

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: SOLICITATION FOR PROPOSALS :
FOR CLEAN ENERGY PROJECTS PURSUANT : DOCKET NO. 4570
TO R.I. GEN. LAWS § 39-31-1 :

ORDER

In 2014, the Rhode Island General Assembly passed the Affordable Clean Energy Security Act (Act).¹ One of the purposes was to:

Utilize coordinated competitive processes, in collaboration with other New England states and their instrumentalities, to advance strategic investment in energy infrastructure and energy resources, provided that the total energy security, reliability, environmental, and economic benefits to the state of Rhode Island and its ratepayers exceed the costs of such projects, and ensure that the benefits and costs of such energy infrastructure investments are shared appropriately among the New England States.²

The Act allows the electric distribution company, in this case, The Narragansett Electric Company d/b/a National Grid (Narragansett), and/or the Rhode Island Office of Energy Resources (OER) to engage in various activities to either develop electric transmission projects to allow for large-scale hydropower to be delivered to New England, to develop electric transmission projects to allow for the reliable transmission of eligible renewable energy resources into New England, or to procure either source of energy through long term contracts.³ Any development or procurement activity is required to be conducted through competitive processes and subject to Public Utilities Commission (PUC) review prior to final commitments being made by either Narragansett or OER.⁴

On June 26, 2015, pursuant to R.I. Gen. Laws § 39-31-6(a)(1)(i), Narragansett filed with the PUC a Request for Proposals (RFP) that had been developed for issuance by Narragansett,

¹ R.I. Gen. Laws §§ 39-31-1 to 9.

² R.I. Gen. Laws § 39-31-2(2).

³ R.I. Gen. Laws §§ 39-31-4(a)(1)-(2), 39-31-5(a)(1)-(3).

⁴ R.I. Gen. Laws §§ 39-31-4(b), 39-31-5(a)(4), (b), 39-31-6(a)(a)(i)-(ii).

OER, Massachusetts electric utilities, the Massachusetts Department of Energy Resources, Connecticut electric utilities, and the Connecticut Department of Energy and Environmental Protection. The New England States Committee on Electricity acted as a facilitator, but is not a soliciting party. The RFP was designed to seek proposals from developers of more than one type of clean energy project.

In the RFP, Narragansett is seeking only one type of proposal, classified as a “Qualified Clean Energy via Transmission Project Under a Performance-Based Tariff Containing a Qualified Clean Energy Delivery Commitment; No PPA” (delivery commitment model).⁵ Under the delivery commitment model, “instead of the [electric distribution companies] purchasing Qualified Clean Energy via [power purchase agreements], the Transmission Project provider would commit to a Performance-Based Tariff containing a Qualified Clean Energy Delivery Commitment.”⁶ The

⁵ Notice of Request for Proposals from Private Developers for Clean Energy and Transmission, 7; [http://www.ripuc.org/eventsactions/docket/4570-NGrid-CleanEnergyRFP\(6-26-15\).pdf](http://www.ripuc.org/eventsactions/docket/4570-NGrid-CleanEnergyRFP(6-26-15).pdf).

⁶ *Id.* at 8. RFP Section 2.2.3.3 Qualified Clean Energy via Transmission Project Under a Performance Based Tariff Containing a Qualified Clean Energy Delivery Commitment states:

An Eligible Bidder bidding to develop or receive cost recovery for a Transmission Project to Deliver Qualified Clean Energy under a Performance-Based Tariff containing a Qualified Clean Energy Delivery Commitment as defined in Section 1.2.2.3 above, if selected, will recover the costs of its proposed Transmission Project through a Rate Schedule or Tariff and Service Agreement, as filed with and accepted by the FERC. Bids must include the minimum Qualified Clean Energy Delivery Commitments provided as specified MWhs of Qualified Clean Energy Delivered at specified ISO-NE Node(s) during specified periods of time. At a minimum, the bidder shall provide such Delivery commitments, but may also provide more refined/targeted Delivery commitments (e.g., seasonal and/or seasonal peak hour minimum Delivery requirements) which, other things being equal, are expected to score better under bid analysis. Bids must also include the proposed ownership of associated transmission rights and obligations (e.g., any transmission capacity rights, or any FTR (Financial Transmission Rights) market incremental auction revenue rights) during and after the term of the Qualified Clean Energy Delivery Commitment. An overview of the Transmission Project under a Performance-Based FERC Tariff containing a Qualified Clean Energy Delivery Commitment approach, including an overview of the regulatory filings and approvals expected to be required, is attached as Appendix G to this RFP. The Eligible Bidder is required to provide the elements described in 2.2.3.2 a-c above. An Eligible Bidder shall comply with any requirements concerning submission of a Transmission Project and the associated proposed tariff, Rate Schedule or Tariff and Service Agreement for review through ISO-NE processes, including any applicable requirements related to the interconnection of the proposed Transmission Project to the ISO-NE system. Bidders should be aware that any Transmission Project(s) presented in their bids will be assumed to include all the activities and costs required to make the Delivery of the Qualified Clean Energy a reality, including but not limited to the cost of any interconnection facilities and ISO-NE network upgrades associated with the Transmission Project. The bidder must also detail in its bid the process to ensure that the associated

Performance-Based Tariff would be subject to approval by the Federal Energy Regulatory Commission (FERC).⁷ However, prior to filing the tariff with FERC, Narragansett would file the agreement with the PUC in order to seek approval of a retail cost recovery mechanism.⁸

According to the RFP, all bidders will be prohibited from communicating directly with members of the evaluation team or its consultants. Bidders must communicate with the evaluation team through a single email address.⁹ Additionally, those employees of the electric distribution companies who are on the Evaluation Team may not communicate any non-public information regarding the RFP with any other staff of the electric distribution company who may be developing or submitting a bid in response to the RFP.¹⁰

The proposals will be evaluated and selected through a two-stage process. The first stage will be a review of whether the proposals satisfy the specified eligibility, threshold, and other minimum requirements set forth in the RFP.¹¹ Next, in stage two, the Evaluation Team from each procuring state will review and rank bids, considering their respective state's legal requirements and policies. This stage includes a quantitative and qualitative analysis.¹² Then, also in stage two, members of the Selection Team "from all three of the Procuring States will collaborate to determine whether together they can create a portfolio of projects that would reduce the cost to customers in the three states consistent with each state's Procurement Statues and clean energy goals."¹³

environmental attributes are included with the energy delivered in New England, and that they are not being applied to any other control area. *Id.* at 18-19.

⁷ *Id.* at 5, 34.

⁸ *Id.* at 32, 34.

⁹ *Id.* at 10.

¹⁰ *Id.*

¹¹ *Id.* at 16-26. *See Id.* at 18 (section 2.2.3.3) and 25 (section 2.2.12.3) (describing the specific requirements for transmission projects under a performance-based tariff containing a qualified clean energy delivery commitment).

¹² *Id.* at 26-31.

¹³ *Id.* at 15, 30.

On July 20, 2015, the PUC issued a Notice of Technical Record Session, Intervention Deadline, and to Solicit Comments, providing 30 days for the filing of Motions to Intervene and written comments. A technical record session was scheduled for September 9, 2015 for the purposes of reviewing Narragansett's filing. Five parties intervened, including the Conservation Law Foundation; Vermont Green Line DevCo, LLC; New Hampshire Transmission, LLC; H.Q. Energy Services (U.S.) Inc., and the RIOER. The Division of Public Utilities and Carriers (Division) is an indispensable party to PUC proceedings and was granted automatic intervenor status. Conservation Law Foundation did not file comments.

New Hampshire Transmission, LLC proposed modifications to the RFP to require additional information about the selection process, including the filing of rankings of the projects and the identity of Evaluation Team members. New Hampshire Transmission, LLC also sought additional information about the screening criteria. Finally, New Hampshire Transmission, LLC opposed the delivery commitment model on the basis that it would be difficult to compare such proposals to those that contain a power purchase agreement. Additionally, New Hampshire Transmission, LLC sought expansion of product offerings within the RFP. Finally, New Hampshire Transmission, LLC expressed concern that the final form of power purchase agreements had not yet been made available to potential bidders.¹⁴

H.Q. Energy Services (U.S.) Inc. and OER supported the proposed RFP.¹⁵ OER Commissioner Gold stated that the "RFP represent[s] a reasonable, open, and competitive method of soliciting clean energy project proposals consistent with" the Act.¹⁶ She noted that there is no

¹⁴ Comments of New Hampshire Transmission, LLC (Aug. 19, 2015)

[http://www.ripuc.org/eventsactions/docket/4570-NHT-Intevene\(8-19-15\).pdf](http://www.ripuc.org/eventsactions/docket/4570-NHT-Intevene(8-19-15).pdf).

¹⁵ Letter from Commissioner Marion Gold (Aug. 20, 2015) http://www.ripuc.org/eventsactions/docket/4570-OER-Comments_8-20-15.pdf; Motion to Intervene of H.Q. Energy Services (U.S.) Inc. (Aug. 20, 2015)

http://www.ripuc.org/eventsactions/docket/4570-HQES-Intervene_8-20-15.pdf;

¹⁶ Letter from Commissioner Marion Gold at 1.

required mandate on the state or Narragansett to procure any specific clean energy project that may result from the RFP. Additionally, she indicated that the RFP does not bind ratepayers to paying for projects prior to a future vetting process to be undertaken by the PUC. She stated that “any proposed project that appears to benefit Rhode Island consumers and advance State policy interests will be subject to substantial and transparent evaluation by the PUC *prior to any ratepayer commitment.*”¹⁷

The Division filed comments expressing some concern with the delivery commitment model because it is based on a FERC tariff rather than a power purchase agreement, something which is a novel approach. Therefore, according to the Division, it is uncertain how FERC will “respond to” the proposed tariff. The Division also questioned how such an approach may affect the pool of bidders. Finally, the Division expressed concern with the difficulty of evaluating such bids because the pricing for the qualified clean energy will be unknown to the Evaluation Team and Narragansett. Despite its concerns, however, the Division determined that the proposed RFP appeared to comply with the Act.¹⁸

The PUC received written public comments from Entergy Nuclear Power Marketing, LLC; RENEW Northeast; New England Power Generators Association, Inc.; Acadia Center; and the New England Clean Energy Council. With the exception of Acadia Center, all were opposed to or concerned about the delivery commitment model, the only model being considered by Narragansett.¹⁹ Acadia Center did not comment specifically on the delivery commitment model.

Entergy expressed concern that Narragansett customers would be receiving nothing new for the rates paid under the tariff. Rather than procuring clean energy, Narragansett ratepayers will

¹⁷ *Id.* at 4 (emphasis in original).

¹⁸ Div. Mem. (Aug. 20, 2015) http://www.ripuc.org/eventsactions/docket/4570-DPU-Memo_8-20-15.pdf.

¹⁹ Many of the comments made by the interveners were similar and the fact that a comment was attributed to only one commenter should not imply that the PUC did not consider the comments of the others.

be charged for the cost of supporting the transmission of clean energy that is bid into ISO-NE wholesale markets. According to Entergy, the design of the delivery commitment model would be to “provide a revenue stream in exchange for functionally the same obligation imposed by the Forward Capacity Market.”²⁰ Entergy also raised several concerns related to the evaluation of bids.²¹ RENEW’s primary concern was that the delivery commitment model would reduce the competitive nature of the RFP.²² The New England Power Generator’s Association also questioned the competitive nature of the RFP, but focused not just on the eligibility of projects that could bid, but also on the affiliated relationship between the electric distribution company and the transmission owners.²³ The New England Clean Energy Council, while recommending approval of the RFP, was concerned about the delivery commitment model as an untested method that may not provide contractual certainty to allow developers to finance renewable energy projects.²⁴ Acadia Center supported the regional approach to procurement of clean energy, but recommended the Attorney General be involved in the evaluation of bids, that the RFP require 30% of New Renewable Energy Certificates (Class I RECs) for all options, and that there should be peak delivery commitments required of the bidders.²⁵

On September 9, 2015, the PUC conducted a Technical Record Session for the purposes of exploring the nature of the delivery commitment model and gauging the intervener and public comments. Commissioner Gold made opening remarks to reinforce her written comments.

²⁰ Public Comments of Entergy Nuclear Power Marketing, LLC http://www.ripuc.org/eventsactions/docket/4570-ENPM_Comments_8-20-15.pdf.

²¹ *Id.* at 2.

²² Public Comments of RENEW Northeast http://www.ripuc.org/eventsactions/docket/4570-RENEW-Comments_8-20-15.pdf.

²³ Public Comments of the New England Power Generators Ass’n., Inc. [http://www.ripuc.org/eventsactions/docket/4570-NEPGA-Comments\(8-19-15\).pdf](http://www.ripuc.org/eventsactions/docket/4570-NEPGA-Comments(8-19-15).pdf).

²⁴ Public Comments of the New England Clean Energy Council <http://www.ripuc.org/eventsactions/docket/4570-NECEC-Comments.pdf>.

²⁵ Public Comments of Acadia Center http://www.ripuc.org/eventsactions/docket/4570-Acadia_Center_Comments.pdf.

Narragansett provided a brief introduction of the RFP process and responded to questions about the mechanics of the delivery commitment model and review process, particularly the collaboration among the states. Specifically addressing the roles of OER and the Division in the evaluation and selection process, Narragansett witness Corinne DiDomenico explained that once the quantitative results (stage one) are in, Narragansett would join with OER and Division to review the results. This should start prior to receipt of the bids in order to develop the qualitative analysis. According to Ms. DiDomenico, the qualitative analysis requires not only input on the viability of projects but also priorities for the state and how those would be valued which would require pre-bid input from both the Division and OER.²⁶

Narragansett witness Timothy Brennan responded to concerns that members of the Narragansett evaluation team would know if it was evaluating a bid made by its affiliate by stating that the presence representatives from multiple electric distribution companies evaluating the proposals would act as a check on each other. He added that the presence of entities other than the electric distribution companies such as OER, the Division, the Massachusetts Department of Energy Resources, and the Connecticut Department of Energy and Environmental Protection would act as a further check against favoritism.²⁷ Ms. DiDomenico reiterated that the quantitative analysis performed by an independent consultant would act as an additional level of protection to ensure an open and competitive evaluation.²⁸ This sentiment was echoed by Nicholas Ucci from OER, who noted that the Act requires consensus building prior to filing for the approval of procurements with the PUC.²⁹

²⁶ Tr. 9/9/15 at 93-94.

²⁷ Tr. at 51-53.

²⁸ *Id.* at 54.

²⁹ *Id.* at 54-56.

In response to the comments regarding whether FERC would accept the delivery commitment model, Mr. Brennan acknowledged that it is a novel approach, but indicated that legal counsel external to Narragansett opined that the delivery commitment model is one that could be considered and ultimately approved by FERC under their existing authority found in the Federal Power Act.³⁰ Additionally, he related that prior to drafting Appendix G to the RFP, explaining the concept, there had been several conversations with FERC staff. Mr. Brennan opined that there were no fatal flaws discovered during the review of the delivery commitment model.³¹ He explained that the term of the delivery commitment model was not yet set, but suggested that it would likely be 15-20 years in duration, although it could be up to the life of the transmission project.³² However, he further clarified that beyond 20 years, the accuracy of the analysis of the projected savings would be questionable and indicated that Narragansett has tried to send that signal to potential bidders.³³

Responding to concerns about the competitive nature of the RFP, Mr. Brennan stated that until bids are submitted, the level of competition will be unknown. However, he noted that the RFP was open to anyone. He conceded that there may be a certain type of bid more desirable to certain entities than others. But, to the extent that the RFP requires bidders, “to the extent they are willing,” to think innovatively, the competitive process is benefitted.³⁴ He challenged the concern that land-based wind may not be able to compete with large hydro under the delivery commitment model. Based on the energy and capacity markets in New England, Mr. Brennan asserted, a land-based wind resource should be able to compete.³⁵ Therefore, stated Mr. Brennan, “I’m not willing

³⁰ *Id.* at 94-96.

³¹ *Id.* at 95-96.

³² *Id.* at 98-99.

³³ *Id.* at 99-100.

³⁴ *Id.* at 107.

³⁵ *Id.* at 108-10, 115-17.

to, as a starting point, assume that all of these larger scale resources necessarily require [a power purchase agreement].”³⁶ He conceded that new resources would prefer a power purchase agreement for financing, but continued to maintain that such resources can be financed without one under the current market conditions.³⁷ Finally, he indicated that the competitive nature of the process is not entirely measured by the number of bids received, but also by whether the benefits of the bids, as set forth in the Act, clearly outweigh the costs.³⁸

Following Mr. Brennan’s testimony, Albert Pereira, the Division’s consultant, questioned the clarity in the RFP of the structural separation of staff within Narragansett and all of National Grid between those who may be working on bids and those evaluating bids. His main concern was that the identity of signatory staff be clear for purposes of requirements that there be no direct communication between those individuals and bidders.³⁹ After Mr. Pereira discussed his recommended amendment to the RFP to clarify who is signatory staff, Mr. Brennan responded that “anyone who is working on any part of this RFP both in the preparation of it, the evaluation, whether quantitative or qualitative, the selection all the way up to the point where everything is public, that they will be signatory staff automatically.”⁴⁰ Mr. Pereira stated that this clarification on the Record was sufficient to satisfy the Division.⁴¹

On September 22, 2015, at an Open Meeting, the PUC considered whether the proposed RFP was in compliance with the Act. The PUC unanimously found that the proposed RFP solicits for something that is allowed by the Act and that the solicitation is reasonable, open and competitive as required by the Act. The PUC expressed its hope that the regional approach with

³⁶ *Id.* at 110-11.

³⁷ *Id.* at 112-13.

³⁸ *Id.* at 114.

³⁹ *Id.* at 123-25.

⁴⁰ *Id.* at 125-26.

⁴¹ *Id.* at 127.

Connecticut and Massachusetts will result in projects that are beneficial not only to the region, but to Rhode Island, as well. The PUC found that, through cross examination, Narragansett's witnesses adequately responded to the concerns of the commenters, particularly in the areas of the reasonableness, openness, and competitiveness of the RFP. Whether the RFP actually results in commercially reasonable arrangements that provide more benefits than cost and should be approved as a cost borne by ratepayers are issues for another day.

Accordingly, it is hereby

(22365) ORDERED:

The Request for Proposals filed by The Narragansett Electric Company d/b/a National Grid on June 26, 2015 complies with the Affordable Clean Energy Security Act, R.I. Gen. Laws §§ 39-31-1 to 9.

EFFECTIVE AT WARWICK, RHODE ISLAND ON SEPTEMBER 22, 2015, PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED MARCH 23, 2016.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran, Chairperson

Paul J. Roberti, Commissioner

Herbert F. DeSimone, Jr., Commissioner

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven 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.