date of this Agreement. (c) After the Delivery Term Start Date, in no event shall a claim of Force Majeure or a Force Majeure Event operate to extend the Delivery Term of this Agreement. (d) After the Delivery Term Start Date, in the event of (i) a Force Majeure Event of twelve (12) consecutive months duration, or (ii) Force Majeure Events cumulatively totaling twelve (12) months, in which Seller fails to deliver any LRECs or ZRECs from the Facility to Buyer, Buyer shall have the right to terminate this Agreement without further liability to Buyer, by giving Seller fifteen (15) Business Days written notice.

#### **16. Section 18.4 – Site Access**

Section 18.4 concerns the Buyers' right to visit the site and inspect the Seller's renewable generation facility to verify compliance with the Agreement. SunEdison raised a concern that any right of a Buyer to visit the site must be subject to the approval of the distribution customer and, if applicable, the site owner. SunEdison Written Comments, January 23, 2012, p. 16 and Attachment 1. The Companies represented that, as part of proper ZREC and LREC program administration, they must

be able to enter premises as needed to safeguard the integrity of their electric systems, as well as properly meter the equipment on the premises as well as the LRECs or ZRECs for payment purposes. The Companies believe that to the extent that permission is required from any third party, such as a site owner or distribution customer, approval must similarly be provided in advance. Companies' Brief, pp. 29 and 30.

The Authority directs the Companies to add language to this section stating that the Buyer and Seller agree that it constitutes a material breach by the Seller to deny reasonable access to the site and the facility and that the material breach can constitute an Event of Default by the Seller under Section 13.

#### **17. Section 18.9 - Governing Law; Venue; Waiver of Jury Trial.**

In response to the Fuel Cell Energy's Written Exceptions at page 9, the Authority approves the following language for Section 18.9.

18.9 Governing Law; Venue; Waiver of Jury Trial. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Connecticut, without regard to principles of conflicts of law. Parties waive the right to a trial by jury. Any dispute arising out of this Agreement shall be governed by Section 17.3 of this Agreement.

#### **18. Attachments to the Standard Contract**

Included in the Companies' proposed Standard Contract are two blank forms, one for meter requirements and the other is a Form Letter of Credit. The Companies will be directed to file for the Authority's approval their respective proposed Meter Requirements Form and a proposed Form of Letter of Credit prior to issuance of the first RFP for ZREC and LREC projects.

### **C. PROGRAM BUDGET AND COST RECOVERY**

#### **1. Program Budget**

The Companies provided the LREC and ZREC program budgets and a breakdown of the annual and 15-year funding targets for each procurement year. Solicitation Plan, pp. 1-3; Appendix A; The LREC/ZREC Program, January 10, 2012, PowerPoint presentation handouts. The chart and funding breakdowns show the yearly funding for LREC and ZRECs. Each year, the Companies would solicit up to \$120 million worth of ZREC contracts (\$8 million per year for 15 years) and up to \$60 million of LREC contracts (\$4 million per year for 15 years) as required by the Energy Act. Solicitation Plan, p. 2.

The Companies also provided updated itemized budgets and projections for each of the LREC and ZREC programs for CL&P and UI that better illustrated the programs targeted total spending of \$1.020 billion utilizing the 15-year contracts. Response to

Interrogatory ACCT-1. The Companies' responses to Interrogatories ACCT-1 and ACCT-2 are included below as Attachment A and Appendix A, respectively.

The Authority reviewed and analyzed the Companies updated itemized budgets<sup>3</sup> and funding breakdowns.<sup>4</sup> The Authority notes the Companies' effort of presenting an itemization of the ZREC and LREC annual budgets, total annual budgets, number of contract years, number of procurement years (ZREC and LREC), total ZREC budget and LREC budget, the CL&P and UI allocation, the small, medium and large ZREC allocation, the annual procurement by CL&P and UI, the annual procurement by product of CL&P and UI and the total procurement by product over 21 years in a revised format.

The Authority questioned the Companies annual fiscal year for the solicitation of ZRECs and LRECs and the expenditure of funding under a competitive procurement process. The Companies stated in part, that there is a distinction between having a budget for \$8 million a year and having commitments entered into for \$8 million in a one-year period and that they are not looking at spending \$8 million per year. It is making a commitment into contracts that will each collectively have a value of \$8 million a year in one year. In other words, during 2012 the Companies would expect to enter into ZREC contracts with a value of \$120 million, which is \$8 million a year for 15 years. Some of those contracts may actually start producing RECs and have payments in 2012, some in 2013 and maybe for some the first payments would not even occur until 2014. Tr. 01/31/12, p. 246.

The Authority recognizes that the values listed in these Program Budgets are presented beginning the year the Companies will solicit for ZRECs and LRECs, and make the commitment to the projects. Actual dollars spent will vary depending on the delivery term selected by the projects and the actual creation of Class I RECs in the New England Power Pool (NEPOOL) Generation Information System (GIS). Brief, pp. 12 and 13.

On that basis, the Authority affirms that the annual procurement budget target required by the Energy Act will represent the dollar value of the aggregate annual procurement commitments. Contract commitments will not exceed the aggregate annual procurement amounts allowed by the Energy Act.

The Authority finds that the Companies LREC/ZREC funding breakdown of the program budgets and calculations filed in their response to Interrogatory ACCT-1 and included as Attachment A and are in compliance with §§107, 108 and 110 of the Energy Act.

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<sup>3</sup> The values listed in these Program Budgets are presented beginning the year the Companies solicit ZRECs and LRECs, and make the commitment to the projects through the execution of an agreement. Actual dollars spent will vary depending on the delivery term selected by the projects and the actual creation of Class I RECs in the NEPOOL GIS.

<sup>4</sup> The spreadsheet is a reformatted version of Appendix A of the Solicitation Plan, which derives the funding breakdown by showing the calculations in detail.

## **2. Program Cost Recovery**

Section 108(e) of the Energy Act entitles the Companies to recover their prudently incurred costs and fees for ZREC procurement through a nonbypassable reconciling component of electric rates as determined by the Authority. However, the Energy Act does not provide a similar provision for LREC procurement costs.<sup>5</sup> The Authority will allow the Companies to recover prudently incurred costs and fees associated with LREC and ZREC procurement. Recovery of such costs will be through the NBFMCC as proposed by the Companies.

To account for the REC Program as “Its Own Transaction” the Authority will direct the Companies to segregate the costs for procuring LREC and ZREC projects. By doing so, the Companies can isolate the dollars attributable to the REC contracts and be able to show them separately from any other dollars that are flowing through their accounting systems. Then, the Companies will be able to produce the numbers that is specific to the ZREC and LREC program.

In addition, to account for the REC Program as “Its Own Transaction,” the Authority will direct the Companies to segregate the administrative costs and fees associated with the procurement of projects so the Companies will be able to produce the numbers that are specific to the ZRECs and LRECs program. The Authority expects that the Companies will be able to account for the actual dollars committed and expended on the ZREC and LREC programs and administrative costs on an annual basis in a format similar to that in the Attachment A and Appendix A. The reasonableness of these expenditures will be addressed in future proceedings. The Authority reminds the Companies of its responsibility of the reconciliation of the cost of the program through the NBFMCC.

### **D. PROGRAM ADMINISTRATION**

In this proceeding, the Companies have asked for the Authority’s approval of the concept of using a tariff rider along with a 15-year service agreement for small ZREC projects. Neither document was filed in this proceeding. The Companies anticipate filing for approval with the Authority the tariff rider and the service agreement once the medium and large ZREC project bids have been approved by the Authority. Tr. 1/31/12, pp. 210-212.

During the January 31, 2012 hearing, the Authority requested that in addition to briefing on the merits of the Companies’ proposal to use a tariff rider for administering small ZRECs and contracts for administering LRECs and medium and large ZRECs, that the Companies also brief the possibility of: (a) whether tariff riders could be used for administering all classes of the Program projects (small, medium and large ZREC and all LREC projects); and (b) whether a tariff rider could be omitted and instead utilize contracts for administering all classes of the Program projects. The Companies stand by their proposal to utilize a tariff rider in conjunction with a service agreement for small

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<sup>5</sup> The Companies believe that this omission should be corrected in the current legislative session. Tr. 1/31/12, pp. 235 and 236; Late Filed Exhibit No. 1.

ZRECs and contracts for the competitive bidding process for medium and large ZRECs and all LRECs for the reasons discussed below. Brief, pp. 6-10.

The Companies believe that it is more accurate to refer to the small ZREC tariff as a standalone contract for the sale and purchase of RECs that is appropriate for and applicable to a group of projects that are in a distinct class size and similarly situated in terms of pricing. As such this form of contract would operate as a tariff in a similar fashion as tariffs for electric service operate. The Companies believe that a tariff rider for the small ZRECs in lieu of the Standard Contract provides for customer ease of enrollment and administrative efficiencies in managing the Program. The benefits of utilizing a tariff include: (1) providing a streamlined process for enrollment by sellers within the small ZREC class; (2) clearly defined eligibility, applicability and other terms and conditions, and (3) advance review and approval of the aforementioned features of the tariff in a simpler format than the Standard Contract. An approved tariff provides potential small ZREC sellers with a complete set of terms and conditions, including pricing, and the contractual and regulatory certainty, upon which they can build their ZREC projects. Once a tariff is approved by the Authority, no additional regulatory approval would be required by the parties to enter into small ZREC contracts. Additionally, the tariff would eliminate the need for the Companies to seek approval for numerous contracts several times throughout the year. Brief, pp. 7 and 8.

The Authority agrees with the points stated by the Companies regarding utilizing a tariff. Consequently, the Authority approves the Companies' proposal to utilize a tariff rider and individual service agreements for small ZRECs and a Standard Contract for medium and large ZRECs and all LRECs. The Authority concludes that these are the most efficient and appropriate contract methods for administering the Program for the various customer classes and project sizes. The Companies will be directed to file for approval by the Authority under their latest respective rate case docket number, their respective proposed small ZREC tariff rider, absent the REC price, and the associated service agreement. Additionally, the Companies will be directed to file for approval by the Authority, the small ZREC tariff rider reflecting the proposed price for each solicitation year under their latest respective rate case docket number.

The Companies will also be directed to file for the Authority's approval and under protective status in the instant docket, their respective Procurement Plans, which includes the selected long-term LREC and medium and large ZREC contracts. The Companies will also include a bid summary sheet by REC category and ranked in order by bid price. The public version of the bid summary sheet will redact the bid price and will be ranked in order by project size.

#### **E. DECLINING ANNUAL INCENTIVES**

Section 107(3) of the Energy Act establishes a price cap that the Companies may pay for RECs in 2012 and grants discretionary authority to the Authority to lower this cap by 3% to 7% annually during solicitation years. Section 108(a)(2) of the Energy Act, requires the Companies to include a declining annual incentive proposal in their solicitation plan. The Companies proposed to set each year's price cap for the medium and large tiers equal to the highest accepted bid from the previous year's solicitation.

This new cap would then be subject to the 3% to 7% reduction exercised by the Authority. Petition, p. 15.

Lacking empirical information, the Authority believes that it is premature to adopt any formula for setting annual price caps. The Authority will examine year one's bidding information for price clusters, outliers, and various central measurements before committing to a price cap formula. In Section IV.L.2. Annual LREC/ZREC Program Reports, below, the Authority has directed the Companies to file annual reports containing the necessary information for the Authority to set future annual LREC and ZREC price caps.

#### **F. BID PREFERENCE FOR CONNECTICUT TECHNOLOGIES**

Sections 107(a) and 110(a) of the Energy Act allows the PURA to give a preference to procure contracts for technologies manufactured, researched or developed in Connecticut. The Companies proposed a 5% reduction in bid prices that would be used for evaluation purposes only, for proposals utilizing technologies that are manufactured, researched or developed in Connecticut. See, Petition, p. 17. The Authority approves a bid preference for technologies manufactured, researched, or developed in Connecticut. However, it does not believe that a 5% reduction in bid prices is an adequate incentive to encourage the use of Connecticut technologies for the projects. The Authority finds that a 10% reduction for evaluating bid prices would better incent the use of projects that are manufactured, researched or developed in Connecticut. Therefore, the Authority directs that bids be given a preference in the form of a 10% credit in the selection process, only if they can demonstrate that the generation technology to be used to produce the electricity is manufactured, researched or developed in Connecticut. See also, Section IV.B.4. Connecticut Technologies.

For purposes of the affidavits, the Authority defines manufactured and researched or developed below.

"Manufactured" is defined as:

the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Changing the quality of property includes any substantial overhaul of the property that results in a significantly greater service life than such property would have had in the absence of such overhaul or with significantly greater functionality within the original service life of the property, beyond merely restoring the original functionality for the balance of the original service life.

“Researched or Developed” is defined as:

The activity of applying technical expertise, knowledge or understanding to investigate, discover and produce new, more beneficial or useful materials, devices, systems, methods, processes or designs, or to improve benefits of the existing materials, devices, systems, methods, processes or designs.

For a project owner to receive a bid preference for projects manufactured, researched or developed in Connecticut, the Seller must submit two affidavits to the EDC along with its response to the RFP. One affidavit must be from the Seller identifying the technology to be used and the name and address of the Connecticut company where the manufacturing, research or development was conducted. The second affidavit must be from an officer of the Connecticut company indicating the company’s name and address and attesting that the technology that the Seller proposes to install was or will be manufactured, researched or developed at its facilities in Connecticut. The affidavit must identify the technology and confirm that no less than 50% of the value of the technology to be installed was or will be manufactured, researched or developed in Connecticut.

Before the Seller receives any payments under the Agreement from the Buyer for RECs, the Seller must provide an affidavit and attached bills or other proof that it actually installed the Connecticut manufactured, researched or developed generation technology. In Section IV.B Standard Contract, above, the Authority directed the Companies to add language to Section 4 of the Standard Contract to require this proof from the Seller.

#### **G. FIXED PRICE METHODOLOGY AND BID EVALUATION PROCESS**

The Authority approves the Companies’ proposal to use the fixed price evaluation methodology to evaluate bid proposals for LREC and medium and large ZREC projects. Valid bid proposals will be ranked in order from lowest to highest REC price under each REC category. Contracts will be awarded to the lowest bid price proposals first and awards will continue until the budget cap in each REC category is fully subscribed or as close to being fully subscribed as possible. See also, Section IV.A. Solicitation Plan, above. In ranking the bids, the Companies will consider the 10% reduction in bid prices for evaluation purposes for projects that utilize technologies that are manufactured, researched or developed in Connecticut, as allowed by the Energy Act and as approved by the Authority in Section IV.F. Bid Preference for Connecticut Technologies, above.

#### **H. ZREC FUNDING APPORTIONMENT**

While §108 of the Energy Act differentiates three customer groups for the purpose of ZREC procurement, it is silent concerning specific monetary procurement targets for each group. For year one of the Program, the Companies proposed to share the annual \$8 million procurement budget evenly among the three groups, subject to adjustment as solicitation analytics become available. Petition, p. 5.

A number of parties submitted comments concerning the proposed Solicitation Plan. While the majority of commenters supported the overall Solicitation Plan, a number of commenters proposed different funding apportionments from the 1/3, 1/3, 1/3 proposed by the Companies. For example, one party suggested an apportionment of 20% for small ZRECs, 30% for medium ZRECs and 50% for large ZRECs.<sup>6</sup> While another party recommended a 20%, 20%, 20% base apportionment with the remaining 40% allotted on bid price.<sup>7</sup>

In determining the ZREC funding apportionment, the Authority finds, absent empirical information, that an even budget allotment among the three size groups to be a sound year one funding strategy. Under this strategy, each group will be afforded an equal opportunity to demonstrate both interest and relative price points. The legislature created a trade off when it established different groups to foster a diversity of project sizes and participation levels, while also requiring the PURA to consider overall cost effectiveness. Generally, a budget allotment of 98% to small ZRECs and 1% each to medium and large ZRECs would tend to maximize participation. The opposite allotment of 1% each to small and medium ZRECs and 98% to large ZRECs would tend to minimize costs, maximize project MWs. Since ratepayers are price sensitive and project diversity indifferent, the PURA will reexamine the funding apportionment and, consequently, ratepayer value once year one's empirical information is available. In Section IV.L.2. Annual LREC/ZREC Program Reports, below, the Authority directs the Companies to file annual reports containing the necessary information for the Authority to set future annual ZREC funding apportionments.

## **I. CLASS I RPS EXPEDITED QUALIFICATION PROCESS**

As stated earlier, selected projects bidders must also obtain their RPS qualification, pursuant to Conn. Gen. Stat. §16-1(a)(26), from the PURA. The Companies stress that it is the sole and exclusive responsibility of the project bidders to ensure they fulfill their obligations relative to obtaining Class I qualification from the Authority. Petition, p. 9.

The Companies stated that as a result of the Program, there will be a significant influx of Class I applications submitted to the Authority. Therefore, the Companies proposed that the Authority establish an expedited process for RPS qualification of selected LREC and ZREC projects in the Program. They believe that a fast track process will be necessary for the projects to meet the Program's contractual timing requirements.<sup>8</sup> The Companies suggest that for LRECs and medium and large ZREC projects, the Authority develop a unified process wherein projects automatically receive Class I qualification upon approval of their contract as part of their Procurement Plan. Petition, p. 12.

To adequately review the LREC and ZREC filings in an efficient manner and in the quicker time periods provided by the Energy Act, the current approval process for

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<sup>6</sup> REEBA Written Comments, January 10, 2012, p. 3.

<sup>7</sup> Borrego Written Comments, January 12, 2012, p. 2.

<sup>8</sup> The Standard Contract requires selected projects to obtain among other prerequisites for purchase, Class I qualification within 12 months of the project's Delivery Term Start Date.

RPS qualifications must be reevaluated. In the near future, new processes will be used for all Class I and Class II filings and will allow the LREC and ZREC filings to be tracked separately. The Authority plans to implement its new registration program in the next few months and will conduct an outreach program to inform all involved about the new application process as well as new compliance and enforcement aspects of the program. However, until the above is implemented, the Authority will conduct the application and compliance process as it has in the past.

#### **J. PROJECT SIZE**

The Companies specified that the project size will be determined by nameplate capacity, which is the aggregate nameplate rating stated in kW converted to alternating current (AC) of all renewable generation behind a customer's REC meter. The project must also include a separate project production REC meter specifically to determine the LRECs or ZRECs created in association with the project's energy output. Petition, p. 7.

FCE stated that §107 of the Energy Act provides that the EDCs can enter into long-term ZREC contracts with projects that are less than 1,000 kW in size and meet certain other criteria. Also, Section 110 of the Energy Act provides that the EDCs can enter into long-term LREC contracts with projects that are less than 2 MW in size and meet certain other criteria. However, there is nothing in these sections of the Energy Act that define project size in the manner proposed by the EDCs. FCE Written Comments, January 24, 2012, p. 6

Since the actual size of any given project can be based on a number of factors, including optimizing the energy production, reliability and security needs of a customer, nameplate capacity should not be the standard for determining which projects are eligible to respond to the ZREC or LREC solicitation. Rather, project size limitations should be based on the number of kW's actually bid in response to a solicitation. Thus, in order to allow customers to install larger size projects that may satisfy other needs, FCE recommends that the Authority be consistent with prior precedent.<sup>9</sup> Specifically, to allow projects comprised of systems individually or in the aggregate, of any power capacity to respond to the solicitations provided that the kW's or MW's bid into the solicitation do not exceed the size caps set forth in the Energy Act. *Id.* Allowing projects of any power capacity to respond to a solicitation so long as the kW's or MW's bid into the solicitation do not exceed the size caps set forth in the Energy Act would provide an opportunity for a greater diversity of project sizes and participation among all eligible customer classes. *Id.* p. 7.

Solar Connecticut believes that the Authority should allow flexibility in the nameplate capacity of a project after a bid is submitted. Very often, a project design change occurs for various reasons including roof capacity, changes in host site demand or funding constraints. At the time of a bid submission, a project developer will submit a bid based on the projected capacity of a project and then, only after the project is commenced, realize that the capacity may need to be altered. In such circumstances,

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<sup>9</sup> Docket No. 03-07-17RE03, DPUC Review of Long Term Renewable Energy Contracts – Round 1 Results and Contract, Accounting and Allocation Issues, Decision dated September 26, 2006 (approving contract for 15MW output from a 30MW project).

the developer should not be disqualified from obtaining the benefits of the ZRECs for the project. The developer, at that point, will most likely have invested a significant amount of resources into a project which will be completely lost without the ZREC payment. Further, the public will not benefit from the project being built and the ZREC funding will not fulfill its intended purpose. To avoid both of these negative occurrences, a project should be allowed to have a final capacity of 10% above or below the ZREC capacity bid (10% Rule). If the actual installed capacity of a project exceeds the ZREC capacity bid, then the ZREC payment would be limited to the capacity bid amount. If the actual capacity falls below the ZREC capacity bid, then the ZREC payment would be limited to the actual ZREC production of the project. If the actual project capacity is more or less than 10% of the capacity bid amount, then the project would be deemed in default of the program's rules. Likewise, the tier limits should not affect the 10% Rule. Thus, if a project's ZREC bid capacity is 95 kW, then the project can have an actual capacity of 104 kW but only receive ZREC payments for up to the 95 kW bid capacity. Brief, pp. 6 and 7.

The 10% Rule will also prohibit projects from "underbidding." Solar Connecticut has a concern that certain developers may attempt to bid larger projects into the smaller tiers in an attempt to (1) underbid competitors in the lower tiers with smaller projects and (2) obtain a higher overall ZREC payment even though the payment is only for a portion of the project size. The Authority should prevent such predatory strategies by adopting the 10% Rule. *Id.*, p. 7.

Section 108(b) of the Energy Act addresses procurement processes based on the size of systems and states:

The electric distribution company's approved solicitation plan shall be designed to foster a diversity of project sizes and participation among all eligible customer classes subject to cost-effectiveness considerations. Separate procurement processes shall be conducted for (1) systems up to one hundred kilowatts; (2) systems greater than one hundred kilowatts but less than two hundred fifty kilowatts; and (3) systems between two hundred fifty and one thousand kilowatts. The Public Utilities Regulatory Authority shall give preference to competitive bidding for resources of more than one hundred kilowatts, with bids ranked in order on the basis of lowest net present value of required renewable energy credit price, unless the authority determines that an alternative methodology is in the best interests of the electric distribution company's customers and the development of a competitive and self-sustaining market. Systems up to one hundred kilowatts in size shall be eligible to receive, on an ongoing and continuous basis, a renewable energy credit offer price equivalent to the weighted average accepted bid price in the most recent solicitation for systems greater than one hundred kilowatts but less than two hundred fifty kilowatts, plus an additional incentive of ten per cent.

The Authority interprets §108(b) of the Energy Act to mean system size is determined by nameplate ratings, which the PURA has used to determine project size for capital grants for distributed resources and in applications for projects requesting

qualification to receive renewable energy certificates. Section 108(b) of the Energy Act does not discuss applying any adjustments to nameplate ratings or other parameters to determine project size.

Project size will be determined by summing the nameplate capacities of the individual units in the project or in the system and that using nameplate capacity is fair and will simplify the process to calculate RECs. The Authority will direct the Companies to provide bid proposals based on nameplate rating; however, the maximum project capacity solicitation will be limited to 1 MW for ZRECs and 2 MW for LRECs and projects will only receive RECs for the project's actual energy production. Project RECs exceeding the program caps can be used at the customer's discretion outside the ZREC and LREC programs.

#### **K. PERFORMANCE ASSURANCE**

The use of a performance assurance mechanism for a projects success can be defined generally as a mechanism that ensures that a sufficient amount of money will be available for use to complete or replace an entity's obligation to implement a required project and meet specified performance standards in the event that it proves unable or unwilling to meet those obligations. Such assurances can be provided by third-party institutions, such as a surety (bonding) companies, insurance companies, banks and other financial institutions that agree to hold themselves financially liable for the failure of a responsible party to perform its compensatory obligations.

The Companies have determined that all LREC and ZREC projects must provide some form of performance assurance as further incentive to achieve timely commercial operation. Petition, p. 5. The amount of performance assurance required for LREC contracts and large ZREC contracts is equal to 20% of the maximum annual quantity of LRECs or ZRECs multiplied by the applicable LREC or ZREC purchase price. The amount of performance assurance required for medium ZREC contracts is equal to 10% of the maximum annual quantity of ZRECs multiplied by the ZREC purchase price. The amount of performance assurance required for small ZREC contracts is equal to 5% of the maximum annual quantity of ZRECs multiplied by the ZREC purchase price. Performance assurance must be provided in the amount set forth in the applicable contract within 15 business days of the effective date of the contract. Solicitation Plan, p. 9.

The Companies' proposal stated that failure by a bidder to provide performance assurance in support of an awarded contract will lead to automatic termination of the contract, and trigger reallocation of Program dollars. However, a performance assurance will be returned to the bidder if one of the following conditions is met:

- (1) the project enters commercial operation and begins producing energy that qualifies for the production of ZRECs and/or LRECs (as applicable). More specifically, the Companies will return the performance assurance at the earlier of thirty days after the in-service date;
- (2) termination of the Agreement for failure to receive regulatory approval satisfactory in substance to the Company; or

- (3) the contract is terminated due to a force majeure event.

For purposes of clarification, the Companies have no obligation to return Performance Assurance if the bidder defaults. Solicitation Plan Appendix C, Standard Contract, pp. 7, 10 and 18.

Performance assurance is forfeited if the contract is terminated by the Company for an event of default, including but not limited to, the project failing to begin generating energy that will result in qualifying LRECs or ZRECs within 12 months of the selected Delivery Term Start Date.

The Authority reviewed the Companies' proposal and in general agrees with the process that has been put forth. However, if a bidder defaults, the Authority will require the Companies to file a notification indicating which bidder has defaulted and the reason why. The Companies will include the name, address of the bidder, as well as any tracking number. Additionally, the Companies will indicate the amount of the performance assurance and whether the performance assurance has been returned to the bidder. Furthermore, since all of the costs of the program will flow through to the NBFMCC charge, the Authority requires that all proceeds of the defaulted performance assurance be applied as an offset to NBFMCC charges.

## **L. REPORTING REQUIREMENTS**

### **1. Report to the General Assembly**

Section 108(g) of the Energy Act requires the Authority to submit a report to the joint standing committee of the General Assembly not later than 60 days following approval of the EDC's Procurement Plan submitted on or before January 1, 2013. The Authority must report:

- (1) number of REC bids relative to the number of RECs requested by the Companies;
- (2) number of bidders for small, medium and large ZRECs;
- (3) total number and value of contracts awarded;
- (4) total weighted-average price of RECs purchased; and
- (5) the extent to which the costs of technology have been reduced.

Given this short window, the Companies will be directed to each provide to the Authority their respective summary information listed above within 30 days following the Authority's approval of each Procurement Plan submitted on or before January 1, 2013. In addition, for each small, medium and large ZREC and LREC bid/application received, the following information will be provided in the form of a working Excel spreadsheet:

- bid amount;
- MWs bid;
- project type (solar, wind, etc.);
- nameplate capacity;

- number of committed RECs and dollars;
- amount of uncommitted funds;
- customer class (residential, commercial, industrial);
- project town;
- date of bid/application;
- identify accepted bid;
- small ZREC price;
- expected in-service date;
- status of awarded bid; and
- bid ranking position.

The Companies may supplement the above requested information as deemed necessary. The Authority considers bid amounts to be proprietary. Therefore, the Companies will redact the bid amounts from the public version of the filing. Additionally, the public version will list the projects by size so that the bid ranking position cannot be determined. However, selected projects must be identified. The proprietary version of the filing will contain all requested information and will be presented in the order of the bid price.

## **2. Annual LREC/ZREC Program Reports**

The Authority will require two annual reports by the Companies to evaluate the LREC and ZREC price caps, determine annual funding allocations for each ZREC category, and overall program evaluation. To that end, UI and CL&P will be directed to file an LREC/ZREC Individual Bid Report, broken out by each REC category (small, medium and large ZRECs and all LRECs) and a LREC/ZREC Program Summary Report. The LREC/ZREC Individual Bid Report, which will be submitted in the form of a working Excel spreadsheet, will include the following:

- bid amount;
- MWs bid;
- project type (solar, wind, etc.);
- nameplate capacity;
- project town;
- date of bid/application;
- number of committed RECs and dollars;
- amount of uncommitted funds;
- amount of committed but unused funds;
- amount of reassigned ZREC funds;
- expected/actual delivery term start date;
- customer class;
- status of awarded bid;
- identify accepted bid;
- bid ranking position;
- small ZREC price, if applicable;
- actual number of RECs purchased; and
- actual dollars for purchased RECs.

The LREC/ZREC Summary Report will include the information required by §108(g) of the Energy Act and delineated above in Section IV.I.1. Report to the General Assembly as well as the following:

- summary of the bid/awarded bid data;
- summary of small ZREC applicant/accepted applicant data;
- proposed ZREC funding apportionment for the upcoming solicitation year;
- proposed ZREC and LREC price cap for the next solicitation year;
- comments on whether the cost of renewables, not just bid prices, have been reduced since last year; and
- Companies' Program assessment.

The Companies may supplement their respective LREC/ZREC Individual Bid Report and the LREC/ZREC Summary Report as deemed necessary. The Companies will redact from the public version of the report the bid amounts. Additionally, in the public version of the report, the Companies will list the projects by size so that the bid ranking position cannot be determined. However, selected projects must be identified. The proprietary version of the filing will contain all requested information and will be presented in the order of the bid price.

### **3. Other Reporting**

The Companies will be directed to submit to the Authority an annual report listing the Program costs and credits flowed through to the NBFMCC (separately including Program costs and administrative costs) for the previous calendar year. The Authority will be requesting this per-bid ZREC and LREC information periodically throughout the solicitation years for new and historical (running list) bids. The Program cost report will be provided in a format similar to what was provided by the Companies in their Response to Interrogatory ACCT-1.

## **V. FINDINGS OF FACT**

1. The Companies are required to procure Class I REC 15-year contracts with owners or developers of renewable energy projects in Connecticut .
2. The production of one MWh of electricity from a Class I renewable energy source will create one REC.
3. Sections 107 and 108 of the Energy Act established the ZREC program and its requirements.
4. Section 110 of the Energy Act established the LREC program and its requirements.
5. The Companies worked collaboratively to design the Proposed Solicitation Plan.
6. ZREC annual funding is \$8 million.

7. LREC annual funding is \$4 million.
8. The Companies would solicit up to \$120 million worth of ZREC contracts and up to \$60 million of LREC contracts each year.
9. Each company will receive and evaluate only the bids for projects in its respective service territory.
10. The procurement of small ZRECs will be independently managed by each company.
11. A number of parties submitted comments concerning the proposed Solicitation Plan.
12. The values listed in these program budgets are presented beginning the year the Companies will solicit for ZRECs and LRECs, and make the commitment to the projects.
13. The Standard Contract only pays the Seller for delivering RECs.

## **VI. CONCLUSION AND ORDERS**

### **A. CONCLUSION**

The Authority has thoroughly reviewed the Companies' proposed Solicitation Plan, including the proposed RFP process for LRECs and medium and large ZRECs and has made some modifications. The approved Solicitation Plan and RFP comply with the requirements set forth in §§107, 108 and 110 of the Energy Act. Further, if the approved Solicitation Plan and RFP are executed as designed, the procurement process should be transparent, open to competitive bidding, non-discriminatory and fair. The Authority also approves, with modifications, the Companies' proposed Standard Contract for use with medium and large ZREC and all LREC projects.

It is the Authority's goal to utilize as much of the annual funding in each year's REC procurement as soon as feasibly possible and as cost effective as possible. Therefore, the Authority approves only one solicitation per year in April (or as soon as practical for the first solicitation year) unless if after the first solicitation significant funds remain uncommitted and there are no bids left in the bid stack queue, a second solicitation will take place in October. If uncommitted funds remain in the medium and large ZREC categories after the first solicitation is completed and other bids remain in the bid stack queue, the Companies will aggregate some or all of those remaining ZREC funds in an attempt to accommodate the next project in the bid stack for either of the two REC categories. Any remaining uncommitted medium or large ZREC funds will be rolled into the small ZREC category for immediate availability.

The Authority approves the Companies' proposal to use the fixed price evaluation methodology to evaluate bid proposals for LREC and medium and large ZREC projects. Contracts will be awarded to the lowest bid price proposals first. In

ranking the bids, the Companies will consider the 10% reduction in bid prices for evaluation purposes only for projects that utilize technologies that are manufactured, researched or developed in Connecticut. The Authority affirms that the annual procurement budget target required by the Energy Act will represent the dollar value of the aggregate annual procurement commitments. Contract commitments will not exceed the aggregate annual procurement amounts allowed by the Energy Act.

The Authority finds that an even budget allotment among the ZREC categories, absent empirical data, to be a sound year one funding strategy. The Authority will annually reexamine, using empirical data, the ZREC funding apportionment and the LREC and ZREC price cap. The Companies will recover prudently incurred costs and fees associated with LREC and ZREC procurement through the NBFMCC. The Authority will monitor these costs through reporting requirements.

The Authority approves the use of a tariff rider and individual service agreements for small ZRECs and a Standard Contract for medium and large ZRECs and all LRECs. These are the most efficient and appropriate methods for administering the Program for the various customer classes and project sizes. Project size will be determined by summing the nameplate capacities of the individual units in the project or in the system and that using nameplate capacity is fair and will simplify the process to calculate RECs.

The Authority will not establish a regulatory process to address requests for extension of time by selected projects that are not producing energy that will result in LRECs or ZRECs within 12 months of the applicable selected delivery term start date(s), due to a force majeure event.

A new process is being developed to expedite Class I and Class II RPS qualifications. However, until the process is implemented, the Authority will conduct the application and compliance process as it has in the past.

## **B. ORDERS**

For the following Orders, submit one original and two copies of the required documentation to the Executive Secretary, 10 Franklin Square, New Britain, CT 06051, and file an electronic version through the Authority's website at [www.ct.gov/PURA](http://www.ct.gov/PURA). Submission filed in compliance with the Authority's Orders must be identified by all three of the following: Docket Number, Title, and Order Number.

1. No later than April 11, 2012, the Companies each shall file for the Authority's approval a copy of the Standard Contract that conforms to the modifications approved herein.
2. No later than May 2, 2012, the Companies each shall file for the Authority's approval under their respective last rate case docket number: (a) a proposed Rate Rider tariff for use with small ZREC projects, absent the REC price; and (b) a proposed standard service agreement for use with small ZREC projects.

3. No later than 14 days before the initial RFP process begins, the Companies each shall file for the Authority's approval, their proposed Meter Requirements form and Form Letter of Credit.
4. No later than one week after the bids for procuring medium ZRECs have been approved by the Authority, UI and CL&P each shall file under their respective last rate case docket number for the Authority's approval, a new small ZREC Rate Rider with the proposed price for the specific solicitation year and the respective price calculation.
5. No later than two weeks following completion of each procurement process, UI and CL&P each shall file for the Authority's approval, the company's selected long-term LREC and medium and large ZREC contracts and summary sheet as discussed in Section IV.D. Program Administration.
6. No later than 30 days following the Authority's approval of the Procurement Plan for Procurement Plans submitted on or before January 1, 2013, UI and CL&P each shall file with the Authority the summary information as outlined in Section IV.L.1, Report to the General Assembly.
7. At least 30 days prior to the execution of a second solicitation in any given year, UI and CL&P each shall notify the Authority that a second solicitation will be conducted.
8. No later than August 15, 2012, and annually thereafter until the Program is completed, UI and CL&P each shall file a report with the Authority that provides specific data regarding the RECs that have been transferred to the Companies from the selected projects for the vintage year, and include any additional RECs beyond the project's maximum annual quantity that have been banked.
9. No later than December 31, 2012, and annually thereafter until the LREC/ZREC Procurement Plan is completed, UI and CL&P each shall file with the Authority the LREC/ZREC Individual Bid Report as outlined in Section IV.L.2. Annual LREC/ZREC Program Reports.
10. No later than December 31, 2012, and annually thereafter until the LREC/ZREC Procurement Plan is completed, UI and CL&P each shall file with the Authority the LREC/ZREC Summary Report as outlined in Section IV.L.2. Annual LREC/ZREC Program Reports.
11. No later than March 1, 2013, and annually thereafter until the Program is completed, UI and CL&P each shall file a report with the Authority detailing the Program costs that flowed through the NBFMCC during the previous calendar as discussed in Section IV.L.3. Other Reporting.

**The Authority is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act (ADA), the Authority makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format to allow them to benefit and/or participate in the agency's programs and services, should call 860-424-3035 or e-mail the ADA Coordinator, at [DEP.aaoffice@ct.gov](mailto:DEP.aaoffice@ct.gov). Persons who are hearing impaired should call the State of Connecticut relay number 711. Requests for accommodations must be made at least two weeks prior to the meeting date (Emphasis added).**





**Explanation of  
 Solicitation Plan Appendix A: LREC and ZREC Funding Breakdown**

<u>Line #</u>	<u>Item</u>	<u>Value</u>	<u>Source or Calculation</u>
A	ZREC Annual Budget	\$ 8,000,000	From PA 11-80, Section 107(c)
B	LREC Annual Budget	\$ 4,000,000	From PA 11-80, Section 110(c)
C	Total Annual Budget	\$ 12,000,000	A + B
D	# of Contract Years	15	From PA 11-80, Section 107(b) and Section 110(a)
E	# of Procurement Years - ZRECs	6	From PA 11-80, Section 107(c) (may be reduced to 4 procurement years by PURA)
F	# of Procurement Years - LRECs	5	From PA 11-80, Section 110(c) (may be reduced to 3 procurement years by PURA)
G	Total ZREC Budget	\$ 720,000,000	A x D x E
H	Total LREC Budget	\$ 300,000,000	B x D x F
I	Total	\$ 1,020,000,000	G+H
J	CL&P Allocation	80%	CL&P has approximate 80% load share (see response to RA-3)
K	UI Allocation	20%	CL&P has approximate 20% load share (see response to RA-3)
L	Small ZREC Allocation	33.33%	Proposed in Solicitation Plan (rounding error corrected)
M	Medium ZREC Allocation	33.33%	Proposed in Solicitation Plan (rounding error corrected)
N	Large ZREC Allocation	33.33%	Proposed in Solicitation Plan (rounding error corrected)
O	Annual Procurement by CL&P	\$ 9,600,000	C x J
P	Annual Procurement by UI	\$ 2,400,000	C x K
<u>Annual Procurement by Product</u>			
<u>Small ZRECs</u>			
Q	CL&P	\$ 2,133,333	A x J x L
R	UI	\$ 533,333	A x K x L
<u>Medium ZRECs</u>			
S	CL&P	\$ 2,133,333	A x J x M
T	UI	\$ 533,333	A x K x M
<u>Large ZRECs</u>			
U	CL&P	\$ 2,133,333	A x J x N
V	UI	\$ 533,333	A x K x N
<u>LRECS</u>			
W	CL&P	\$ 3,200,000	B x J
X	UI	\$ 800,000	B x K
<u>Total Procurement by Product Over 21 Years</u>			
<u>Small ZRECs</u>			
Y	CL&P	\$ 192,000,000	D x E x Q
Z	UI	\$ 48,000,000	D x E x R
<u>Medium ZRECs</u>			
AA	CL&P	\$ 192,000,000	D x E x S
BB	UI	\$ 48,000,000	D x E x T
<u>Large ZRECs</u>			
CC	CL&P	\$ 192,000,000	D x E x U
DD	UI	\$ 48,000,000	D x E x V
<u>LRECS</u>			
EE	CL&P	\$ 240,000,000	D x F x W
FF	UI	\$ 60,000,000	D x F x X

**DOCKET NO. 11-12-06 JOINT PETITION BY THE CONNECTICUT LIGHT AND  
POWER COMPANY AND THE UNITED ILLUMINATING  
COMPANY FOR APPROVAL OF THE SOLICITATION  
PLAN FOR THE LOW AND ZERO EMISSIONS  
RENEWABLE ENERGY CREDIT PROGRAM**

This Decision is adopted by the following Directors:

John W. Betkoski, III

Kevin M. DeIGobbo

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.



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Kimberley J. Santopietro  
Executive Secretary  
Department of Energy and Environmental Protection  
Public Utilities Regulatory Authority

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April 4, 2012  
Date