

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID'S PROPOSED REVISED :
TIMETABLE AND METHOD FOR SOLICITATION : DOCKET NO. 4316
AND EXECUTION OF LONG-TERM CONTRACTS :

REPORT AND ORDER

On March 1, 2012, The Narragansett Electric Company d/b/a National Grid ("National Grid" or Company") filed a revised timetable and method for solicitation and execution of long-term contracts with the Public Utilities Commission ("Commission") pursuant to R.I. Gen. Laws § 39-26.1-3 ("Long-Term Contracting Standard") and the Commission's Rules and Regulations Governing Long-Term Contracting Standards for Renewable Energy ("Long-Term Contracting Rules"). In accordance with the Long-Term Contracting Rules, the Company is required to file for Commission review and approval, any such proposed changes no less than 120 days prior to the issuance of the next annual solicitation. Intervenors may comment within 45 days from the filing and the Division within 60 days of the filing. The Company may then file reply comments following the Division's comments but prior to a hearing on the matter.

In addition to updating dates, targets and threshold numbers, and clarifying that the solicitation is separate from the solicitations for distributed generation, National Grid made certain substantive changes to its Request for Proposals for Long-Term Contracts for Renewable Energy ("RFP"). The Company proposed to modify the provisions for Eligible Products to eliminate the sales of Renewable Energy Certificates ("RECs") only from projects employing net metering because those projects are now governed by the Net Metering Tariff pursuant to R.I. Gen. Laws § 39-26.4-1 et seq. Thus, the Company asserted that this elimination would not adversely affect the competitive bidding process under the Long-Term Contracting Standard.¹

¹ National Grid's Filing Letter, 3/1/12 at 2.

The Company also proposed to increase the minimum contract size for solar projects from 250 kilowatts (“kW”) to 1 megawatt (“MW”). The Company maintained that the 250 kW minimum size ordered by the Commission in Docket No. 4150 was no longer necessary in light of the fact that the Distributed Generation Standards Contracts Act, codified at R.I. Gen. Laws § 39-26.2-1 et seq., is intended to facilitate and promote the development of distributed generation solar projects with a nameplate capacity of 5 MW or less.² National Grid also made changes to portions of the RFP to address the consideration of pricing submitted by projects not located in Rhode Island, including the factors of eligible facilities, the analysis of direct economic benefits to Rhode Island, and the allowable forms of pricing.³ Specifically, National Grid’s proposed new language in the RFP allows projects to show economic benefit to Rhode Island through pricing which will lead to cost savings for Rhode Island customers, regardless of the project’s location.⁴

Discovery was issued by the Division of Public Utilities (“Division”) and Commission and on April 30, 2012, the Division submitted a Memorandum from its consultant, Richard Hahn of La Capra Associates. Mr. Hahn summarized National Grid’s proposed changes and discussed recent changes to legislation which allows projects enrolled in National Grid’s distributed generation contracts to be counted toward the Long-Term Contracting Standard. Discussing each of National Grid’s proposed changes, Mr. Hahn first focused on the change to the size of eligible solar projects from 250kW to 1 MW. He asserted that “letting the provision remain in place may provide some bidders one additional opportunity to have their projects evaluated and likely would not cause any harm.”⁵ Next, Mr. Hahn discussed National Grid’s proposal to

² *Id.*

³ *Id.*

⁴ RFP at Sections 2.2.2.2(c) and 2.2.3.6.

⁵ Division Exhibit 1 (Memorandum of Richard Hahn) at 3.

consider pricing benefits as a means of meeting the economic benefit to the state, but expressed concern that it may be difficult in practice to compare pricing benefits and non-price benefits such as new jobs when reviewing bids. He then recommended accepting National Grid's proposal to allow it to consider pricing benefits as a threshold eligibility requirement but to not modify the non-price scoring system.⁶ Mr. Hahn seemed to support National Grid's proposal to evaluate the difference in delivery point pricing for out-of-state bidders, but cautioned that the Company should not automatically require bidders to use a Rhode Island zone delivery point.⁷

Finally, Mr. Hahn discussed recommendations he made in 2010 in Docket No. 4150, reviewing the current RFP. He noted that National Grid had not objected to his recommendations, but that they had not been implemented. Summarizing his previous comments, he stated that the proposed RFP should not allow for late submissions of bids or for the acceptance of proposals that do not meet the eligibility requirements. He also sought clarification of the amount of time the Division would have to review bids and whether bidders could bid without submitting a Notice of Intent or attending the Bidder's Conference. Next, he thought the Division should have the market price forecast in advance of the bids date. He also recommended some "clean up" of language that he believed was outdated and unnecessary, such as dates that are no longer applicable.⁸

On May 15, 2012, National Grid submitted Reply Comments to the Division's Memorandum. Responding to Mr. Hahn's recommendation that the minimum size for solar projects remain at 250 kW, the Company noted that it has not received bids from any facilities less than 1 MW in prior solicitations and that it would be more appropriate and streamlined for

⁶ *Id.* at 3-4.

⁷ *Id.* at 4.

⁸ *Id.* at 4-5.

small projects to bid into the DG enrollment.⁹ Addressing the Division's recommendation that all late proposals be rejected and all projects not meeting the eligibility requirements be disqualified, National Grid stated that it should be allowed the flexibility to waive requirements in order to allow the best and most competitive projects to participate. National Grid stated that if such a situation arose where the flexibility would be required, the Company would consult with the Division "to ensure the utmost fairness to bidders and to maintain the integrity of the competitive process."¹⁰ Turning to the timeliness of the market price forecast, National Grid stated that although the market price forecast might appear out of date, because of the length of time between the bidding and the signing of a contract, the forecast is timely.¹¹ Finally, the Company clarified that neither a Notice of Intent nor attendance at a Bidder's Conference is required in order to bid under the RFP. National Grid also indicated a willingness to provide the market forecast to the Division earlier in the procurement timeline. The Company believed that the Division already had more than thirty (30) days to review the bids prior to selection and negotiation of a contract.¹²

On May 30, 2012, the Commission conducted a Hearing at its Offices at 89 Jefferson Boulevard, Warwick, Rhode Island for the purpose of discussing and considering National Grid's Filing. The following appearances were entered:

FOR NATIONAL GRID:	Jennifer Brooks Hutchinson, Esq.
FOR CLF:	Jerry Elmer, Esq.
FOR DIVISION:	Jon Hagopian, Esq. Senior Legal Counsel

⁹ National Grid Exhibit 2 at 2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

¹² *Id.* at 4-5.

Karen Lyons, Esq.
Special Assistant Attorney General

FOR COMMISSION:

Cynthia G. Wilson-Frias, Esq.
Senior Legal Counsel

National Grid presented Corinne Abrams, Manager of Environmental Transactions in support of its filing. Ms. Abrams agreed that while there would be no harm in keeping the size of solar at 250 kW, she maintained that it would be more simplified for the smaller projects to have one option with a ceiling price set which eliminates the need to create a bid.¹³ With regard to the desire for flexibility to allow bidders to submit late bids, Ms. Abrams stated that the Company would like to maintain flexibility in the event a bidder contacted National Grid in advance of the due date to notify the Company that it would be a day or two late with its submission. She stated that the Company would consult with the Division and do “whatever is appropriate” with regard to the bid and other bidders, including allowing other bidders the opportunity to update their bids.¹⁴

Similarly, Ms. Abrams explained that the Company would like the flexibility to be able to accept bids even if the bidder had not yet met the eligibility qualifications, but clarified that the Company would not select a bidder if it had not met the guidelines. One example she gave was a project that was in the process of being qualified as an eligible renewable resource. However, all eligibility requirements would need to be met no later than the date for the selection of short listed bidders.¹⁵ She agreed, however, that because this is an annual solicitation, the dates of which have not changed very much, potential bidders should be aware that it will be available and they should be gathering their information in sufficient time to meet the deadlines.¹⁶

¹³ Tr. 5/30/12 at 10.

¹⁴ *Id.* at 12-16, 20.

¹⁵ *Id.* at 16-17.

¹⁶ *Id.* at 25-27.

The Company also presented Madison Milhous, a consultant to National Grid, to elaborate on this matter. Mr. Milhous explained that whether or not the Company exercised its flexibility would depend on the reason for the delay in submitting a bid. For example, he stated that if a bidder has not developed its pricing, there would be no allowance in the time, but if the bidder was awaiting a legal document or some other document to complete the package, it may make sense to allow a little extra time. He indicated that everything should be in place before the bids needed to be submitted to the Division and thus, reiterated Ms. Abrams' point that the extra time allowed would be less than one week.¹⁷ However, Mr. Milhous conceded that the Company would not want to take any action which would lead to claims from bidders that the process was unfair.¹⁸

The Division presented Mr. Hahn in support of its position. Mr. Hahn reiterated his belief that a hard and fast deadline for the receipt of bids and for meeting eligibility requirements is important because it is common practice in power supply solicitations, it avoids suspicion from timely bidders that the process is tainted, and it protects the Company from legal complaints following a solicitation.¹⁹ He stated that he understood National Grid's desire for flexibility but focused his comments on the integrity of the process.²⁰

With regard to the minimum project size, he stated that he simply did not see a reason for changing the RFP where it would provide developers another option for their project. However, he stated that practically speaking, he did not expect a small project to bid into this RFP when

¹⁷ *Id.* at 22-24.

¹⁸ *Id.* at 24-25.

¹⁹ *Id.* at 32-34, 47-48.

²⁰ *Id.* at 32. Ms. Hutchinson noted for the record that the flexibility has been built into the RFP since 2010 and the Company wished to preserve that flexibility. *Id.* at 34-35.

the Distributed Generation solicitation process provides for a higher rate. He concluded that either way the Commission was to decide the issue, the process would still work.²¹

On June 12, 2012, at an Open Meeting, the Commission considered National Grid's filing and a majority voted to approve the revised RFP with three exceptions. A majority of the Commission accepted the Division's recommendation that the RFP should set firm deadlines for the submission of bids and that the eligibility criteria should be met by the same deadlines as those for the submission of bids. The Commission is persuaded that any solicitation process appears more legitimate when all potential bidders are held to the same standard. Furthermore, as Mr. Hahn stated, it is common practice in the power industry that firm deadlines exist for the submission of bids. Finally, because this is an annual process, potential bidders are well aware of the deadlines for the upcoming year, within a day or two and as such, should have ample opportunity to complete their bid packages if they are serious about their project. For all of these reasons, the Commission is not persuaded that the State will lose out on a lower cost qualified bidder if the deadlines are not applied equally to all participants. National Grid shall submit a conforming RFP to the Commission.

The Commission rejects the change for new solar projects from a minimum of 250 kW to 1 MW. The Commission was persuaded by Mr. Hahn's testimony that there should be as many options for renewable projects as possible in order to meet the Long-Term Contracting Standard even if projects of that size chose not to bid. The Commission agreed that there would be no harm to the Company or customers and that there could be a benefit in retaining the status quo. With regard to the modification of the eligibility analysis for all projects and the economic benefits analysis for out-of-state projects, the Commission finds that it is consistent with the purpose of the Long-Term Contracting Standard, the Commission's Long-Term Contracting

²¹ *Id.* at 35-37.

Rules and with the Commission's recent decision in Docket No. 4319 (In Re: Review of Purchase Power Agreement Between Narragansett Electric Company d/b/a National Grid and Black Bear Development Holdings, LLC) wherein the Commission applied the standards proposed by National Grid in this Docket and stated: "The record in this docket reveals that the Black Bear PPA is expected to provide direct economic benefit to the State of Rhode Island by way of significant pricing benefits and/or cost savings delivered to ratepayers as a result of the PPA."²²

Accordingly, it is hereby

(20768) ORDERED:

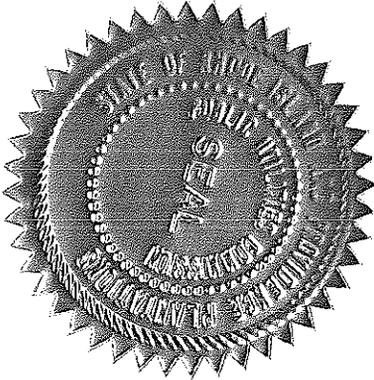
1. The Narragansett Electric Company d/b/a National Grid's Revised Request for Proposals for Long-Term Contracts for Renewable Energy Projects filed on March 1, 2012 is hereby approved except for Section 3.4, Section 2.2.2 and Section 2.2.2.5.
2. The Narragansett Electric Company d/b/a National Grid shall remove the sentence in Section 3.4 that states: "National Grid reserves the right to reject any proposals received after the deadline" and replace that sentence with: "National Grid shall reject all proposals received after the deadline."
3. The Narragansett Electric Company d/b/a National Grid shall change the sentence in Section 2.2.2 which states: "Failure to meet any of these requirements could lead to disqualification of the proposal from further review and evaluation" to: Failure to meet any of these requirements will lead to disqualification of the proposal from further review and evaluation.
4. The Narragansett Electric Company d/b/a National Grid shall reinsert the deleted language regarding the minimum contract size of 250 kW for solar projects.

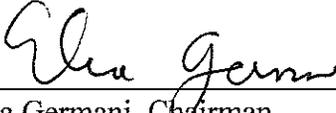
²² Order No. 20738 (issued May 19, 2012) at 5 (citations omitted).

5. The Narragansett Electric Company d/b/a National Grid shall file with the Commission a new Revised RFP for Long-Term Contracts for Renewable Energy Projects incorporating the Commission's order and instructions prior to June 29, 2012, the Issuance Date.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON JUNE 12, 2012. WRITTEN ORDER ISSUED JULY 12, 2012.

PUBLIC UTILITIES COMMISSION





Elia Germani, Chairman



Mary E. Bray, Commissioner

*Paul J. Roberti, Commissioner

*Commissioner Roberti dissented from the majority decision to eliminate the Company's flexibility to evaluate bids that did not meet the eligibility criteria or which were submitted late on the basis that the Company should have the flexibility to obtain the best pricing structure for Rhode Island. He believed that the Company could implement this flexibility in a way that was fair to all bidders. He also dissented from the majority decision not to raise the minimum project size for new solar projects from 250 kW to 1 MW on the basis that the DG Enrollment process is available to those projects at a generous fixed price and National Grid has not received any bids below that size during the previous solicitations. Furthermore, Commissioner Roberti was concerned that keeping the multiple solicitations open to smaller projects could pose a burden to National Grid that would not be outweighed by the benefit to the State. While there was a need for the smaller minimum in 2010, recent law changes have eliminated that need.

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE

SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.