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July 30, 2010
106640-3

By Hand Delivery

Mark D. Marini, Secretary
Mass. Department of Public Utilities
One South Station, 2nd Floor
Boston, MA 02110

Re: Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid for Approval by the Department of Public Utilities of Two Long-Term Contracts to Purchase Wind Power and Renewable Energy Certificates Pursuant to G.L. c. 169 § 83 and 220 C.M.R. § 17.00 *et. seq.*, D.P.U. 10-54

Dear Secretary Marini:

I enclose for filing with regard to the above-referenced matter:

1. Prefiled Direct Testimony of Timothy Fagan; and
2. Certificate of Service.

Thank you for your assistance in this matter.

Very truly yours,


Sarah P. Kelly

SPK/jme
Enclosure

cc Laura Bickel, Hearing Officer (*w/enc. – 10 copies – by first-class mail and e-mail*)
Service List (*w/enc. by first-class mail and e-mail*)

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Petition of Massachusetts Electric Company and)
Nantucket Electric Company each d/b/a National)
Grid for Approval by the Department of Public) D.P.U. 10-54
Utilities of Two Long-Term Contracts to Purchase)
Wind Power and Renewable Energy Certificates)
Pursuant to G.L. c. 169 § 83 and 220 C.M.R.)
§ 17.00 *et. seq.*)

Prefiled Direct Testimony of Timothy Fagan

*Submitted on behalf of Morris Energy Group LLC and
Lowell Cogeneration Company Limited Partnership*

July 30, 2010

1 **I. Introduction**

2 **Q: Please state your name, position, and business address.**

3 A: My name is Timothy Fagan. I am the Director of Asset Management for Morris
4 Energy Group LLC. My business address is 36 Corbett Way, Eatontown, New Jersey, 07724.

5 **Q: On whose behalf are you testifying in these proceedings?**

6 A: I am testifying on behalf of Morris Energy Group LLC (“MEG”) and Lowell
7 Cogeneration Company Limited Partnership (“Lowell Cogen,” for purposes of this testimony).
8 MEG acquired Lowell Cogen in 2008.

9 **Q: Can you describe your responsibilities as Director of Asset Management?**

10 A: I am responsible for managing all operational, financial, and contractual aspects of the
11 generation facilities of MEG, including but not limited to project development, plant
12 operations, maintenance, plant betterment, regulatory compliance, contracts, power marketing,
13 fuel supply, cash flow, and profits/losses.

14 **Q: Could you please describe your professional and educational background?**

15 A: I graduated from Manhattan College in 1989 with a Bachelor of Science degree in
16 Mechanical Engineering. In 1995, I was awarded a Master of Science degree in
17 Environmental Engineering from Manhattan College. I have been employed in the electric
18 power industry for over twenty years. Prior to joining MEG in 2005, I served as Manager of
19 Business Development for the American Ref-Fuel Company, where I was responsible for all
20 activities related to project development. Prior to joining American Ref-Fuel Company, I
21 worked in the business development and asset management group of United American Energy
22 Corp., where I was responsible for developing and managing power facilities. I have also
23 previously held a position as an engineer at Burns and Roe Company.

24 **Q: Can you please describe Lowell Cogen’s business?**

25 A: Lowell Cogen is a wholesale electric supplier, authorized to engage in wholesale sales
26 of energy and capacity at market-based rates. It owns the Lowell Cogen facility (the
27 “Facility”), located in Lowell, Massachusetts, a 32.5 MW (nameplate) facility. The Facility
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1 has been in operation as a natural gas and No. 2 fuel oil fired facility since 1988. It is
2 interconnected to the transmission system of National Grid (in the ISO-NE market).

3 **Q: What is Lowell Cogen’s connection to this proceeding?**

4 A: Lowell Cogen submitted a proposal to National Grid under Section 83 of the Green
5 Communities Act of 2008, proposing to repower the Facility to burn biofuel and satisfy the
6 requirements for Class 1 renewable energy and credits. Lowell Cogen proposed that National
7 Grid purchase renewable energy, renewable energy credits (RECs), and capacity from Lowell
8 Cogen. The RFP process, however, was improperly suspended by National Grid, and
9 National Grid instead entered into two Power Purchase Agreements (“PPAs”) with Cape
10 Wind, purportedly under Section 83 of the GCA. Those PPAs are the subject of this
11 proceeding.

12 Lowell Cogen sought to intervene in the proceeding because the RFP process was
13 improperly suspended and because Lowell Cogen can offer efficiencies and benefits, under
14 Section 83 of the GCA, that Cape Wind cannot offer. It is important for the Department to
15 understand the position of a competitor of Cape Wind (one that began the RFP process) under
16 Section 83.

17

18 **II. Section 83 of the Green Communities Act**

19 **Q: Are you familiar with Section 83 of the Green Communities Act?**

20 A: Yes, I followed the passage of the bill very closely and am quite familiar with it.

21 **Q: What is the purpose of Section 83 of the GCA?**

22 A: Section 83 was enacted to encourage renewable energy generation in the
23 Commonwealth. It provides distribution companies with an incentive to purchase renewable
24 energy from new or repowered renewable energy facilities, which will, in turn, support the
25 growth of renewable energy facilities in the Commonwealth.

26 More specifically, the statute provides that distribution companies are required to solicit
27 proposals from renewable energy developers and “enter into cost-effective long-term contracts
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1 to facilitate the financing of renewable energy generation.” In other words, because renewable
2 energy frequently is, at this point, more expensive than non-renewable forms of energy, the
3 Massachusetts legislature sought to encourage the development of renewable energy sources by
4 creating a market for the new renewable energy produced by requiring distribution companies
5 to purchase it. The legislature, however, also specifically required that these contracts be
6 “cost-effective.”

7 The legislature also gave the distribution companies a financial incentive (in addition to
8 a legal mandate) to enter into these long-term contracts with renewable-energy providers,
9 namely, an “annual remuneration . . . equal to 4 per cent of the annual payments under the
10 contract.” The distribution companies, however, are not obligated to enter into long-term
11 contracts that would, in the aggregate, exceed 3% of the “total energy demand from all
12 distribution customers in the service territory of the distribution company.”

13 **Q: What are the criteria under which renewable energy providers’ proposals are to be**
14 **reviewed?**

15 A: Section 83 requires that the renewable energy generating source meet a number of
16 criteria: (1) that it has a commercial operation date, as verified by the Department of Energy
17 Resources, on or after January 1, 2008; (2) that it be qualified by the Department of Energy
18 Resources as eligible to participate in the RPS program . . . and to sell RECs under the
19 program; and (3) be determined by the Department of Public Utilities to (i) provide enhanced
20 electricity reliability, (ii) contribute to moderating system peak load requirements; (iii) be cost
21 effective to Massachusetts electric ratepayers over the term of the contract; and (iv) where
22 feasible, create additional employment in the Commonwealth. In approving any of these
23 contracts, the Department of Public Utilities “shall take into consideration both the potential
24 costs and benefits of such contracts and shall approve a contract only upon a finding that it is
25 cost-effective mechanism for procuring renewable energy on a long-term basis.”

26 **Q: How does this Act benefit renewable energy providers?**

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1 A: Because renewable energy, at this point, is generally more expensive than non-
2 renewable energy, it is difficult to create incentives for those who might have the means to
3 generate renewable energy to build new plants or repower old ones. However, if a distribution
4 company is required to purchase renewable energy, then those seeking to build new renewable
5 energy facilities or convert old facilities into renewable energy facilities will be able to obtain
6 financing to build or modify their facilities and have a built-in market in which to sell their
7 product. Moreover, the Act has the obvious benefit of increasing the Commonwealth's use of
8 renewable energy sources.

9 **Q: Finally, how does Section 83 provide that distribution companies are to select**
10 **renewable energy providers?**

11 A: Section 83 provides that distribution companies "shall be required . . . to solicit
12 proposals from renewable energy generators and, provided reasonable proposals have been
13 received, enter into cost-effective long-term contracts to facilitate the financing of renewable
14 energy generation[.]" It further provides that the distribution company shall select a
15 "reasonable method of soliciting proposals from renewable energy developers, which may
16 include public solicitations, individual negotiations, or other methods." Thus, two
17 requirements stand out: there must be a request for proposals and the method of soliciting
18 proposals must be reasonable.

19

20 **III. The Benefits of Lowell Cogen's Proposal**

21 **Q: Did National Grid issue a Request for Proposals pursuant to Section 83 of the**
22 **GCA?**

23 A: Yes. National Grid issued a Request for Proposals dated January 15, 2010.

24 **Q: What was the purpose of the RFP?**

25 A: According to National Grid, it was seeking to "satisfy the policy directive encompassed
26 within Section 83 of the GCA, which require the Distribution Companies, in consultation with
27 DOER to (1) solicit proposals from developers of Massachusetts-based renewable energy

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1 projects . . . in a reasonable fashion and (2) execute long-term PPAs in order to facilitate the
2 development, financing, construction and operation of these projects.”

3 **Q: Did Lowell Cogen submit a proposal in response?**

4 A: Yes. On or about February 18, 2010, Lowell Cogen submitted a proposal for a long-
5 term contract for renewable energy.

6 **Q: Was Lowell Cogen’s proposal eligible for consideration under the terms of Section**
7 **83 of the GCA?**

8 A: Yes. The proposal met all Section 83 criteria. First (in order that they are spelled out
9 in Section 83), the Facility will have a commercial operation date on or after January 1, 2008.
10 While the plant is already in existence, under the proposal submitted to National Grid, Lowell
11 Cogen will repower its facility to burn biofuel and satisfy the requirements for Class 1
12 renewable energy and credits under a Power Purchase Agreement. Under currently existing
13 DOER guidelines, such a conversion (after January 1, 2008) would qualify the Facility as
14 having a “commercial operation date . . . on or after January 1, 2008.”

15 The second criteria is that the facility be qualified by the Department of Energy
16 Resources as eligible to participate in the RPS program . . . and to sell RECs under the
17 program. The Lowell Cogen Facility proposed that it would burn biofuel and qualify, under
18 the guidelines of the Department of Energy Resources, to participate in the RPS program and
19 to sell electricity and RECs under the program.

20 Third, Lowell Cogen provides significant benefits that would qualify it under the
21 remaining criteria in Section 83: (i) that the Facility provide enhanced electricity reliability, (ii)
22 that the Facility contribute to moderating peak load requirements, (iii) that the proposal be
23 cost-effective to Massachusetts electric ratepayers over the term of the contract, and (iv) create
24 additional employment in the Commonwealth. Lowell Cogen is capable of offering benefits
25 that cannot be offered by Cape Wind, which was awarded a PPA with National Grid.

26 **Q: Could you elaborate on those final four criteria?**

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1 A: Of course. The first of those criteria—to be evaluated by the Department of Public
2 Utilities—is that the Facility provide “enhanced electricity reliability.” This is undoubtedly
3 true of Lowell Cogen. If distributors choose to purchase at least some of their renewable
4 energy from wind projects, then Lowell Cogen, and other non-wind projects like it, will be
5 critical to the Commonwealth’s goal of enhancing reliability while decreasing our dependence
6 on fossil fuels. Lowell Cogen will be a fully dispatchable facility, generating renewable
7 energy and renewable energy credits from the burning of Massachusetts-eligible liquid bio-fuel
8 for 3,000 run hours at 75,000 MW/year by January 1, 2011. I will explain further why this is
9 so important.

10 The first attribute of the Facility that will contribute to electricity reliability in the
11 Commonwealth is that the Facility is fully dispatchable. In this regard, it is a perfect
12 compliment to other variable energy renewable resource projects, such as wind and solar
13 projects. Lowell Cogen can be started within ten minutes and can be easily dispatched by the
14 distributor when other variable energy resources fail to operate (*e.g.*, the wind does not blow)
15 or when other units trip off line. For National Grid to purchase all of its renewable energy
16 requirements from Cape Wind is nothing short of irresponsible. A facility that is fully
17 dispatchable (the opposite of Cape Wind) is the only way that a wind facility of any kind makes
18 sense – the distributor will need to call on Lowell Cogen on days when the wind dies down, as
19 even Cape Wind acknowledges will happen approximately 60% of the time.

20 Moreover, Lowell Cogen will be prepared begin its operations soon, unlike Cape
21 Wind. First, the Facility is already in existence. Lowell Cogen currently operates a GE
22 LM2500 aero-derivative gas turbine with a brush electric generator operating in combined
23 cycle with a Vogt Heat Recovery Steam Generator and a Westinghouse Steam Turbine with a
24 GE Electric Generator and associated auxiliary equipment.

25 Steps will need to be taken to repower the Facility, but they are not onerous. In fact,
26 Morris Energy has already successfully repowered facilities to burn biofuel in Massena, New
27 York and Elmwood Park, New Jersey. With respect to Lowell Cogen, the Massachusetts
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1 Department of Environmental Protection has granted permission for biofuel testing to be
2 performed at the facility this year. After testing, an application will be submitted to the
3 Department of Environmental Protection and the Department of Energy Resources for both a
4 modification to the plant's air permit to burn bio fuel and for a Statement for Qualification as a
5 Class 1 renewable generating unit under the Massachusetts Renewable Portfolio Standards
6 program. I do not foresee any issues with permitting or qualifications, especially compared to
7 a project like Cape Wind, and I would have anticipated (had the proposal been accepted) a
8 commercial operation date for Lowell Cogen of December 31, 2010. There is no construction
9 or financing risk associated with the Facility, nor is there any risk associated with an
10 interconnection agreement (as the interconnection is already in place—a 23 kV line runs
11 between the Facility and National Grid's Quebec Street Substation).

12 In contrast, Cape Wind is not prepared for operation in the near future. Cape Wind's
13 PPA has built-in delays until December 31, 2018, with no financial penalty. Finally, Cape
14 Wind, unlike Lowell Cogen, has no demonstrated track record of success. In short, it is in no
15 way clear that Cape Wind will be ready to produce "reliable" energy for the Commonwealth in
16 the near future.

17 The second factor is whether Lowell Cogen will contribute to moderating system peak
18 load requirements. As demonstrated above, Lowell Cogen is perfectly suited to working in
19 conjunction with variable energy sources, as it can fill in gaps when solar or wind power plants
20 are not able to produce power. Lowell Cogen is capable of getting 20 MWs on the grid within
21 ten minutes and has been active in ISO-NE's Forward Reserve Market for the past five years.
22 Lowell Cogen's proposal is designed so that it can operate as one of many renewable energy
23 providers—one that can be counted on during hot summer days. Lowell Cogen's offering was
24 specific in stating that National Grid had the right to dispatch the Facility at opportune times.

25 Cape Wind, on the other hand, simply cannot contribute to moderating system peak
26 load requirements on a guaranteed basis. Cape Wind has no control over when the wind will
27 blow and thus, when it will be able to produce electricity for the grid. The mere fact that it
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1 will sometimes—as a matter of chance—be able to produce electricity at peak times does not
2 fulfill the requirements under Section 83, because all wind power plants will, at some point,
3 generate electricity during a peak demand time. Lowell Cogen can do more than that. It can
4 power up quickly, during peak demand times, and will reliably moderate system peak load
5 requirements.

6 Third, Lowell Cogen’s proposal is cost effective to Massachusetts rate payers over the
7 life of the contract. Because the cost of bio fuels may rise in the future, it is possible that the
8 electricity purchased from Lowell Cogen may be somewhat more expensive than fossil fuel
9 powered sources. However, Lowell Cogen provides an option to distributors not available
10 from other renewable energy providers—dispatchability. Moreover, National Grid, under the
11 proposal, would not be required to purchase a preset amount of electricity or RECs each year,
12 but could elect to purchase power only during peak demand. Thus, National Grid would have
13 the ability to determine the overall effect on customer rates and manage the total power and
14 RECs purchased from Lowell Cogen in any given year.

15 In contrast, Cape Wind does not offer a cost effective alternative, even to other wind
16 proposals. The all-in price in 2013 is at least 20.7 cents per kWh. And this is for power
17 produced at times when electricity is very inexpensive on the spot market during off-peak load
18 periods. Under the Cape Wind PPA, National Grid ratepayers could potentially be paying
19 20.7 cents per kWh, while customers of other distributors are paying less than 4.0 cents per
20 kWh. It appears that various other wind projects, including those that have reached PPAs with
21 NSTAR, are providing wind power at a significantly lower price—possibly as low as 10 to 15
22 cents per kWh. Moreover, National Grid, in conjunction with other distribution companies,
23 has recently amended its RFP to allow renewable energy providers outside of the
24 Commonwealth to submit proposals under Section 83.¹ If the RFP process is open again, this
25 time to new bidders, how can Cape Wind even argue it is cost effective when compared to the
26 competition? Clearly, it cannot. Thus, Cape Wind, even in its own class of facilities, is not

27 ¹ See DPU Docket No. 10-58, Amended RFP submitted for review and approval, July 14, 2010.

1 cost-effective. Lowell Cogen's price is effective because it can offer a benefit that other
2 renewable energy generators simply cannot provide.

3 Fourth, Lowell Cogen will create a renewable energy facility within the
4 Commonwealth and will create jobs related to the operations of the plant, up to four new
5 positions, which would likely have an annual salary of \$65,000- \$85,000. Moreover, jobs will
6 be indirectly created to operate the biofuel plant in the production of fuel needed for the
7 Facility and in the transportation of the fuel to the Facility. Cape Wind, however, cannot
8 clearly guarantee that any jobs will be created in the Commonwealth.

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10 **IV. The Request for Proposal Process**

11 **Q: Did Lowell Cogen engage in negotiations with National Grid as a result of its**
12 **proposal?**

13 A: No.

14 **Q: Do you understand why National Grid chose not to negotiate with Lowell Cogen?**

15 A: Not exactly. I do understand that National Grid began engaging in bilateral
16 negotiations with Cape Wind. According to a Memorandum of Understanding filed with the
17 DPU, National Grid sought the DPU's approval of its negotiations with Cape Wind as early as
18 December 29, 2009.² The Request for Proposal, required by Section 83, was issued on
19 January 15, 2010.

20 **Q: Have you received a response from National Grid concerning Lowell Cogen's**
21 **proposal?**

22 A: Yes. The proposal was neither accepted nor rejected, nor did National Grid wish to
23 engage in further negotiations. Instead, on May 10, 2010, National Grid summarily informed
24 Lowell Cogen, by e-mail, that the RFP process had been suspended, pending further action
25 from the DPU concerning the PPA at issue in this proceeding.

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27 ² See Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, D.P.U. 09-
138 (Dec. 29, 2009).

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1 **Q: Did you follow up with National Grid?**

2 A: Yes, Lowell Cogen's attorney wrote a letter to Mr. Madison Milhous at National Grid,
3 on May 26, 2010, restating Lowell Cogen's continuing interest in providing renewable energy
4 and RECs to National Grid.

5 **Q: Did you receive a response to that letter?**

6 A: No.

7 **Q: Do you believe National Grid complied with the solicitation requirements of**
8 **Section 83?**

9 A: No, I do not. The statute requires that the distributor solicit proposals from renewable
10 energy developers (plural) and also requires that the distribution company select a reasonable
11 method of soliciting proposals. The RFP process was proposed to and approved by the DPU.
12 However, National Grid failed to complete the entire solicitation and selection process, instead
13 "suspending" the process without engaging in a good-faith process to determine whether
14 renewable energy could be obtained on a cost-effective basis through either acceptance of one
15 of the proposals, or through further negotiation with one of the bidders. Without
16 consummation of the bidding process, through either acceptance of a single or multiple bids, or
17 rejection of all bids as non-qualified, National Grid has failed to satisfy the requirements of
18 Section 83. It began negotiations with Cape Wind before it even issued an RFP, and instead of
19 negotiating in parallel with those that responded to the RFP, it suspended the bid process
20 before completion and closed out all other potential providers, depriving them of an
21 opportunity to benefit from the process. Such a process is unfair and contrary to the intent of
22 Section 83, and it has resulted in a PPA that will end up causing unnecessary rate increases and
23 jeopardizing the reliability of the renewable energy supply in the Commonwealth.

24 **Q: Is there anything else you would like to add?**

25 A: I would like to close by stating that the Cape Wind PPA does not meet the goals of
26 Section 83. Cape Wind (1) can make no clear commitments to provide power in 2012, (2)
27 cannot with certainty contribute to moderating peak load requirements, and (3) is not cost
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1 effective. National Grid's decision to buy 100% of Cape Wind's output (and fulfill its 3%
2 renewable energy requirement with one source) is short-sighted and unreasonable. The goal of
3 the Section 83 provisions is to encourage the broad development of a renewable energy
4 generation base in Massachusetts. That goal is best served by entering into several power
5 purchase agreements under the Section, spreading the risks and benefits of the program among
6 a broad range of providers and technologies, while providing rate payors with the most
7 competitive prices for renewable energy. As now proposed, National Grid's customers will be
8 forced to satisfy their Section 83 obligations in reliance on a single, expensive provider with no
9 guarantees that power will be available by 2012, or at a competitive price. The benefits
10 intended for a body of in-state generators will instead be provided to a single entity, not even
11 located on the soil of the Commonwealth. A facility, such as Lowell Cogen, could better
12 satisfy the goals of the Commonwealth, particularly as it could be used to moderate peak load
13 requirements, given its quick start-up time. Moreover, Lowell Cogen is an existing facility,
14 one that would not require extensive efforts to re-power, and capable of meeting our renewable
15 energy goals sooner. To deny all small producers the benefits under Section 83 and to award
16 them all to a project that is far from certain and moreover, that will be expensive, is not in
17 keeping with the intent and language of Section 83.

18 **Q: Is there anything further?**

19 **A:** No, that concludes my testimony.

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

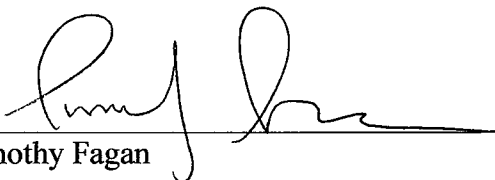
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Pursuant to G.L. c. 169 § 83 and 220 C.M.R.)
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_____)

AFFIDAVIT OF TIMOTHY FAGAN

I, Timothy Fagan, hereby depose and say:

1. I am currently the Director of Asset Management for Morris Energy Group, LLC.
2. I submitted the attached testimony on behalf of Morris Energy and Lowell Cogeneration Company Limited Partnership.
3. All of the testimony I have submitted is true and correct, to the best of my knowledge.

Signed under the pains and penalties of perjury this 22nd day of July, 2010.



Timothy Fagan

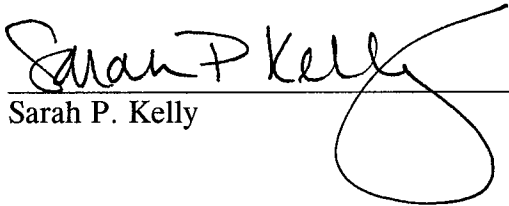
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CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Massachusetts Department of Public Utilities for the above-captioned proceeding in accordance with the requirements of 220 CMR 1.05(1) and the Procedural Order issued in this case.

Date: July 30, 2010



Sarah P. Kelly