

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF POWER PURCHASE AGREEMENT
BETWEEN NARRAGANSETT ELECTRIC COMPANY,
d/b/a NATIONAL GRID AND ORBIT ENERGY RHODE
ISLAND, LLC.

DOCKET NO. 4265

REPORT AND ORDER

1. Background

On June 22, 2011, Narragansett Electric Company, d/b/a National Grid (“National Grid” or “Company”) filed with the Commission a Power Purchase Agreement (“PPA” or “Orbit Energy PPA”) with Orbit Energy Rhode Island, LLC. (“Orbit Energy”). The Company filed the PPA pursuant to R.I.G.L. § 39-26.1-3 which requires the Company to annually solicit and enter into long-term contracts with renewable energy developers subject to Commission approval. The legislative purpose of this requirement is to stabilize long-term energy prices, improve environmental quality and create Rhode Island jobs.¹ To achieve these goals, the Legislature established a Long-Term Contracting Standard which requires the Company to receive 90 megawatts of power from newly developed renewable energy resources by 2013.² The PPA under consideration in this Docket represents the third PPA executed by the Company to count towards this long-term contracting capacity requirement.³ The Company’s process and procedures for soliciting long-term contracts for renewable energy was approved by the

¹R.I.G.L. § 39-26.1-1.

²R.I.G.L. § 39-26.1-3(2).

³ The Deepwater Wind PPA and the R.I. LFG Genco PPA were the first two long-term contracts for renewable energy executed by National Grid. The Deepwater Wind PPA was approved by the Commission on August 11, 2010. Written Order issued August 16, 2010 (Docket 4185). The Genco PPA was approved by the Division of Public Utilities and Carriers on July 1, 2010 (Docket No. D-10-36). Although the Orbit Energy PPA is the third renewable energy PPA executed by National Grid, it is technically the first PPA to be reviewed pursuant to R.I.G.L. § 39-26.1 et seq., since the prior two PPAs (Deepwater and Genco) were reviewed pursuant to separate statutes which specifically addressed those two projects-- R.I.G.L. § 39-26.1-7 and § 39-26.1-8 (Town of New Shoreham) and § 39-26.1-9 (Genco). By law, National Grid is allowed to count the capacity that it acquires as a result of the Deepwater and Genco PPAs toward the Long-Term Contracting Standard. See 39-26.1-7(h) and 39-26.1-9(8).

Commission on June 17, 2010.⁴ The Company's first Request for Proposals ("RFP") was issued on June 30, 2010. The result of this solicitation revealed that the Orbit Energy Project ranked first in both price and non-price categories. As a result of this ranking, the Company notified the Commission on April 11, 2011 that it had selected Orbit Energy pursuant to the Long-Term Contracting Standard and was in the process of negotiating the terms of a PPA.⁵ The PPA between National Grid and Orbit Energy was executed on May 26, 2011 and submitted to the Commission for review on June 22, 2011. The Commission approved the Orbit Energy PPA at the conclusion of a hearing held on July 28, 2011.

II. Power Purchase Agreement Between National Grid and Orbit Energy R.I., LLC.

National Grid submitted the Testimony of Madison N. Milhous in support of the Orbit Energy PPA who described the pertinent provisions of the PPA and the proposed Orbit Energy project, including the technology to be employed at the proposed facility, and the current status of the project.⁶ The project was originally slated to be located in Woonsocket but was relocated to the town of Johnston, adjacent to the Central Landfill, at the behest of the R.I. Resource Recovery Corporation.⁷ This location was considered ideal to the extent it will allow Orbit Energy to receive organic waste directly from the landfill.⁸ As Mr. Milhous explained, the project is expected to use roughly 120 tons per day of organic waste from the landfill to produce biogas which in turn will be used to generate approximately 23,160 MWh of electricity annually.

⁴ Written Order issued December 1, 2010 (Docket 4150).

⁵ National Grid 3, p. 1. The Company had exceeded the Long-Term Contracting Standard in 2010 with the execution of the Genco PPA.

⁶ National Grid 1, pgs. 8-9.

⁷ *Id.*, p. 8.

⁸ *Id.*

⁹ Mr. Milhous testified that this output would be approximately 2.6 MW of contract capacity as defined by the Commission's Long-term Contracting Regulations. ¹⁰

Mr. Milhous testified that although construction of the Orbit Energy facility had not yet begun, it was customary for projects of this type to secure financing prior to commencing construction. He explained that a lease had been approved by the R.I. Resource Recovery Corporation Board and the developer was in the process of securing financing. ¹¹ The project's commercial operation date is slated for September of 2013. ¹² Mr. Milhous explained that the pricing of the PPA compared favorably to market price forecasts over the term of the PPA, and noted that if the Company elected to extend the PPA beyond the 15 year term, any such extension of the contract would require Commission approval. ¹³ The price of power delivered by Orbit Energy to National Grid in 2013, according to the PPA, will be a per kilowatt hour price that ranges from 9.5 to 10 cents depending on the interconnection cost adjustment allowed by the contract. ¹⁴ According to the contract, the price of 9.5 cents per kilowatt-hour may be adjusted incrementally by 0.1 cent per kilowatt-hour for each \$200,000 of interconnection costs that exceed the sum of \$1,000,000; however, the total per kilowatt-hour price of power cannot exceed 10 cents according to the contract. ¹⁵ After 2013, the price of power is subject to a 2% escalator clause in the PPA meaning it will increase by 2% annually over the course of the contract. ¹⁶

⁹ Id., pgs. 8-9.

¹⁰ Id., p. 9.

¹¹ Id., p. 10. Mr. S. Anwar Shareef, Orbit Energy Inc.'s Chief Executive Officer, also confirmed that Orbit Energy had signed a 15-year lease of the land adjacent to the landfill, with an option to purchase. Orbit Energy 1, p. 4.

¹² National Grid 1, p.10; Orbit Energy 1, p. 5.

¹³ National Grid 1, p. 12 and 14.

¹⁴ Id., p. 12-13.

¹⁵ Id.

¹⁶ Id., p. 11.

Mr. Milhous concluded his testimony by reiterating the Company's support of the Orbit Energy Project because of its favorable pricing, environmental and economic benefits to the state of Rhode Island.¹⁷

III. Testimony of Orbit Energy R.I., LLC.

Orbit Energy, Inc.'s Chief Executive Officer, S. Anwar Shareef, filed written testimony with the Commission on July 11, 2011 providing information about himself, his company (Orbit Energy), the Orbit Energy Project and the technology to be employed at the proposed project. To quote Mr. Shareef, Orbit Energy's mission "is to be a significant part of the renewable energy revolution with a focus on harvesting renewable energy from organic wastes."¹⁸ Mr. Shareef characterized the high solid anaerobic digester ("HSAD") technology proposed for the Orbit Energy facility in Johnston, R.I. as environmentally and economically beneficial to the extent that it will generate electricity from renewable resources, reduce greenhouse gas emissions, create "green" jobs and extend the useful life of the state landfill.¹⁹ By converting organic waste from the state landfill to biogas/electricity, the Orbit Energy facility will help reduce the quantity of waste at the state landfill while producing electricity with virtually no solid waste by products or waste water discharges.²⁰ He described the Orbit Energy facility as a \$15 million investment in Johnston, R.I. that would result in 12 full time jobs.²¹

IV. The Division's Testimony and National Grid's Rebuttal

The Division's consultant, Mr. Hahn, expressed some concern in his testimony over the Test REC Price²² and the Extension Price²³ but was overall supportive of the proposed PPA

¹⁷ Id., p. 15.

¹⁸ Orbit Energy 1, p. 3.

¹⁹ Id., pgs. 3-4.

²⁰ Id., p. 4.

²¹ Id. 5.

²² National Grid 1, p. 12 of the Power Purchase Agreement between the Narragansett Electric Company d/b/a National Grid and Orbit Energy Rhode Island, LLC.

and recommended approval. After reviewing the PPA between National Grid and Orbit Energy, Mr. Hahn concluded that the price of power produced at the facility was reasonable as compared to other renewable energy projects and as a result of the fact that the project was selected in a competitive bidding process.²⁴ He also found that the price would have a minimal impact on rates and posed minimal risk on ratepayers in the event the project did not perform as planned.²⁵ Finally, he noted that the project would create jobs for the local economy.²⁶ Mr. Hahn also noted that the price of the Orbit project was lower than many other renewable technologies including offshore wind, small hydropower, solar PV and biomass and was also lower than the Town of Johnston landfill gas project approved by the Division last summer.²⁷ He also noted that with an estimated 12 full time employment positions, the Orbit project, if it proceeds according to plan, will exceed the level of job creation expected from the recently approved Deepwater Wind project.²⁸

As previously noted, Mr. Hahn raised two minor issues which he found insufficient to prevent the Commission from approving the Orbit Energy PPA. The first issue concerned the price of renewable energy certificates (“RECs”) during the project’s “Test Period”. The Test Period, according to the PPA, is a brief period not to exceed 6 months prior to the commercial operation of the project during which energy and RECs will be sold by Orbit Energy to National Grid.²⁹ The PPA states that the price of RECs sold during the Test Period are to be determined

²³ Id., p. 5 of the Power Purchase Agreement between the Narragansett Electric Company d/b/a National Grid and Orbit Energy Rhode Island, LLC.

²⁴ Division 1, p. 3.

²⁵ Division 1, p. 3, 11.

²⁶ Division 1, p. 3.

²⁷ Id., p. 8. Mr. Hahn is referring to the Power Purchase Agreement between Genco, Inc. and National Grid approved by the Division on July 1, 2010.

²⁸ Id., p. 12.

²⁹ National Grid 1, Power Purchase Agreement Between The Narragansett Electric Company, d/b/a National Grid, as Buyer and Orbit Energy Rhode Island, LLC, as Seller, dated May 26, 2011, p.28.

from an average of two broker quotes obtained by the Seller (Orbit Energy).³⁰ Mr. Hahn testified that the price of RECs during the Test Period should be determined from published subscription data sources since these are more truly representative of market prices.³¹ Similarly, Mr. Hahn felt that the method of determining the purchase price of power during the Extended Term³² should be based on net book value multiplied by a rate of return, rather than the Company's total assets from its financial statements multiplied by a rate of return, as required in the PPA.³³ According to Section 2.2(e) of the PPA, National Grid has the option to extend the PPA beyond the 15 year term, for an Extended Term of 6 years.³⁴ In the event the Company elects to extend the PPA, it must pay Orbit Energy an "Extension Price" for power which is intended to cover Orbit Energy's operating costs during the Extended Term plus a reasonable rate of return.³⁵ Mr. Hahn's concern was limited specifically to the calculation of the Extension Price defined in the PPA, namely the use of the developer's total book assets as the appropriate factor by which to multiply the rate of return. He testified that Orbit Energy's total assets listed on financial statements would not accurately reflect the book value of its property, plant and equipment and should therefore not be used to calculate extension price.³⁶ This issue was addressed further at the hearing; however, Mr. Hahn reiterated at that time that the method of calculating the Extension Price was a minor issue that should not prevent the Commission from approving the PPA.³⁷

³⁰ Id., p.12

³¹ Division 1, p. 13.

³² National Grid 1, Power Purchase Agreement between the Narragansett Electric Company d/b/a National Grid and Orbit Energy Rhode Island, LLC., p.14.

³³ Id., pgs. 13-14.

³⁴ National Grid 1, Power Purchase Agreement Between The Narragansett Electric Company, d/b/a National Grid, as Buyer and Orbit Energy Rhode Island, LLC, as Seller, dated May 26, 2011, p.14.

³⁵ Id., Exhibit E, Paragraph 5, p. 2.

³⁶ Division 1, pgs. 13-14.

³⁷ Transcript, p. 64.

In the Company's rebuttal testimony, Madison Milhous addressed Mr. Hahn's issues regarding the Test REC Price and Extension Price. He said there are not many available published sources of the kind recommended by Mr. Hahn that would accurately represent a market price for RECs eligible to satisfy the Rhode Island Renewable Energy Standard.³⁸ Furthermore, Mr. Milhous stated that the Company already obtains REC pricing partially from a published subscription source, SNL Financial LC ("SNL"), which is based on data from a small group of brokers.³⁹ Regarding the Extension Price, Mr. Milhous felt Mr. Hahn's recommendations failed to take into consideration the fact that the Company has the right to elect to purchase bundled renewable energy from Orbit Energy during the Extended Term, and that if it so elects to enter the Extended Term, the Extension Price would be subject to Commission approval.⁴⁰ Mr. Hahn's recommendation also failed to acknowledge that the PPA allows the Company to verify the Extension Price, and through this process, the Company would have the opportunity to obtain any information it deemed relevant for purposes of evaluating the fairness of the Extension Price.⁴¹ Finally, Mr. Milhous argued Mr. Hahn's point that a net book value is a better approach in determining the Extension Price. Mr. Milhous testified that failure to include all of the developer's assets in the calculation of the Extension Price, as Mr. Hahn suggests, would subject Orbit Energy's investors to the risk of not receiving a market return on their investment.⁴² Mr. Milhous characterized Mr. Hahn's proposal to calculate Extension Price based on the developer's net book value as "an artificial cap on [investors'] returns" that would adversely affect Orbit Energy's ability to attract investors.⁴³

³⁸ National Grid 2, p.2.

³⁹ Id.

⁴⁰ Id., p. 4.

⁴¹ Id.

⁴² Id., p. 3.

⁴³ Id.

V. Hearing

Following public notice, the Commission held a hearing on July 28, 2011 at the Commission's offices located at 89 Jefferson Boulevard, Warwick, Rhode Island wherein the following appearances were entered:

FOR NATIONAL GRID:	Jennifer Brooks Hutchinson, Esq.
FOR THE DIVISION:	Leo Wold, Esq. Steve Scialabba, Rate Analyst Richard S. Hahn, Division Consultant
FOR THE COMMISSION:	Amy K. D'Alessandro, Esq. Alan Nault, Utility Rate Analyst Nicholas Ucci, Principal Policy Associate Dilip Shah, Special Projects Coordinator

At the July 28 hearing, National Grid presented the testimony of Madison Milhous who testified regarding many aspects of the Orbit Energy PPA and answered questions posed by the Commission. Prior to Mr. Milhous taking the stand, counsel for National Grid confirmed that the 3.2 megawatt Orbit Energy project would count as just shy of 3% of the Company's 90 megawatt capacity requirement.⁴⁴ The Commission questioned Mr. Milhous, as well as Orbit Energy and the Division witness, as to whether it was customary not to have a commercial operation date, expressed in terms of a month, day and year, specified in the contract.⁴⁵ Mr. Milhous and Mr. Hahn testified 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.⁴⁶ Mr. Shareef would not say whether it was typical to not have a commercial operation date in the PPA because all PPAs are different.⁴⁷ Mr. Milhous reiterated that the

⁴⁴ Transcript, p. 7.

⁴⁵ Id., pgs. 11-12, 44, 65-66.

⁴⁶ Id., pgs. 11-12, 66.

⁴⁷ Id., p. 44.

PPA's commercial operation date of 2 years from the effective date of the PPA was reasonable in the Company's view.⁴⁸

The Commission questioned the Company as to whether it intended to resell the energy and RECs purchased from Orbit Energy into the market.⁴⁹ Mr. Milhous confirmed the Company's intention to resell the energy and RECs into the market and stated that the difference between the contract costs and those transactions, whether positive or negative, would be passed on to ratepayers.⁵⁰ Mr. Milhous addressed Mr. Hahn's concerns once again regarding Test REC Price and Extension Price. He pointed out that the Test Period will likely be a period of only one or two months and noted that there are not many subscription sources available to provide guidance in determining a market price for RECs.⁵¹ Having said that, he re-iterated that one of the most reliable published indices for REC pricing is SNL which is based on broker quotes; therefore, the information the Company will rely on to determine a fair Test REC Price is the same whether it be derived from broker quotes or SNL.⁵² Mr. Milhous also pointed out that the PPA allows the Company recourse through dispute resolution in the unlikely event of any controversy that might arise out of the determination of the Test REC Price.⁵³ Mr. Milhous therefore maintained that the use of broker quotes is the most appropriate method of determining a fair Test REC Price. That said, towards the end of the hearing, Mr. Milhous testified, and Mr. Shareef agreed, that ultimately any and all available sources would be used by the Company to

⁴⁸ Id., p. 12.

⁴⁹ Id., pgs. 14-16.

⁵⁰ Id.

⁵¹ Id., pgs. 29-30, 36, 87.

⁵² Id., pgs. 17-18.

⁵³ Id., p. 88. See page 47, Paragraph 11, of the Power Purchase Agreement between Narragansett Electric Company, d/b/a National Grid and Orbit Energy Rhode Island, LLC.

evaluate the Test REC Price, including the Company's price of recently procured RECs which was proposed at the hearing by Mr. Hahn.⁵⁴

Regarding the Extension Price, Mr. Milhous suggested at the hearing that Mr. Hahn's proposal to include net book value in the calculation of Extension Price is misplaced to the extent that the developer's assets used to calculate Extension Price would already be depreciated.⁵⁵ Mr. Milhous also reiterated the fact that the PPA includes ample safeguards against any type of irretrievable controversy over the Extension Price, not the least of which is the Company's option to extend the contract in the first place and the Commission's authority to approve the Extension Price.⁵⁶ In short, without directly saying so, Mr. Milhous implied that Mr. Hahn's concern was relatively insignificant and certainly not a sufficient reason to reject or modify the PPA. The Extension Price did not appear to be much of an issue to Orbit Energy's Chief Executive Officer, S. Anwar Shareef, who when asked whether the PPA allowed Orbit Energy to include net book value for determining the Extension Price, testified that Orbit Energy was basically interested in recovering its operating costs and some return.⁵⁷ It should be noted that both Mr. Shareef and Mr. Hahn agreed that National Grid has the sole discretion whether to extend the PPA beyond the 15 year term.⁵⁸

At the hearing, Mr. Hahn proposed another method of determining the Test REC Price. He proposed that the Test REC Price be the price of RECs that were purchased by the Company in its most recent annual procurement.⁵⁹ Mr. Milhous was willing to consider this but noted that the REC price procured through the Company's solicitation might not be recent enough.⁶⁰

⁵⁴ Id., pgs. 88-89.

⁵⁵ Id., pgs. 19-20.

⁵⁶ Id., pgs. 24-26, 29.

⁵⁷ Id., pgs. 45-46.

⁵⁸ Id., p. 45, 73.

⁵⁹ Id., pgs. 61-62.

⁶⁰ Id., p. 87.

When asked about the importance of the Test REC Price in light of the short duration of the Test Period (one to two months), Mr. Hahn stated that although the Test Period is short, it is still a good idea to “eliminate vagueness” from the contract.⁶¹ He also testified that the use of a subscription source for determining Test REC Price would facilitate review by the Division simply by virtue of it being an objective, easily accessible source.⁶² Regarding the method of determining Extension Price, Mr. Hahn disagreed with Mr. Milhous’ testimony that the developer’s assets would be depreciated and therefore already represent “net” value.⁶³ Mr. Hahn stated this argument would allow the developer to earn a return on several items that appear on a financial statement, such as cash, which would clearly be inappropriate.⁶⁴ As stated previously, however, Mr. Hahn agreed that this issue would not be a sufficient basis for the Commission to reject the PPA.⁶⁵

VI. Commission Findings

On July 28, 2011, the Commission voted unanimously to approve the Purchase Power Agreement between National Grid and Orbit Energy Rhode Island, LLC. The decision was rendered following a hearing in which parties from National Grid, Orbit Energy and the Division of Public Utilities and Carriers presented testimony to the Commission regarding the pertinent provisions of the PPA and the Orbit Energy Project. The Commission’s authority to review the PPA in this matter is governed by the Long-Term Contracting Standard codified at Title 39, Chapter 26.1 of the R.I. General Laws. Pursuant to Chapter 26.1 of the R.I. General Laws, the Commission’s review of the within PPA is limited to three questions. First, the Commission must determine whether the PPA is commercially reasonable as that term is defined in R.I.G.L. §

⁶¹ Id., pgs. 70-71.

⁶² Id., p. 60, 74.

⁶³ Id., pgs. 62-63.

⁶⁴ Id., p. 63.

⁶⁵ Id., p. 64.

39-26.1-2(1). Next, the Commission must decide whether the requirements for the annual solicitation have been met, and finally, the Commission must decide whether the PPA is consistent with the purposes of Chapter 26.1, Title 39 of the R.I. General Laws. ⁶⁶ The Commission unanimously found that the Company had met its burden with respect to all three questions.

The R.I. General Assembly defines the term “commercially reasonable” as follows:

“...terms and pricing that are reasonably consistent with what an experienced power market analyst would expect to see in transactions involving newly developed renewable energy resources. Commercially reasonable shall include having a credible project operation date, as determined by the commission, but a project need not have completed the requisite permitting process to be considered commercially reasonable. If there is a dispute about whether any terms or pricing are commercially reasonable, the commission shall make the final determination after evidentiary hearings.” ⁶⁷

The primary witness for the Division of Public Utilities and Carriers, Richard S. Hahn, testified that the terms and pricing of the Power Purchase Agreement between National Grid and Orbit Energy were generally fair and reasonable and recommended approval. ⁶⁸ He testified that the pricing was favorable compared with other renewable energy projects recently approved, including both the Deepwater Wind and Genco projects. ⁶⁹ When the issue of the commercial operation date was raised at the hearing, Mr. Hahn never expressed any doubt that the Orbit Energy Project’s commercial operation date of September 2013 was reasonable. The Commission therefore finds, based on the testimony in this matter, that the Orbit Energy PPA is commercially reasonable.

The Company’s pre-filed testimony and Summary Report on the National Grid’s First Solicitation for Long-Term Contracts for Renewable Energy Projects demonstrate quite clearly

⁶⁶ R.I.G.L. § 39-26.1-3(b).

⁶⁷ R.I.G.L. § 39-26.1-2(1).

⁶⁸ Division 1, p. 3.

⁶⁹ Id, pgs. 8-9; Transcript, p. 83.

that the Company has met the requirements for the annual solicitation, having selected Orbit Energy Rhode Island, LLC. from eight other bidders.⁷⁰ The final prong to be met in this analysis is whether the PPA is consistent with the purposes of Title 39, Chapter 26.1 of the General Laws entitled Long-Term Contracting Standard for Renewable Energy, which is defined as follows:

“The purpose of this chapter is to encourage and facilitate the creation of commercially reasonable long-term contracts between electric distribution companies and developers or sponsors of newly developed renewable energy resources with the goals of stabilizing long-term energy prices, enhancing environmental quality, creating jobs in Rhode Island in the renewable energy sector, and facilitating the financing of renewable energy generation within the jurisdictional boundaries of the state or adjacent state or federal waters or providing direct economic benefit to the state.”⁷¹

The purchase power agreement under consideration calls for the construction of a 3.2 megawatt anaerobic digester biogas facility, located in the Town of Johnston, R.I., which will generate power through the conversion of organic waste to biogas. By signing this agreement, National Grid agrees to purchase renewable energy, capacity and RECs from Orbit Energy Rhode Island, LLC for a period of at least 15 years subject to assignment.⁷² The record in this docket reveals that the Orbit Energy Facility is expected to generate 20 full-time jobs during the construction phase, 12 full-time, post-construction jobs, generate tax revenues to the Town of Johnston and the State of Rhode Island and have a minimal effect on the environment.⁷³ In addition to these benefits, the facility will also serve to reduce the quantity of waste at the Central State Landfill thereby extending the life of the Landfill.⁷⁴ The Commission finds that these benefits are consistent with the Legislature’s stated policies of enhancing environmental

⁷⁰ National Grid 3.

⁷¹ R.I.G.L. § 39-1-26.1-1.

⁷² Assignment of the PPA is generally prohibited unless consented to in writing by the parties. Exceptions exist in the event of a merger or acquisition of the Company. Purchase Power Agreement between the Narragansett Electric Company d/b/a National Grid, Paragraph 14, pgs. 48-49.

⁷³ Orbit Energy 1; Transcript, pg. 52-53.

⁷⁴ Orbit Energy 1, p. 4.

quality and creating jobs in the State of Rhode Island. The theory that long-term contracts for renewable energy promote stabilization of energy prices will be proven in due course through years of experience. The Commission cannot, and will not attempt to, verify this theory during this nascent period of the renewable energy industry; however the approval of power purchase agreements such as this one certainly have the potential to positively affect future energy prices and therefore, the Commission finds that the Orbit Energy PPA satisfies the Legislature's express goal of stabilizing long-term energy prices. Finally, the location of the Orbit Energy Project in Johnston, Rhode Island, lends itself to at least a reasonable inference that Orbit Energy would secure local financing for this project; therefore, the Commission finds the Orbit Energy PPA is consistent with the Legislature's goal of facilitating financing of renewable energy generation within the jurisdictional boundaries of this State.

The Commission does not find that the issues raised in this matter regarding the Test REC Price or the Extension Price are significant enough to require the parties to modify the existing terms of the PPA. This is a private contract between two very capable and sophisticated parties who have entered into this contract with a wealth of knowledge and experience. The Commission is confident that if an issue were to arise at the end of the contract term regarding the Test REC Price, the parties would be more than capable of resolving it through the PPA's dispute resolution provisions. Furthermore, it is difficult to fathom circumstances in which a disagreement over the Test REC Price would result in a breach of contract or other irreparable breakdown of the contract. Likewise, the Commission regards the method of calculating the Extension Price as an issue of de minimis consequence that, in the unlikely event of it reaching fruition, would most likely be resolved through natural market forces. The Orbit Energy PPA gives the Company sole discretion to extend the PPA beyond the 15 year term, and as such, puts

the Company in the best possible position for controlling its destiny. The Commission is confident the Company will engage in an appropriate, in depth analysis of whether to extend the contract period which will include among other things a determination of a fair Extension Price. The decision to extend the contract term and accept an Extension Price is akin to the decision routinely made by the Company to enter into a contract with a non-regulated power producer. This decision, in the Commission's opinion, does not require regulatory intervention, nor does the decision to accept the Extension Price and extend the term of the Orbit Energy PPA. These decisions are appropriately influenced by market forces and within the exclusive authority of the Company.

Accordingly, it is hereby

(20453) ORDERED:

1. The Power Purchase Agreement between the Narragansett Electric Company, d/b/a National Grid and Orbit Energy Rhode Island, LLC., dated May 26, 2011 and filed with the Commission on June 22, 2011, complies with all relevant terms and provisions of the R.I. General Laws, including without limitation R.I.G.L. § 39-26.1 et seq. entitled The Long-Term Contracting Standard for Renewable Energy, and it is therefore approved.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JULY 28, 2011 PURSUANT
TO A BENCH DECISION. WRITTEN ORDER ISSUED AUGUST 18, 2011.

PUBLIC UTILITIES COMMISSION



Elia Germani

Elia Germani, Chairman

Mary E. Bray

Mary E. Bray, Commissioner

Paul J. Roberti

Paul J. Roberti, Commissioner