

December 19, 2013

VIA HAND DELIVERY & ELECTRONIC MAIL

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

RE: Docket 4265 - Review of Power Purchase Agreement Between The Narragansett Electric Company d/b/a National Grid and Orbit Energy Rhode Island, LLC Pursuant to R.I.G.L. § 39-26.1-7

Amendments to Power Purchase Agreement

Dear Ms. Massaro:

This letter is to inform the Commission that National Grid¹ and Orbit Energy Rhode Island, LLC ("Orbit Energy") have executed the following amendments to the Power Purchase Agreement ("PPA") that the Commission approved by bench decision on July 28, 2011, which amendments the Company is enclosing with this letter:

- First Amendment to Power Purchase Agreement dated as of April 11, 2013 ("First Amendment") to amend Exhibit A (Description of Facility) of the PPA to change the site location of the Orbit Energy facility from the original location at the Town of Johnston landfill to a new property location within Johnston, Rhode Island; and
- Second Amendment to Power Purchase Agreement dated as of December 9, 2013 ("Second Amendment," and together with the First Amendment, the "Amendments") to amend, again, the site location of the facility in Exhibit A of the PPA and to modify the critical milestone dates set forth in clauses (i) through (vi) of Section 3.1(a) of the PPA.

The PPA is for a 3.0 MW anaerobic digester biogas project with an initial bundled price of 9.5 cents per kilowatt-hour in 2013, subject to an interconnection cost adjustment with an initial price cap of 10.0 cents per kilowatt-hour in 2013. At the time of the filing, the project was forecasted to be at or below market prices.

Except for the change in site location in the First Amendment, there were no other substantive changes to the PPA with the First Amendment. The Second Amendment extends the Commercial Operation Date in Section 3.1(a)(vi) to September 1, 2015, which reflects Orbit Energy's exercise of the one-year extension option and the two additional six-month extension options pursuant to Section 3.1(c)(i) and (ii) of the PPA, and modifies the deadlines for meeting the other critical milestones set forth in clauses (i) through (v) of Section 3.1(a). Pursuant to

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¹ The Narragansett Electric Company d/b/a National Grid (herein referred to as "National Grid" or the "Company").

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Paragraph 5 of the Second Amendment, Orbit Energy agrees that it has exercised all of its rights to extend the critical milestone dates under the PPA and no further extensions may be made under the PPA. In addition, Paragraph 3 of the Second Amendment is intended to reflect and memorialize the parties' agreement to extend the deadline for Orbit Energy to post the remaining one-half of the development period security under Section 6.2(a) of the PPA until fifteen days after the closing of the financing for the project, since that financing is expected to provide the cash or letter of credit that will be that second half of the development period security. The Amendments also contain some ancillary changes for the sake of completeness and clarity.

The Company does not believe that changes set forth in the Amendments are the type that would require regulatory approval for the following reasons:

- First, and foremost, none of the changes reflected in the Amendments alter the bundled price under the PPA or the size and scope of the project. The PPA pricing is still forecasted to be at or below market prices.²
- The extension of the Commercial Operation Date to September 1, 2015 is consistent with the extension options allowed under Section 3.1(c) of the PPA, which provides that Orbit Energy may extend the Commercial Operation Date for up to a total of two years. The original deadline for achieving the Commercial Operation Date under the PPA was two years after the Effective Date (i.e. on or around September 1, 2013), which the Commission found was reasonable, noting the testimony that witnesses for the Company and the Division provided at the hearing that it was "typical to have a commercial operation date with some flexibility to account for unforeseen circumstances and/or variables that might necessitate schedule changes." The PPA, as amended by the Second Amendment, continues to have a credible operation date as required by the Commission's Rules and Regulations Governing Long-Term Contracting Standards for Renewable Energy (the "Regulations").
- The amendment of the other critical milestone dates listed in clauses (i) through (v) of Section 3.1(a) of the PPA do not impact whether or not the project will reach commercial operation by the new deadline. These dates are interim milestones to assure that the project continues to make progress. Specifically, the amendment of the critical milestones for closing of financing and the issuance of a full notice to proceed by Orbit Energy to May 1, 2014 is still within the three-year window following the date of the PPA (May 26, 2011) for the Company to determine whether or not Orbit Energy has made material progress as required by Section 3.1(f) of the PPA.
- In its written Order, the Commission, in reviewing a separate issue presented at the hearing with respect to the extension price under the PPA, found that decisions such as extension of the contract term and acceptance of an extension price are akin to decisions routinely made by the Company when it enters into a contract, and that such decisions are within the exclusive authority of the

See Response of National Grid to Commission Data Request 5-1, Docket No. 4372 (Filed, October 25, 2013).

³ Report and Order, Docket No. 4265, at 8 (August 18, 2011).

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Company without the need for regulatory intervention.⁴ The decision to amend the critical milestone dates and the site location as set forth above is similar to this routine decision-making authority of the Company and should not require regulatory approval.

• The change in site location is a *de minimis* and immaterial change to the PPA.

The Orbit Energy PPA continues to be a good project for Rhode Island with favorable pricing that will benefit customers and a unique technology that will continue to bring diversity to the Company's renewable energy portfolio. The Company continues to support the PPA for the same reasons as outlined in the Company's original filing, and has, therefore, executed the Amendments with Orbit Energy. The Company has consulted with the Division of Public Utilities and Carriers and they have indicated their support for the Amendments.

By filing this letter, National Grid requests that the Commission issue a ruling at an Open Meeting that (1) affirms that the enclosed notification is sufficient and that the Amendments do not require additional regulatory approval; or (2) in the alternative, if the Commission determines that the Amendments do require regulatory approval, to approve the Amendments for the reasons outlined above and to authorize the Company to proceed under the PPA.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7288.

Very truly yours,

Jennifer Brooks Hutchinson

Enclosures

cc: Docket 4265 Service List Leo Wold, Esq. Steve Scialabba, Division

⁴ See Report and Order, Docket No. 4265, at 15.

Certificate of Service

I hereby certify that a copy of the cover letter and / or any materials accompanying this certificate has been electronically transmitted, sent via U.S. mail or hand-delivered to the individuals listed below.

Joanne M. Scanlon

December 19, 2013

Date

Docket No. 4265 National Grid – PPA w/ Orbit Energy RI

Service List updated 7/26/11

Name/Address	E-mail Distribution	Phone/FAX
Jennifer Brooks Hutchinson, Sr. Counsel National Grid 280 Melrose Street	Jennifer.brooks@us.ngrid.com	401-784-7288 401-784-4321
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Richard Hahn LaCapra Associates One Washington Mall, 9 th floor Boston, MA 02108	rhahn@lacapra.com	617-778-2467 617 778-2481
File an original & 10 copies w/: Luly E. Massaro, Commission Clerk Public Utilities Commission	Lmassaro@puc.state.ri.us ADalessandro@puc.state.ri.us Nucci@puc.state.ri.us	401-780-2017 401-941-1691

89 Jefferson Blvd.	Anault@puc.state.ri.us	
Warwick, RI 02888	DShah@puc.state.ri.us	

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FIRST AMENDMENT TO POWER PURCHASE AGREEMENT

This FIRST AMENDMENT TO POWER PURCHASE AGREEMENT (this "Amendment") is entered into as of April 11, 2013, by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation ("Buyer"), and Orbit Energy Rhode Island, LLC, a Rhode Island limited liability company ("Seller"). Buyer and Seller are individually referred to herein as a "Party" and are collectively referred to herein as the "Parties").

WHEREAS, Buyer and Seller are parties to that certain Power Purchase Agreement dated as of May 26, 2011 (the "Agreement") pursuant to which Seller has agreed to sell and deliver, and Buyer has agreed to purchase and receive, the Products generated by or associated with the Facility during the Services Term (in each case as defined in the Agreement); and

WHEREAS, Seller has chosen to locate its Facility at an address other than as set forth in the Agreement;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. In the introductory paragraph of the Agreement, the phrase "(this "Agreement")" is deleted in its entirety and replaced with "(as amended from time to time in accordance with the terms hereof, this "Agreement").
- 2. The text of Exhibit A to the Agreement is deleted in its entirety and replaced with the following:

Facility: The Orbit Energy Rhode Island, LLC facility is located on Lot 28 and Lot 38 on the Town of Johnston, Rhode Island Tax Assessor's Plat 33. The facility consists of two Caterpillar G3520C generator sets (Generator #1 and Generator #2). Each generator set is rated at 1.6 MW for a combined 3.2 MW of electric generation capacity. Orbit Energy will generate renewable power using biogas generated from on-site anaerobic digestion of food scraps and other organic waste.

- 3. The usage in this Amendment of terms which are defined in the Agreement is in accordance with the usage thereof in the Agreement.
- 4. Except as specifically amended hereby, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect, and each of the Parties ratifies and confirms all such terms and provisions. In the event of a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.
- 5. Two or more counterparts of this Amendment may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same

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instrument. Facsimile signatures hereon shall be deemed to have the same effect as original signatures.

6. Interpretation and performance of this Amendment shall be in accordance with, and shall be controlled by, the laws of the State of Rhode Island (without regard to its principles of conflicts of law).

[Signature Page Follows]

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IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

By:

Name: John V. Vaughn
Title: Authorized Signatory

ORBIT ENERGY RHODE ISLAND, LLC

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IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID

By:	
1	Name:
7	Γitle:
ORB	BIT ENERGY RHODE ISLAND, LLC
	Amer Shoref
By:	
	Name: Anwar Shareef
	Γitle: Manager

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SECOND AMENDMENT TO POWER PURCHASE AGREEMENT AND ACKNOWLEDGEMENT

This SECOND AMENDMENT TO POWER PURCHASE AGREEMENT AND ACKNOWLEDGEMENT (this "<u>Amendment</u>") is entered into as of December 9, 2013, by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation ("<u>Buyer</u>"), and Orbit Energy Rhode Island, LLC, a Rhode Island limited liability company ("<u>Seller</u>"). Buyer and Seller are individually referred to herein as a "<u>Party</u>" and are collectively referred to herein as the "<u>Parties</u>").

WHEREAS, Buyer and Seller are parties to that certain Power Purchase Agreement dated as of May 26, 2011, as amended by the First Amendment to Power Purchase Agreement dated as of April 11, 2013 (the "Agreement") and approved by the Rhode Island Public Utilities Commission (the "PUC") on August 18, 2011 in Docket No. 4265, pursuant to which Seller has agreed to sell and deliver, and Buyer has agreed to purchase and receive, the Products generated by or associated with the Facility during the Services Term (in each case as defined in the Agreement); and

WHEREAS, in a letter dated October 12, 2011, a copy of which is <u>Attachment 1</u> hereto, Buyer agreed to extend the deadline for Seller to provide the second half of the Development Period Security under Section 6.2(a) of the Agreement until fifteen days after the closing of the Financing described in Section 3.1(a)(iii) of the Agreement, and the Parties wish to reflect that extension in this Amendment; and

WHEREAS, Seller has exercised its rights to extensions of the dates for the Critical Milestone under Section 3.1(c) of the Agreement; and

WHEREAS, Seller has chosen to locate its Facility at an address other than as set forth in the Agreement;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. The text of clauses (i) through (vi) of Section 3.1(a) of the Agreement is deleted in its entirety and replaced with the following:
 - (i) receipt of all Permits necessary to construct the Facility, as set forth in <u>Exhibit B</u>, in final form, by August 1, 2014;
 - (ii) acquisition of all required real property and other site control rights necessary for construction and operation of the Facility, interconnection of the Facility to the Interconnecting Utility, construction of the Network Upgrades (to the extent it is Seller's responsibility to do so) and performance of Seller's obligations under this Agreement as set forth on Exhibit B, by February 1, 2014;

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- (iii) closing of Financing required in order for Seller to proceed with the construction of the Facility, including, as applicable, Seller's financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades, by May 1, 2014;
- (iv) issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility by May 1, 2014;
- (v) execution of agreements by Seller and one or more providers of organic feedstock for the Facility that collectively are adequate to satisfy all of the Facility's feedstock requirements for the first two years after the Commercial Operation Date by May 1, 2014; and
- (vi) achievement of the Commercial Operation Date by September 1, 2015.
- 2. In Section 5.1(b) of the Agreement, the reference to "January 1, 2014" is changed to "January 1, 2016."
- 3. The second sentence of Section 6.2(a) of the Agreement is deleted in its entirety and replaced with the following:

One-half of the Development Period Security shall be provided to Buyer within fifteen (15) days after the Agreement Date, and the remaining one-half of the Development Period Security shall be provided to Buyer within fifteen (15) days after the closing of Financing required in order for Seller to proceed with the construction of the Facility, as described in Section 3.1(a)(iii).

4. The text of Exhibit A to the Agreement is deleted in its entirety and replaced with the following:

Facility: The Orbit Energy Rhode Island, LLC facility is located on Lot 2 on the Town of Johnston, Rhode Island Tax Assessor's Plat 43. The facility consists of two Caterpillar G3520C generator sets (Generator #1 and Generator #2), or the equivalent. Each generator set is rated at 1.6 MW for a combined 3.2 MW of electric generation capacity. Orbit Energy will generate renewable power using biogas generated from on-site anaerobic digestion of food scraps and other organic waste.

5. The Parties acknowledge and agree that: (i) the revisions to Section 3.1(a) of the Agreement that are set forth in Section 1 of this Amendment reflect the exercise by Seller of all of its rights under Section 3.1(c) of the Agreement to extend the dates for the Critical Milestones under the Agreement and that no further extensions of those Critical Milestones may be made by Seller under Section 3.1(c) of the Agreement; (ii) as a result of the revision to Section 5.1(a) of the Agreement that is set forth in Section 2 of this Amendment, no certification in the form of Exhibit F to the Agreement is required in connection with that extension of the Critical

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Milestones; and (iii) as of the date of this Amendment, Seller has not provided any of the second half of the Development Period Security required under Section 6.2(a) of the Agreement.

- 6. This Amendment is conditioned upon and shall not become effective unless and until either (a) the PUC confirms, in a manner that is acceptable in form and substance to Buyer in its sole discretion, that PUC approval is not required in order for the effectiveness of this Amendment or (b) the PUC approves this Amendment without material modification or conditions, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion. If so requested by Seller, Buyer shall notify Seller in writing within five (5) Business Days after the effectiveness of this Amendment.
- 7. The usage in this Amendment of terms which are defined in the Agreement is in accordance with the usage thereof in the Agreement.
- 8. Except as specifically amended hereby, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect, and each of the Parties ratifies and confirms all such terms and provisions. In the event of a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.
- 9. Two or more counterparts of this Amendment may be signed by the Parties, each of which shall be an original but all of which together shall constitute one and the same instrument. Facsimile signatures hereon shall be deemed to have the same effect as original signatures.
- 10. Interpretation and performance of this Amendment shall be in accordance with, and shall be controlled by, the laws of the State of Rhode Island (without regard to its principles of conflicts of law).

[Signature Page Follows]

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IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

THE NAKKAGANSETT ELECKRIC COMPANY, D/B/A NATIONAL GRII)
Name: John V. Vaughn Title: Authorized Signatory	
ORBIT ENERGY RHODE ISLAND, LLC	
3y:	
Name:	
Title:	

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IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID

Ву:		
	Name: John V. Vaughn	
	Title: Authorized Signatory	

ORBIT ENERGY RHODE ISLAND, LLC

y. 94

Name Title:

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Attachment 1

Letter Extending Deadline for Second Half of Development Period Security

[Attached]

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Madison N. Milbays ⊅6f 8 Director Renewable Energy Projects



October 12, 2011

VIA ELECTRONIC MAIL

Anwar Shareef Manager Orbit Energy Rhode Island, LLC 3301 Benson Drive, Suite 401 Raleigh, NC 27609

Re: Power Purchase Agreement Dated as of May 26, 2011 (the "PPA") between The Narragansett Electric Company, d/b/a National Grid ("National Grid") and Orbit Energy Rhode Island, LLC ("Orbit")

Dear Anwar:

On September 21, 2011, pursuant to Section 8.1 of the PPA, National Grid notified Orbit that the approval of the PPA by the Rhode Island Public Utilities Commission (the "PUC") is acceptable in form and substance to National Grid. Further, it was established that for purposes of the PPA, the Effective Date as defined in Section 2.1 of the PPA shall be September 1, 2011.

Under Section 6.2, the remaining half of the Development Period Security is due within 15 days after the Effective Date. The remainder of the Development Period Security is now outstanding.

As we discussed, Section 3.1 requires that you report closing of financing, one of the Critical Milestones, within seven (7) days of achieving that Critical Milestone. Pursuant to this letter and the understanding we reached in that discussion, the remainder of the Development Period Security should be posted within 15 days of the financial closing.

As before, you should work with Eboni Troupe, (<u>Eboni.Troupe@us.ngrid.com</u>) at 516-545-3122 to arrange for the posting of the required Development Period Security of \$45,000.

Very truly yours,

Madison N. Milhous

ce: Brian J. Lamoureux, Esq. (via electronic mail)
Paul Corey, Esq. (via electronic mail)
William S. Bost III, Esq. (via electronic mail)
Eboni Troupe
Corinne Abrams
Celia B. O'Brien, Esq.
Jennifer Brooks Hutchinson, Esq.

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