

PPA, finding that the procurement process, evaluation criteria, and resulting contracts complied substantially with the framework and requirements of the Long-Term Contracting Act.

II. Background

The Long-Term Contracting Act requires an electric distribution company to conduct solicitations at least once per year until 100% of the minimum, long-term contract capacity is met.³ The contract price should be below the forecasted market prices of energy and renewable-energy certificates over the term of the proposed contract.⁴ Minimum long-term contract capacity is defined by the statute as 90 megawatts (MW).⁵

On January 23, 2017, National Grid received notice from Champlin Wind, LLC, a renewable energy developer that it had executed a PPA with, that Champlin Wind, LLC was terminating the PPA. This termination caused the Company's contract capacity of all the Long-Term Contract Standard PPAs to drop below the required 90 MW minimum. Thus, National Grid was required to replace the energy, capacity, and/or RECs lost as a result of the termination of that PPA, amounting to 13%, 10.74 MW or 94,124 MWh, of its Long-Term Contracting Standard (LTC Standard) capacity.

Gravel Pit is a 50 MW solar electric generation facility with a proposed 27% capacity factor. The PPA with Gravel Pit is for the purchase of 49.5 MW from Gravel Pit. Since Gravel Pit's proposed capacity factor is 27%, this equates to 13.36 MW. The term of the PPA is 20 years at a fixed price of \$52.95/MWh, which will satisfy National Grid's shortfall resulting from the termination of the deal with Champlin Wind, LLC. The PPA also provides that, in the event Gravel Pit

³ R.I. Gen. Laws § 39-26.1-3(f).

⁴ *Id.*

⁵ R.I. Gen. Laws §39-26.1-2(7).

does not qualify as an eligible renewable energy resource because of a change in the law, National Grid will continue to purchase energy for \$46.95/MWh.⁶ The anticipated commercial operation date for Gravel Pit is March 31, 2023.

III. Findings and Analysis

The Long-Term Contracting Act, R.I. Gen. Laws §§ 39-26.1-1 to 39.26.1-9, sets out the standard of review and criteria the Commission must use in making its decision. The Commission shall approve the contract if it determines first, that the contract is commercially reasonable which means its term and pricing 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 makes the final determination after evidentiary hearings. Second, the Commission must determine whether the requirements for the annual solicitation have been met, and thirdly, the Commission must find that the contract is consistent with the purposes of R.I. Gen. Laws §39-26.1-1. The Long-Term Contracting Act directs that no contracts should be awarded unless the price is below the forecasted market price of energy and renewable-energy certificates over the term of the proposed contract, using common industry standard forecasting methodologies as have been previously used by the Commission. In such solicitations, the electric-distribution company may elect not to acquire capacity, but shall acquire all environmental attributes and energy. Finally, as a condition of contract approval, the Commission must require that all approved projects, regardless of their location, provide other direct economic benefits to

⁶ This amount is calculated by deducting the cost of RECs (\$6.00) from total price per MW.

Rhode Island, such as job creation, increased property tax revenues, or other similar revenues, deemed substantial by the Commission. R.I. Gen. Laws §§ 39-26.1-3, 39-26.1-5(e).

A. The PPA is Commercially Reasonable

National Grid witnesses, Stephen A. McCauley, Director of Wholesale Electric Supply and Environmental Transactions in the Energy Procurement organization of National Grid, and Katherine Wilson, a Lead Trader in the Environmental Transactions, Energy Procurement of National Grid USA Service Company, Inc., (the witnesses) stated that the PPA was commercially reasonable.⁷

The witnesses provided that there were 41 respondents from the approximately 600 individuals the RFP was issued to. The proposals were evaluated in three stages. None of the bids were disqualified in stage 1 for ineligibility, although one bidder withdrew two proposals. The remaining proposals' price and non-price factors were evaluated in stage 2, with price factors weighted at 80% and non-price factors weighted at 20%. There, 9 proposals were withdrawn, leaving 30 to be ranked. The stage 2 price evaluation compared the total contract cost of the products bid to the estimated market value of those products. The Company ranked the proposals from highest to lowest present value of net benefit on a dollars-per-MWh basis based on the result derived from the above-noted comparison. Non-price factors were also evaluated in stage 2, in order to ascertain the likelihood of the project becoming operational. The factors evaluated included: 1) siting, permitting, and environmental impacts; 2) project development status and operational viability; 3) experience and capabilities of bidder and the project development team; 4) interconnection; 5) financing; 6) contract risk; and 7) economic benefits to Rhode Island.⁸

⁷ McCauley and Wilson Test. at 22-25.

⁸ *Id.* at 15-18; Gravel Pit provided prefiled direct testimony about its background and business model as evidence that it will be successfully developed. Martin Test. at 2-3.

In stage 3, the witnesses stated that 31 proposals were further evaluated, the 30 remaining proposals and a portfolio of the top three-ranked proposals. The proposals were ranked on matters pertaining to project viability and the extent to which the bids achieved a number of objectives, including cost-effectiveness and diversity of resources. Of these 31 proposals, 20 were determined to have met the LTC Standard requirement of being commercially reasonable in that they provided pricing below that which was forecasted for energy and RECs over the term of the PPA. Upon completion of the evaluation, Gravel Pit was clearly the top-ranked and selected for contract negotiation.⁹

In her prefiled testimony, Dr. Ellen Cool, a consultant retained by the Division of Public Utilities and Carriers (Division) and the Office of Energy Resources (OER), provided that the PPA with Gravel Pit was selected through a competitive solicitation process where the terms it offered were reviewed against rival proposals. She stated that its project schedule and milestones were also reasonable as compared to the other proposals submitted.¹⁰ During the evidentiary hearing, Dr. Cool reiterated her conclusion that she found the PPA to be commercially reasonable.¹¹ Based on the uncontroverted testimony, the Commission found the PPA to be commercially reasonable.

B. The PPA Process Comported With the Long-Term Contracting Act Process Requirements

As of February 9, 2018, National Grid had entered into long-term contracts for more than 90 MW of new renewable energy resources and had satisfied the requirements of the LTC Standard. However, the subsequent cancellation of the Champlin Wind, LLC contract created a shortage in the long-term contracting capacity. The Company, accordingly, proposed to fill that shortfall

⁹Martin Testimony at 18-19.

¹⁰Cool Test. at 12-13.

¹¹Tr. at 126-27.

with the procurement.¹² The Commission must determine whether the Company substantially complied with the specific requirements of the LTC Standard and whether the solicitation process allowed for a reasonable amount of negotiating discretion to engage in commercially reasonable, arm-length negotiations over the final contract terms.¹³ The Commission found that the standard was met.

The instant RFP was issued and distributed to approximately 600 individuals and entities with an interest in developing renewable energy projects; 41 projects responded. The Company engaged in a three-stage quantitative and qualitative review process, as described above, in which OER; the Division; and Tabors Caramanis Rudkevich (TCR), a private consulting firm, participated. After determining whether the proposals were eligible by offering the appropriate product from qualifying newly developed renewable energy resources and ensuring that the eligible proposals satisfied the statutory criteria under the LTC Standard and met the minimum standards for viability, National Grid selected Gravel Pit.¹⁴

Dr. Cool noted in her prefiled testimony that setting the maximum target capacity at 400 MW was done in anticipation of a robust competitive market for renewable resources.¹⁵ She found that the proposals were ranked in a fair, robust, and unbiased manner with a consistent pre-established methodology.¹⁶ There was no dispute about or objection to the process applied.

The Commission found that the process was a robust one in which the parties were able to engage in arms-length negotiations over the final terms. There were numerous project developers

¹² See Docket No. 4822, Order No. 23460.

¹³ *Id.*

¹⁴ McCauley and Wilson Test. at 19-25.

¹⁵ Cool Test. at 4, 7.

¹⁶ *Id.* at 8.

that participated in the process which yielded strong bids for consideration. Thus, the approved solicitation methodology was clearly as robust as the Long-Term Contracts Act requires.

C. The PPA is consistent with the purposes of the Long-Term Contracting Act

The primary purpose of the Long-Term Contracting Act 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. Other purposes include stabilizing long-term energy prices, enhancing environmental quality, creating jobs in Rhode Island's renewable energy sector, facilitating the financing of renewable energy generation within the jurisdictional boundaries of the state or adjacent state or federal waters, and providing direct economic benefit to the State.¹⁷

In her prefiled testimony, Dr. Cool stated that the PPA satisfies all of the requirements of the LTC Standard. She listed each requirement and explained how each was satisfied by the terms of the PPA with Gravel Pit. She noted that because Gravel Pit has not achieved financial closure or begun construction, it is considered "newly developed." She stated that Gravel Pit is an eligible renewable energy resource as defined by R.I. Gen. Laws §39-26.1-5. And while the statute limits contract terms to 15 years and permits longer terms with Commission approval, she noted, Gravel Pit submitted a conforming 15-year bid and an alternative 20-year bid. Dr. Cool found the PPA to be commercially reasonable and its pricing to be below the forecasted market price of energy and RECs over the term of the proposed contract using industry standard forecasting methodologies. Finally, she found benefit to Rhode Islander customers in pricing benefits and lower electricity costs.¹⁸

¹⁷ R.I. Gen. Laws § 39-26.1-1

¹⁸ Cool Test. at 12-13.

The PUC found that the PPA satisfies the purposes of the Long-Term Contracting Act. Because the pricing over the term of the contract is known, \$52.95/MWh, it provides a level of stability. If the contract is actually below market, it will provide an economic benefit to Rhode Islanders. Also, development of new renewable energy resources in the region should reduce greenhouse gas emissions and other air pollutants from power generation.¹⁹

D. The PPA Included Pricing That was Below the Forecasted Market Price of Energy and Renewable Energy Certificates Over the Full Contract Term.

The unrefuted testimony in this matter was that the software model used to evaluate the PPA's pricing, compared the pricing of the PPA to the forecasted market price of energy and renewable energy certificates over the twenty-year contract terms. The result of the comparison was that the PPA's pricing was within industry standards. TCR, the firm used by the evaluation teams, employed a forecasting model called ENELYTIX. No party disputed or challenged the model used. Dr. Cool testified during the hearing that although her company does not use it, she was very familiar with that model and agreed it was a very good one.²⁰

The Commission found the testimony and evidence presented supported that the pricing of the PPA included pricing that was below the forecasted market price of energy and RECs over the term of the contract.

E. The PPA May Reasonably Be Found to Provide Other Direct Economic Benefits to Rhode Island, Such as Job Creation and Increased Tax or Other Revenues

Consistent with prior Commission decisions and standards and the facts of this case, the Commission found that the contract could reasonably be found to provide other direct economic

¹⁹ Gravel Pit's annual reduction in societal greenhouse gas emission reductions is projected to be approximately 41,000 tons CO₂/year. McCauley and Wilson Test. at 23.

²⁰ Cool Test. at 130.

benefits to Rhode Island. Gravel Pit committed to invest at least \$300,000 in training programs to support Rhode Island's growing energy workforce.²¹ Both Mr. McCauley and Dr. Cool testified that the \$300,000 and the below-market contract price constituted direct economic state benefits.²²

F. National Grid is not Entitled to Receive Automatic Remuneration for Amounts Procured in Excess of 90 MW.

National Grid asked for automatic remuneration of 2.75% of the actual annual payments to Gravel Pit, including the 2.62 MW of the proposed capacity factor that will exceed the 90 MW minimum long-term contract capacity requirement it is obligated to procure. In support of its request, the Company argued that the 2.62 MW was not voluntary²³ and that Commission precedent supported its request.²⁴ In considering the Company's position, it is important to note that the 2.62 MW that the Company seeks remuneration for is not *de minimus*; it is approximately 20% of the contract capacity.

The Long-Term Contracting Act, R. I. Gen. Laws §39-26.1-4, provides in part that “[i]n order to achieve the purpose of this chapter, electric distribution companies shall be entitled to financial remuneration and incentives for long-term contracts for newly developed renewable energy resources, which are over and above the base rate revenue requirement established in its cost of service for distribution ratemaking.” Under the LTC Standard, National Grid is obligated to procure 90 MW of renewable energy and is entitled to remuneration equal to 2.75% of the contract value up to this obligation. National Grid is not under an obligation to enter into contracts for any additional capacity above this 90 MW requirement.

²¹ Sevdlow Test. at 5

²² Cool Test. at 129.

²³ PUC 3-5, PUC 3-8.

²⁴ PUC 1-2.

There is no dispute that the Commission has discretion to disallow remuneration on voluntarily procured contract capacity greater than 90 MW. The Company has acknowledged that the Commission has the discretion to approve remuneration in the form of incentives to set just and reasonable rates.²⁵

The Company did not make it clear it was seeking remuneration for the 2.62 MW until its response to the Commission's First Set of Data Requests, filed on March 16, 2020. Until the hearing, the record was devoid of any evidence that the 2.62 MW was not voluntarily procured. At the hearing, Mr. McCauley responding to Commission Data Request PUC 3-5 testified that the 2.62 MW was not voluntarily procured.²⁶ However, absent this assertion was any explanation or facts to support it. To the contrary, when asked if National Grid was required to take all 50 MW, Mr. McCauley responded that they were not and testified that he did not know if there was an attempt to negotiate this with Gravel Pit.²⁷

National Grid also asserted that the 2.62 MW may not be in excess of the 90 MW minimum requirement because some other facilities in the portfolio are not yet operational. National Grid reasoned that if these other facilities did not reach commercial operation, the excess 2.62 MW from the current contract might fall within the 90 MW statutory requirement. Such reasoning allows an absurd result: the PUC must allow automatic remuneration for any contract amount (even hundreds of MW), so long as at least one facility in the portfolio was not yet operational or

²⁵ Docket No. 4822, In re: the Narragansett Electric Company d/b/a National Grid's Solicitation of Long-Term Contracts Pursuant to R.I. Gen. Laws § 39-26.1, Order No. 23460 *citing* National Grid Response to PUC 1-1; PUC 3-8; McCauley Test. at 42, 46.

²⁶ Tr. at 64-65. When asked during the hearing if the company was voluntarily procuring the 2.62 MW above the statutory requirement of 90 MW, Mr. McCauley responded "I would say no." Since the Commission was not provided with the Company's Responses to its Third Set of Data Requests prior to the hearing, Mr. McCauley verbally responded to them during the hearing. They were subsequently filed.

²⁷ Tr. at 66-67. When asked if National Grid was required to take all 50 MW, Mr. McCauley responded "I would say we weren't..."

90 MW of energy is not being supplied to the grid. Furthermore, the statute only requires the utility to enter into contracts for newly developed renewable energy resources that together total 90 MW. The Company is entitled to remuneration based on the contract value; the statute does not require 90 MW of operational capacity.

The Company also asserted in its response to Commission Data Request PUC 1-2 that the Commission set a precedent in Docket No. 4574 when it permitted the Company to receive remuneration for a number of MWs that exceeded the 90 MW minimum. The order Docket No. 4574 is silent on the issue of remuneration however, nothing in that order can be ascertained about the Commission's intent to provide remuneration on the contract capacity above 90 MW. The Commission's silence should not be interpreted, either now or in the future, to represent a policy decision. And although not filed under the LTC Standard, the Commission in Docket No. 4929 was very clear on what it intends to be this Commission's policy on remuneration. In denying the Company's request for remuneration, the Commission relied on National Grid's testimony it would still recover its costs absent remuneration or any net benefits being realized. Further, National Grid was unable to establish that a denial of remuneration would result in harm to the Company or an adverse effect on its credit rating.²⁸

The evidence and testimony do not establish that the 2.62 MW was involuntarily procured. Therefore, the Commission denies National Grid's request for automatic remuneration for the amount that is in excess of the 90 MW minimum requirement.

Accordingly, it is hereby

(23829) ORDERED:

²⁸ Docket No. 4929, Order No. 23609.

1. The Power Purchase Agreement between the Narragansett Electric Company d/b/a National Grid and Gravel Pit Solar II, LLC is hereby approved in accordance with R.I. Gen. Laws §§ 39-26.1-3 and 39-26.1-4.

2. The Narragansett Electric Company d/b/a National Grid's request for remuneration for the 2.62 MW excess is denied.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON MARCH 30, 2020. WRITTEN ORDER ISSUED MAY 11, 2020.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran, Chairperson

Marion S. Gold, Commissioner

Abigail Anthony, 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.