

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID'S PROPOSED :
2010 STANDARD OFFER SUPPLY PROCUREMENT : DOCKET NO. 4041
PLAN AND 2010 RENEWABLE ENERGY SUPPLY :
PROCUREMENT PLAN :

ORDER REJECTING NATIONAL GRID'S
PROPOSED PROCUREMENT PLANS

On March 16, 2009, the Public Utilities Commission ("Commission") conducted an open meeting to review two filings made by Narragansett Electric Company d/b/a National Grid ("NGrid") to determine whether the filings were in compliance with Commission Rules and prior Commission orders and whether they should be accepted or rejected under Commission Rule of Practice and Procedure 1.5(f).¹ Based on its review of its Rules and Regulations Governing the Implementation of a Renewable Energy Standard ("RES Rules"), specifically, RES Rule 8.3, and its prior Orders, the Commission found that neither the Standard Offer Supply ("SOS") Procurement Plan filed on March 3, 2009 nor the Renewable Energy Supply ("RES") Procurement Plan filed on March 4, 2009 were in compliance with the Commission's Rules and/or prior Orders.² Therefore, the Commission rejected both filings and ordered NGrid to file a new SOS Procurement Plan and a new RES Procurement Plan within thirty (30) days, or by April 16, 2009.

¹ Commission Rule of Practice and Procedure 1.5(f) states: Rejection of Pleadings and Documents. Pleadings and documents which are not in substantial compliance with these or other Commission rules, orders of the Commission, or applicable statutes may be rejected within thirty (30) days after filing. If rejected, such papers will be returned with an indication of the deficiencies therein. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the Commission and is not a waiver of such requirements. The Commission Counsel is authorized to reject pleadings and documents under this rule.

² The RES Procurement Plan was not docketed.

The Commission found that the RES Procurement Plan was not in compliance with the Commission's RES Rules because, contrary to the plain language of RES Rule 8.3, the plan did not contain any long term contracts for renewable energy resources.³ The Commission further found that while it had not previously enforced Rule 8.3 during the current SOS period which expires on December 31, 2009, the Commission's clear intent was to enforce the provision commencing in 2010. The Commission's decision not to enforce RES Rule 8.3 through the end of the current SOS period was based partly on the fact that the General Assembly had passed the Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006 which included several statutes related to energy supply. The Commission, in reviewing these provisions, concluded that:

Until such time as the standards for least cost procurement are developed, the Commission can understand NGrid's reluctance to move forward with long term contracts beyond 2009 at this time. However, NGrid recognizes that it will have a responsibility to procure standard offer supply after 2009. The General Assembly has set forth its various policy goals, namely that NGrid be procurer of energy supply and that a portion of its supply needs to meet the RES requirements. It appears the General Assembly expected these provisions to all work together for the standard offer period commencing January 1, 2010, with the procurement of the power commencing in 2009.⁴

It is apparent to the Commission that NGrid also recognized that RES procurement after 2009 would be different. For example, NGrid's witness stated that "the regulations clearly contemplate long term contracts to be part of a portfolio after the initial standard offer period is over at the end of 2009..."⁵ Furthermore, NGrid's witness stated that "[t]he Commission should take steps to assure that any long term renewables

³ Rule 8.3 of the Commission's Rules and Regulations Governing the Implementation of a Renewable Energy Standard, states: The Renewable Energy Procurement Plan shall contain the Obligated Distribution Company's procedure for procuring its target percentage of Eligible Renewable Energy Resources for each Electric Energy Product offered to End-use Customers, including long-term contracts which shall be made part of the Obligated Distribution Company's portfolio for procuring its target percentage of Eligible Renewable Energy Resources for each Electrical Energy Product offered to End-use Customers.

⁴ *Order No.* 19801 at 32 (emphasis added).

⁵ Docket No. 3765, NGrid Exhibit 5 (Pre-filed Rebuttal Testimony of Ronald Gerwatowski), p. 6.

procurement required of the Company is closely coordinated with standard offer procurement for the period after 2009.”⁶ Therefore, it is clear to the Commission that NGrid understood that RES Rule 8.3 required the Company to include long-term contracts in its 2010 RES Procurement Plan and further anticipated coordinating the long term contracting of renewables with the SOS Procurement Plan.

Notably, at the Technical Record Session held on February 19, 2009, NGrid departed from its prior position and argued that the R.I. Gen. Laws § 39-26-1 et seq. (“RES legislation”) should be read separately from R.I. Gen. Laws §§ 39-1-27.3 and 39-1-27.8 (“SOS Procurement legislation”).⁷ The March 3, 2009 SOS Procurement Plan reflected this position which is in sharp contrast to NGrid’s 2007 analysis of the law and the Commission’s Rules.

The Commission, however, has not changed its position that the General Assembly’s intent can only be determined by reading all of the statutes in harmony with one another. For instance, on September 17, 2008, in response to a letter from Governor Carcieri, stating that “to facilitate the construction of [renewable energy] projects, it is necessary that National Grid be compelled to enter into long-term contracts in order to provide lower cost financing for these project....” the Commission not only agreed that it has statutory authority to mandate National Grid to enter into long term renewable contracts, the Chairman noted that the Commission has stated its policy in prior Orders that renewable contracts will need to be part of National Grid’s standard offer service

⁶ Docket No. 3765, NGrid Exhibit 5 (Pre-filed Rebuttal Testimony of Ronald Gerwatowski), p. 20. He noted that “this will allow the procurement plan to take into account the customer base on standard offer service and, most importantly, what the terms and conditions will be for obtaining standard offer service, staying on the service, and leaving the service.” *Id.*

⁷ Tr. 2/19/09, pp. 68-70. As part of its argument at the Technical Session, NGrid referenced its filed brief on the legal analysis. The Commission also reviewed legal analysis from other participants to SOS planning meetings conducted by Commission staff. These submissions provided counter-arguments to NGrid’s analysis.

after the expiration of the current standard offer service contracts on December 31, 2009.⁸ Furthermore, at the Technical Session, the Chairman indicated that the Commission cannot interpret the RES and SOS provisions “in isolation”, stating that “renewable developers can’t develop their [projects] unless they have a long-term purchase contract. ...We have to consider all the statutes and [renewable supply] has to be part of this [SOS] procurement.”⁹ This is particularly true where the RES obligation is based on NGrid’s SOS load. Where the Commission has already determined that NGrid’s RES obligation includes long-term contracting, it is only logical that the SOS Procurement Plan should incorporate such long term contracts.

Under the basic rules of statutory construction, the Commission is required to interpret all relevant provisions of Title 39 in harmony. Specifically, the Supreme Court of Rhode Island has held that:

In construing the provisions of statutes that relate to the same or to similar subject matter, the court should attempt to harmonize each statute with the other so as to be consistent with their general objective scope. “This rule of construction applies even though the statutes in question [may] contain no reference to each other and [even though they] are passed at different times.”¹⁰

In this instance, the Commission must interpret various statutes relating to energy procurement in a manner that meets the stated goals in R.I. Gen. Laws § 39-1-1 as amended by the Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006 (“2006 Act”). For example, the R.I. Gen. Laws § 39-1-1(e) states “that it is a necessary move beyond basic utility restructuring in order to secure for Rhode Island, to the maximum extent reasonably feasible, the benefits of reasonable and stable rates, least-cost procurement, and system reliability that includes energy resource diversification,

⁸ PUC Minutes of September 17, 2008 Open Meeting.

⁹ Tr. 2/19/2009, pp. 70-71.

¹⁰ *Kaya v. Partington*, 681 A.2d 256 (R.I. 1996) (citations omitted).

distributed generation, and load management.”¹¹ It should be noted that as part of the 2006 Act, NGrid’s obligation to provide SOS was extended beyond 2009.¹² Thus, the SOS procurement must be consistent with system reliability and least-cost procurement statute set forth in R.I. Gen. Laws § 39-1-27.7 which was part of the 2006 Act.¹³

There has been significant focus on R.I. Gen. Laws § 39-1-27.7. The statute states that:

Least-cost procurement shall comprise system reliability and energy efficiency and conservation procurement as provided for in this section and supply procurement as provided for in § 39-1-27.8, as complementary but distinct activities that have as common purpose meeting electrical energy needs in Rhode Island, in a manner that is optimally cost-effective, reliable prudent and environmentally responsible.

NGrid has interpreted this statute to mean that energy procurement is a “distinct activity” from system reliability and energy efficiency and conservation procurement. However, this puts too much emphasis on “distinct” and does not adequately take into account the language that indicates that each is “complementary” and has a “common purpose”.

In fact, NGrid’s interpretation ignores the language of R.I. Gen. Laws § 39-1-27.8 which specifically states that the SOS procurement plan “shall be consistent with the purposes of least-cost procurement and shall, as appropriate, take into account plans and orders with regard to system reliability and energy efficiency and conservation procurement.”¹⁴ Although energy procurement may be referred to as a distinct activity in R.I. Gen. Laws § 39-1-27.7, the SOS procurement plan addressed in R.I. Gen. Laws § 39-1-27.8 states it must be consistent with system reliability provisions of R.I. Gen. Laws § 39-1-27.7. Specifically, R.I. Gen. Laws § 39-1-27.7(a)(i) states clearly that system

¹¹ R.I. Gen. Laws § 39-1-1(e)(4).

¹² R.I. Gen. Laws § 39-1-27.3.

¹³ R.I. Gen. Laws § 39-1-27.3 (b).

¹⁴ R.I. Gen. Laws § 39-1-27.8.

reliability procurement includes “procurement of energy supply from diverse sources, including, but not limited to, renewable energy resources as defined” in R.I.G.L. § 39-26-1 et. seq. Specifically, R.I. Gen. Laws § 39-26-4 requires NGrid to “obtain at least 3% of the electricity they sell at retail to Rhode Island end-use customers, adjusted for electric line losses, from eligible renewable energy resources, escalating...” each year.

Accordingly, R.I. Gen. Laws § 39-1-27.8 specifically states that the SOS Procurement Plan must be consistent with the purposes set forth in R.I. Gen. Laws § 39-1-27.7. R.I. Gen. Laws § 39-1-27.7 specifically references R.I. Gen. Laws § 39-1-26 et seq. as a basis for system reliability. Therefore, SOS procurement needs to work in conjunction with RES procurement. Because the Commission has previously determined in its RES Rules that RES procurement must include long term contracts, long term renewable contracts must be incorporated into SOS procurement.

Based on this analysis, the Commission remains convinced that the General Assembly expected all of these provisions were designed to work together towards meeting the policy goals set forth in the preamble. The most logical interpretation is, as NGrid originally stated in 2007, to coordinate the long term contracting requirements set forth in the Commission’ RES Rules with the Company’s SOS procurements.

Aside from the legal analysis, the Commission is aware that NGrid has previously argued against any requirement that it enter into long term renewable contracts, even absent any energy component. NGrid opposed the inclusion of Rule 8.3 in the RES Rules and in the 2007 RES Procurement Plan for several reasons, one of which was the argument that such contracts would result in stranded costs due to migration of customers from SOS to the competitive market if such contracts would resulted in costs higher than

the market could provide.¹⁵ NGrid continues to make this argument in 2009. The Commission was not persuaded in 2005 and 2007 and remains skeptical of NGrid's argument today.¹⁶ The Commission notes that the SOS supply contracts that covered the period from 1998 to December 31, 2009 were in excess of ten (10) years and were designed in such a manner as to avoid stranded costs. A portfolio approach of varying length contracts and fuel diversity for SOS procurement should be able to mitigate NGrid's concern, particularly where SOS and RES Procurement Plans need to be filed and reviewed annually.

The Commission has stated repeatedly "that long term contracts will be necessary for the success of the renewable energy supply."¹⁷ However, the Commission is cognizant that it has not heretofore provided a definition of "long-term contract" for renewables. The Commission had expected NGrid to put forth a proposal for review and debate by all parties. NGrid chose not to do so. Therefore, the Commission takes Administrative Notice of docket nos. 3765, 3901, and 4012 and relying on the evidence collected, it is the Commission's expectation that a long term renewable contract will have a range of ten (10) to fifteen (15) years.¹⁸

Therefore, consistent with prior Commission directives and the Commission's stated intent regarding the length of long term renewable energy contracting, NGrid is ordered to file a SOS Procurement Plan no later than April 16, 2009 which incorporates long term renewable contracts. The Commission declines to mandate a specific

¹⁵ Report 18485 (issued December 28, 2005), p. 10; *Order No.* 19801, p. 18-19.

¹⁶ The Commission stated, "the Commission finds persuasive the comments which argue that there is little chance of additional stranded costs accruing as a result of this decision." Report 18485 at 10.

¹⁷ *Order No.* 19801 (issued October 17, 2007), p. 32; *Order No.* 19239 (issued March 7, 2008), p. 19; *Order No.* 19580 (issued February 25, 2009), p. 11.

¹⁸ This time period is also consistent with the General Assembly's intent based on two bills passed during the 2008 session and vetoed by the Governor (*See* H 2008-7916 Sub A and S 2008-2849 Sub B). Similar bills have been introduced during the 2009 Session.

percentage of the Company's obligation that should be covered by long term renewable contracts but, suffice it to say, it needs to be more than de minimus, but does not need to match 100 percent, the RES obligation for each year covered by the long term contract. In addition, NGrid's proposal in its RES and SOS Procurement Plans (if not filed as part of the same document) shall include proposed standards for assessing whether a proposal is commercially reasonable.

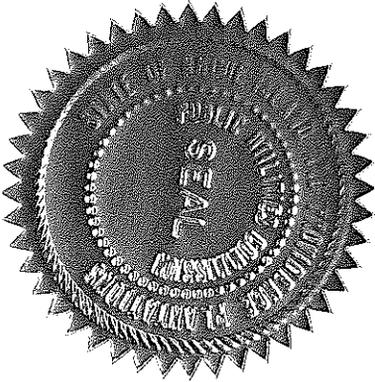
Accordingly, it is hereby

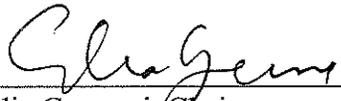
(19602) ORDERED:

1. Narragansett Electric Company d/b/a National Grid's March 3, 2009 Standard Offer Service Procurement Plan is hereby rejected.
2. Narragansett Electric Company d/b/a National Grid's March 4, 2009 Renewable Energy Supply Procurement Plan is hereby rejected.
3. On or before April 16, 2009, Narragansett Electric Company d/b/a National Grid shall file a Renewable Energy Supply Procurement Plan which includes long term renewable contracts.
4. On or before April 16, 2009, Narragansett Electric Company d/b/a National Grid shall file a Standard Offer Service Procurement Plan that incorporates long term renewable contracts.

5. Narragansett Electric Company d/b/a National Grid shall comply with all other instructions contained in this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON MARCH 16, 2009. WRITTEN ORDER ISSUED MARCH 18, 2009.





Elia Germani, Chairman

*Robert B. Holbrook, Commissioner



Mary E. Bray, Commissioner

* Commissioner Holbrook concurs with the decision but is unavailable for signature.