

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 CHAMPLAIN WIND, LLC

DOCKET NO. 4437

ORDER

WHEREAS, on August 2, 2013, Narragansett Electric Company, d/b/a National Grid (“National Grid” or “Company”) entered into a Power Purchase Agreement (“Champlain Wind PPA” or “PPA”) with Champlain Wind, LLC (“Champlain”) and the same was filed with the PUC on September 3, 2013; and,

WHEREAS, the Company executed the PPA pursuant to R.I.Gen. Laws §39-26.1-3 which requires the Company to annually solicit and enter into long-term contracts with renewable energy developers subject to PUC approval; and,

WHEREAS, R.I. Gen. Laws §39-26.1-3 (Long-Term Contracting Standard for Renewable Energy) requires the Company to enter into long-term contracts for 90 megawatts of power from newly developed renewable energy resources by December 31, 2014; and,

WHEREAS, the Company’s process and procedures for soliciting long-term contracts for renewable energy was recently updated and approved by the PUC on July 12, 2012.¹ On June 29, 2012, the Company issued its third solicitation for proposals from renewable energy developers to enter into long-term contracts for the purchase of capacity, energy and attributes pursuant to R.I. Gen. Laws §39-26.1-3(a); and,

¹ Order No. 20768 (Dkt. 4316). The Company’s solicitation process was originally approved on June 17, 2010 (Dkt. 4150). See also, Commission 7 (Confidential Summary Report on National Grid’s Third Solicitation), p.1.

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WHEREAS, R.I. Gen. Laws §39-26.1-3 (Long-Term Contracting Standard for Renewable Energy) requires the Company to enter into long-term contracts for 90 megawatts of power from newly developed renewable energy resources by December 31, 2014; and,

WHEREAS, the Company’s process and procedures for soliciting long-term contracts for renewable energy was recently updated and approved by the PUC on July 12, 2012.¹ On June 29, 2012, the Company issued its third solicitation for proposals from renewable energy developers to enter into long-term contracts for the purchase of capacity, energy and attributes pursuant to R.I. Gen. Laws §39-26.1-3(a); and,

¹ Order No. 20768 (Dkt. 4316). The Company’s solicitation process was originally approved on June 17, 2010 (Dkt. 4150). See also, Commission 7 (Confidential Summary Report on National Grid’s Third Solicitation), p.1.

WHEREAS, the Bowers Project (“Project”) was the highest ranked project out of sixteen bids received in the June 29, 2012 solicitation, and on October 19, 2012, the Project developer, Champlain Wind, LLC, was notified it had won the solicitation;² and,

WHEREAS, the PPA between National Grid and Champlain Wind, LLC has a fixed, bundled price of \$78 per megawatt-hour (for energy, capacity and RECs) based on the ISO-NE Maine Zone;³ and,

WHEREAS, the pricing of the Champlain Wind PPA is estimated to be approximately \$48.9 million below the projected market price on a net present value basis over the term of the fifteen-year contract;⁴ and,

WHEREAS, the Bowers Project is the first land based wind project to be selected pursuant to the Long-Term Contracting Standard and will diversify the Company’s current portfolio of renewable energy resources;⁵ and,

WHEREAS, the Bowers Project, to be located in Carroll Plantation and Kossuth Township, Maine, has a 48 megawatt nameplate capacity and will satisfy approximately 73.5% of the Company’s 90 megawatt statutory requirement.⁶

WHEREAS, the Project will be interconnected via an existing 38-mile 115kV generator lead which has sufficient capacity for the Project;⁷ and,

WHEREAS, the Company will sell the power purchased from Champlain Wind, LLC into the wholesale spot market at the delivery point in Maine or deliver the power to Rhode Island;⁸ and,

² National Grid 1 (Testimony of Corinne Abrams), p. 5.

³ Id., p.9.

⁴ Attachment Comm 1-1.

⁵ National Grid 1 (Testimony of Corinne Abrams), p. 5 (line 20) to p. 6 (line 3).

⁶ Commission 7 (Confidential Summary Report on National Grid’s Third Solicitation), p.5; Transcript, p. 13, line 7; National Grid 1 (Testimony of Corinne Abrams), p. 5 (line 5).

⁷ There is no need for incremental transmission. National Grid 1 (Testimony of Corinne Abrams), p. 8.

WHEREAS, the Project qualifies as a newly developed renewable energy resource pursuant to R.I. Gen. Laws §39-26.1-2(6) and has a commercial operation date of March 31, 2017;⁹ and,

WHEREAS the PUC's authority to review this PPA is governed by the Long-Term Contracting Standard codified at Title 39, Chapter 26.1 of the R.I. Gen. Laws.

WHEREAS, the PUC's review of the Champlain Wind PPA is limited to three questions. The PUC must first determine whether the PPA is commercially reasonable as that term is defined in R.I.Gen. Laws §39-26.1-2(1). The PUC must also determine whether the requirements for the annual solicitation have been met. Finally, the PUC must determine whether the PPA is consistent with the purposes of Chapter 26.1, Title 39 of the General Laws;¹⁰ and,

WHEREAS, the Rhode Island General Assembly defines the term "commercially reasonable" as,

"...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."¹¹

WHEREAS, following public notice, the PUC held a hearing on October 9, 2013 to review the terms and provision of the Champlain Wind PPA; and,

⁸ National Grid 1 (Testimony of Corinne Abrams), p. 9.

⁹ *Id.*, p. 8.

¹⁰ R.I. GEN. LAWS §39-26.1-3(b).

¹¹ R.I. GEN. LAWS §39-26.1-2(1).

WHEREAS, representatives of National Grid, Champlain Wind, LLC and the Division of Public Utilities and Carriers testified at the hearing regarding the terms and provisions of the PPA; and,

WHEREAS, the primary witness for the Division of Public Utilities and Carriers, Richard S. Hahn, testified in support of the Champlain Wind PPA.¹² Mr. Hahn was questioned regarding the ratepayer impact of the negative pricing rule scheduled for effect in December of 2014.¹³

WHEREAS, Mr. Hahn testified that while negative pricing may expose ratepayers to above market costs during hours when locational marginal prices are very low, the likelihood of that happening on a frequent basis in New England is low.¹⁴ He further testified that given the time frame of the negative pricing rule, proposed a year after Champlain LLC was awarded the PPA, the Company's only options were to re-negotiate the contract to place the risk of negative pricing on the developer, adhere to the contract that was solicited in the RFP (keeping the risk of negative pricing on the ratepayer) or void the RFP and re-issue a new one which placed the risk of negative pricing on the developer;¹⁵ and,

WHEREAS, Mr. Hahn testified that the best option for ratepayers was the one chosen by National Grid, namely to stick to the original contract placing the risk on the ratepayer. Mr. Hahn's opinion was based on the fact that a re-negotiated contract would have resulted in a higher fixed bundled price over the length of the contract, resulting in a more adverse impact on ratepayers than the alternative of allowing the ratepayer to assume the relatively small risk of negative pricing;¹⁶ and,

¹² Transcript, p.104 (lines 19-21), p. 105 (lines 9-12).

¹³ (Dkt. 4316) Company Letter to the PUC, 07/19/13; National Grid 1 (Testimony of Corinne Abrams), p. 10 (line 9).

¹⁴ Transcript, p. 105 (line 23) to p. 107 (line17).

¹⁵ Transcript, p.95 (line21) to p.96 (line 6).

¹⁶ Transcript, p. 96 (line 15) to p.100 (line 1); See also Division 3, p.4; ISO-NE filed the negative pricing tariff provision with the FERC on July 1, 2013. National Grid awarded the PPA to Champlain Wind on October 19, 2012.

WHEREAS, the PUC received testimony and discovery concerning the fact that the Maine Department of Environmental Protection denied the application of Champlain Wind, LLC. to construct the Bowers Project at the proposed location in Carroll Plantation and Kossuth Township, Maine;¹⁷ and,

WHEREAS, the Champlain Wind PPA requires as a critical milestone that all permit approvals, including the Maine DEP permit, are received by December 31, 2015;¹⁸ and,

WHEREAS, the Champlain Wind PPA requires Champlain Wind, LLC. to pay National Grid \$4.5 million in development period security, three times the amount of operating period security, in light of the Maine DEP permit denial and potential risk of an unsuccessful appeal;¹⁹

WHEREAS, failure to obtain a permit by December 31, 2015 will result in the payment of delay damages by Champlain Wind, LLC to National Grid, plus an additional sum of \$1,485,000 in operating period security;²⁰ and,

WHEREAS, the LTC Act specifically authorizes the PUC to approve long-term contacts prior to completion of the permit process;²¹ and,

WHEREAS, the Company's Summary Report on National Grid's Third Solicitation ("Report") for Long-Term Contracts for Renewable Energy, filed August 29, 2013, demonstrates that the Company has met the requirements for the annual solicitation;²² and,

WHEREAS, National Grid posted the RFP on the Company's website and sent notice of same to the ISO-New England Markets Committee and interested parties;²³ and,

The negative pricing rule is scheduled for effect in December of 2014. Company Letter to the PUC, 07/19/13 (Dkt. 4316).

¹⁷ National Grid 1 (Testimony of Corinne Abrams), p. 16 (line 13) to p.17 (line 8); PUC 4 (Comm 3-8, 3-11); Division 1 (Div 1-1); Transcript, p. 125 (line 6) to p. 126 (line 3), p. 77 (line 10) to p. 81 (line 2).

¹⁸ National Grid 1, Exhibit 1 (PPA, Section 3.1(a)(i) and (ii)).

¹⁹ National Grid 1 (Testimony of Corinne Abrams), p. 16 (line 13) to p. 17 (line 8); PPA, Section 6.2 (a).

²⁰ National Grid 1 (Testimony of Corinne Abrams), p.9 (lines 1-2); PPA, Section 6.2 (b); Transcript, p. 33 (line 9) to p. 36 (line 3).

²¹ R.I. GEN. LAWS §39-26.1-2(1).

²² Commission 7 (Summary Report on National Grid's Third Solicitation).

WHEREAS, the Report and pre-filed testimony of Corinne Abrams indicate that the Company evaluated sixteen bids according to both pricing and non-pricing criteria consistent with the provisions of §2.3 of the Company's RFP;²⁴ and,

WHEREAS, the Company held a bidders conference on July 16, 2012, and selected Champlain Wind, LLC on October 19, 2012 out of the sixteen (16) bids;²⁵ and,

WHEREAS, the aforementioned dates are consistent with the bidding process schedule established in §3.1 of the Company's RFP;²⁶ and,

WHEREAS, the PPA was executed on August 2, 2013, approximately eight (8) months beyond the date established in the bidding process schedule;²⁷ and,

WHEREAS, the testimony at the hearing revealed that the parties engaged in negotiations over several months regarding the appropriate amount of damages, development period security and assignment of risk with respect to negative pricing; and,

WHEREAS, such negotiations are consistent with the solicitation process envisioned by the Act which permits, "... a reasonable amount of negotiating discretion for the parties to engage in commercially reasonable arms-length negotiations over final contract terms;"²⁸ and,

WHEREAS, the legislative purpose of the Long-Term Contracting Standard is set forth in R.I. Gen. Laws §39-26.1-1 which states,

"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

²³ Id.

²⁴ Commission 13 and National Grid 1.

²⁵ Commission 7, p. 3-4.

²⁶ Commission 13, p. 15.

²⁷ The RFP called for contract execution by December 7, 2012. Commission 13, p. 15.

²⁸ R.I. GEN. LAWS §39-26.1-3(b).

generation within the jurisdictional boundaries of the state or adjacent state or federal waters or providing direct economic benefit to the state.”

WHEREAS, the PPA requires National Grid to purchase energy, capacity and RECs from a 48MW land based wind project to be located in Maine;²⁹ and,

WHEREAS, the Company will sell the power it purchases from the Bowers Project in the wholesale electricity spot market or deliver it to Rhode Island;³⁰ and,

WHEREAS, the PPA calls for a fixed, bundled price for capacity, energy and RECs of \$78 per megawatt-hour for the entire length of the contract (15 years) based on the ISO New England Maine Zone;³¹ and,

WHEREAS, the Champlain Wind PPA pricing is estimated to be approximately \$48.9 million below market on a net present value basis over the length of the contract;³² and,

WHEREAS, the PUC finds, based on the record, that the Champlain Wind PPA is commercially reasonable, as defined in R.I. Gen. Laws §39-26.1-2(1); and,

WHEREAS, the PUC finds, based on the record, that National Grid has fulfilled the requirements for the annual solicitation as provided in R.I. Gen. Laws §39-26.1-3; and,

WHEREAS, the PUC finds that the Champlain Wind PPA, with pricing at \$48.9 million below market, is consistent with the purpose of the Long-Term Contracting Standard for Renewable Energy to encourage and facilitate commercially reasonable contracts and to provide direct economic benefit to Rhode Island in the form of cost savings to Rhode Island customers; and,

²⁹ National Grid 1, Testimony of Corinne Abrams, p. 9.

³⁰ Id.

³¹ Id.

³² Attachment Comm 1-1.

WHEREAS, this finding is consistent with PUC precedent and §2.2.3.6 of the Company's RFP ("Direct Economic Benefits to Rhode Island") which states, "For projects not located in Rhode Island, the benefits of cost savings for Rhode Island customers resulting from competitive pricing will be considered;" and,

WHEREAS, the PUC has interpreted Rule 5.2 of the Long-Term Contracting Rules consistent with §2.2.3.6 of the Company's RFP to allow competitive pricing to qualify as a direct economic benefit to the state of Rhode Island where the project is not located within the state;³³ and,

WHEREAS, the PUC finds, based on the record, that the Champlain Wind PPA fulfills the legislative goals of promoting long-term contracts for renewable energy, stabilizing long-term energy prices and providing direct economic benefit to the State of Rhode Island.

ACCORDINGLY, it is

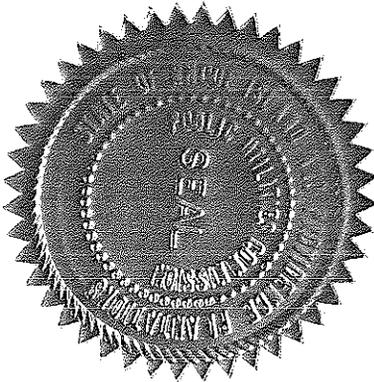
(21234) ORDERED:

1. The Power Purchase Agreement between the Narragansett Electric Company, d/b/a National Grid and Champlain Wind, LLC, dated August 2, 2013, and filed with the PUC September 3, 2013, complies with all relevant policies and provisions of the R.I. Gen. Laws, including without limitation R.I. Gen. Laws §39-26.1, and the same is hereby approved.

³³ The PUC approved the Black Bear PPA on May 17, 2012 finding that it provided direct economic benefit to the State of Rhode Island in the form of significant pricing benefits and/or costs savings delivered to ratepayers. *Order No. 20738 (Dkt. 4319)*. The Black Bear PPA called for the delivery of energy, capacity and RECS from Black Bear Development Holdings, LLC. to National Grid for a bundled price of \$91 per megawatt-hour, escalating 2% annually. The Black Bear pricing was estimated to be \$8.4 million below market over the life of the contract. *Id.*

EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 25, 2013 PURSUANT TO
AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED NOVEMBER 4, 2013.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran
Margaret E. Curran, Chairperson

Paul J. Roberti
Paul J. Roberti, Commissioner

Herbert F. DeSimone, Jr.
Herbert F. DeSimone, Jr., Commissioner