

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

DOCKET NO. D-14-20

IN RE: TOWN OF NEW SHOREHAM PROJECT
TRANSMISSION FACILITIES PURCHASE AGREEMENT

DETERMINATION BY THE RHODE ISLAND DIVISION OF
PUBLIC UTILITIES AND CARRIERS OF WHETHER THE "TERMS
AND PRICING OF THE AGREEMENT ARE REASONABLE,"
PURSUANT TO RHODE ISLAND GENERAL LAWS, SECTION 39-
26-1-7(f).

**CONSENT DECISION OF THE RHODE ISLAND DIVISION
OF PUBLIC UTILITIES AND CARRIERS**

1. Introduction

The instant consent process has its genesis in a 2010 amendment to the State of Rhode Island's "Long-Term Contracting Standard for Renewable Energy" laws (R.I.G.L., Chapter 39-26.1). The amendment in issue, R.I.G.L., Section 39-26.1-7, relates to the construction of a small-scale offshore wind demonstration project off the coast of Block Island (New Shoreham), including an undersea transmission cable that interconnects Block Island to the mainland. This project, referred to in the amended law as the "Town of New Shoreham Project" ("Project") has been determined by the General Assembly to contain a number of favorable attributes that could offer significant benefits to the State.

Under Section 39-26.1-7(a)-(e), the Narragansett Electric Company, d/b/a National Grid ("National Grid" or "Company")), is authorized to enter into

a purchased power agreement (“PPA”) with the developer of the Project, Deepwater Wind Block Island, LLC (“Deepwater Wind”), “for the purchase of energy, capacity, and any other environmental and market attributes,” subject to the approval of the Rhode Island Public Utilities Commission (“Commission”). The Commission approved such purchased power agreement on August 16, 2010.¹

The Project’s related transmission cable, which connects the Town of New Shoreham and the mainland, is addressed in Section 39-26.1-7(f), which is the subject of this docket and decision. The pertinent provisions of the law are reproduced below:

The project shall include a transmission cable between the Town of New Shoreham and the mainland of the state. The electric distribution company, at its option, may elect to own, operate, or otherwise participate in the transmission cable project. The electric distribution company, however, has the option to decline to own, operate, or otherwise participate in the transmission cable project. The electric distribution company may elect to purchase the transmission cable and related facilities from the developer or an affiliate of the developer, pursuant to the terms of a transmission facilities purchase agreement negotiated between the electric distribution company and the developer or its affiliate, an unexecuted copy of which shall be provided to the division of public utilities and carriers for the division’s consent to execution. The division shall have twenty (20) days to review the

¹ On 4/2/10, in Docket 4111 the Commission initially unanimously rejected the PPA as not meeting the statutory definition of “commercially reasonable.” On 6/15/10, amendments to 39-26.1-7 were signed into law authorizing the re-submission of the PPA and directing the commission to perform an expedited review. The statutory amendments directed the commission to “*review the power purchase agreement taking into account the state’s policy intention to facilitate the development of a small offshore wind project in Rhode Island’s waters...*” The amended law also changed the statutory definition of “commercially reasonable” as it applied to this project only. On 8/16/10, the commission issued Order No. 20095 Docket No. 4185, approving the PPA in a 2-1 vote. (emphasis applied).

agreement. If the division independently determines that the terms and pricing of the agreement are reasonable, taking into account the intention of the legislature to advance the project as a policy-making matter, the division shall provide its written consent to the execution of the transmission facilities purchase agreement.

2. Transmission Facilities Purchase Agreement Filing

Pursuant to R.I.G.L. § 39-26.1-7(f), *supra*, on March 13, 2014, National Grid filed an unexecuted draft of the Transmission Facilities Purchase Agreement (the "Agreement") between National Grid and Deepwater Wind Block Island Transmission, LLC ("Deepwater Transmission"), an affiliate of Deepwater Wind, (collectively "Deepwater") for the Rhode Island Division of Public Utilities and Carriers' ("Division") review and consent.

In its filing, National Grid states that the Agreement provides that Deepwater Transmission has begun the process of developing the transmission cable and that the Company intends to exercise its authority, as contemplated by R.I.G.L. § 39-26.1-7(f), to construct, own, and operate the transmission cable and related facilities (collectively, the "Transmission Facilities") from the Town of Narragansett to Block Island. National Grid also offered the following background and legal support for its filing:

Around the summer of 2012, the Company and Deepwater agreed upon an approach, whereby National Grid would purchase the real estate rights, permits, and completed engineering work from Deepwater, and National Grid would construct, own and operate the Transmission Facilities as a transmission project regulated by the Federal Energy Regulatory Commission ("FERC"). This approach was different from the original proposal, whereby Deepwater and National Grid would attempt to negotiate an agreement providing for Deepwater to construct the Transmission Facilities and to sell the Transmission Facilities to National Grid

when completed. Negotiations of the original sale proposal reached an impasse earlier in 2012 around the purchase price and National Grid's role in the construction of the Transmission Facilities. The Company believed that the alternative approach was likely to be the more successful option for the project for several reasons: (1) the Company and its affiliates are in the business of constructing transmission projects and, specifically, have experience with constructing submarine cables, whereas Deepwater's expertise is with wind farm development; (2) by constructing the Transmission Facilities, the Company would be better able to control costs given that its cost of capital is less than Deepwater's and there would be lower "soft" costs (e.g., financing costs and third-party management fees), thereby making this the preferred option for Rhode Island customers; and (3) by utilizing a traditional regulated approach, whereby the Company constructs the Transmission Facilities like any other FERC-regulated transmission project, the Company is better able to assess and manage the project risk.

The Company believes that R.I.G.L. § 39-26.1-7(f) and state policy support National Grid's construction of the Transmission Facilities. The plain language of the fourth sentence of subsection (f) is permissive in nature and states that the electric distribution company "may purchase the transmission cable and related facilities from the developer..." This language is independent of the second sentence in that section, which states "the electric distribution company, **at its option**, may elect to own, operate, **or otherwise participate in such transmission cable project.**" (Emphasis added). That coupled with the use of the word "may" instead of "shall" in the fourth sentence suggests that the legislature did not intend that the Company must purchase a fully constructed transmission cable in order to "own, operate, or otherwise participate" in the project.² Most importantly, the Company's approach helps to facilitate construction of the Transmission Facilities for the reasons noted above, which will further the state's public policy of promoting the development of offshore wind and interconnecting Block Island to the mainland.³

² This reading is also consistent with Section 8.5(e) of the Power Purchase Agreement between the Company and Deepwater Wind Block Island, LLC ("Seller") that was approved by the Public Utilities Commission in Docket No. 4185. That provision states that the Company "may, in its sole discretion elect to . . . construct, or cause the construction of, the Transmission Cable (either directly or through an Affiliate) without the involvement of Seller or Deepwater Transmission, pursuant to an agreement that will be mutually beneficial to Buyer and Seller."

³ Cover Letter attached to National Grid's March 13, 2014 filing, pp. 1-2.

National Grid additionally offered a detailed description of the Transmission Facilities in issue and the scope of the Agreement between the Company and Deepwater Transmission. The filing indicates that the Transmission Facilities will include an approximate 20 mile 34.5kV submarine electric cable and related facilities connecting Block Island to the mainland electric grid. In addition, the Transmission Facilities will include approximately one (1) mile of terrestrial infrastructure (buried and overhead) on Block Island and approximately four (4) miles of terrestrial infrastructure (buried) in Narragansett. The Transmission Facilities will also include a new substation on Block Island at the Block Island Power Company property and a switchyard in the Town of Narragansett, at the Rhode Island Department of Transportation facility located at Dillons Corner. The Transmission Facilities are more particularly described on Schedule 1 of the Agreement.

The filing also reflects that the Agreement provides that National Grid is purchasing the assets listed on Schedule 2 of the Agreement, which include the property options and rights (including the right-of-way from the Bureau of Ocean Energy Management for the ocean floor in federal waters), all major permits (except for storm water and building permits), conceptual engineering documents, environmental and archaeological reports, and procurement results (collectively, the "Assets").⁴

Regarding the purchase price, National Grid explains that the parties initially negotiated a total not-to-exceed price of \$10.7 million to purchase the

⁴ Id., pp. 2-3 and attached Agreement.

Assets, which included a purchase price of \$9.8 million plus an adjustment at closing for verified costs incurred between February 1, 2013 and closing up to a cap of \$852,005. The maximum purchase price also included the payment of a development fee to Deepwater in the amount of \$2,280,819.⁵ The filing also reflects that the Company and Deepwater met with the Division on July 29, 2013 to present the project and the commercial terms of the proposed transaction; and that following that meeting, the Company and Deepwater Transmission engaged in a series of discussions with Division staff and based on the Division's input, Deepwater Transmission agreed to a reduction in the development fee in the amount of \$1,514,227 from \$2,280,819 to \$766,592, for a revised not-to-exceed purchase price of \$9,486,289. A breakdown of the purchase price of \$9,486,289 as set forth in Section 3 and Schedule 3 of the Agreement is as follows:

- Purchase Price for the Assets in the amount of \$8,334,782 (inclusive of a development fee of \$766,592); plus
- Real Estate Costs for the easements to be acquired from the State of Rhode Island in the amount of \$374,838; plus
- An Expense Adjustment of up to a maximum of \$776,669, which includes the actual out-of-pocket expenses incurred by Deepwater in connection with the acquisition and development of the Assets between February 1, 2013 and Closing (not to exceed \$762,000) plus a 3.85% development fee applied to such expenses.⁶

⁵ National Grid's March 13, 2014 filing letter in this docket references an originally negotiated development fee of \$2,320,824, which is \$40,005 more than that referenced in this Order above. This is merely a matter of presentation, as the purchase price, as presented in July of 2013, included a proposed development fee of \$2,280,819, and a potential additional amount of costs incurred until closing, capped at \$852,005, which included \$40,005 of potential additional development fee. National Grid's filing letter combined these amounts in its presentation of the previously negotiated development fee.

⁶ Id., p. 3.

National Grid also adds that it has agreed to pay for fifty percent of the actual out-of-pocket litigation expenses incurred by Deepwater Transmission up to a maximum of \$50,000 and without any additional development fee.⁷

The Agreement contains numerous closing conditions that Deepwater Transmission must satisfy prior to closing as conditions precedent to National Grid's obligation to purchase the Assets. These closing conditions are more particularly set forth in Section 8 of the Agreement, and include, but are not limited to, the following:

- Receipt of all governmental approvals, which include the Division's consent to execution of the Agreement and the necessary approvals by FERC as listed in Section 8(a) of the Agreement;
- Receipt and transfer of all permits listed on Schedule 2, Part 2 of the Agreement to National Grid (which must be final and unappealable, except for certain permits listed on Schedule 4 of the Agreement);
- Receipt and transfer of all property rights listed on Schedule 2, Part 1 of the Agreement to National Grid;
- Receipt and transfer of all other Assets listed in Schedule 2;
- Receipt of clean environmental assessments (i.e. Phase I);
- Completion of final ocean surveys listed on Schedule 2, Part 4 of the Agreement, acceptable to National Grid in its sole discretion;
- Consultations with the Town of Narragansett that are satisfactory to National Grid in its sole discretion; and
- Receipt of a parent guarantee.⁸

⁷ Id.

⁸ Id., p. 4 and the Agreement

National Grid requests the Division's "consent to the parties' execution of the Agreement (without condition or modification except as set forth below) within twenty (20) days from the date of this letter as required by §39-26.1-7(f), following which the Company intends to make a filing with FERC to put into effect transmission rates to recover the costs associated with the Transmission Facilities."⁹ The Company notes that the not-to-exceed purchase price of \$9,486,289 set forth in the Agreement represents the Company's initial cost to acquire the Assets to develop the project and that it will be incurring additional costs to complete the construction of the Transmission Facilities, which additional costs are not expressly before the Division for review. National Grid currently estimates the total cost of the Transmission Facilities (inclusive of the purchase price under the Agreement) to be \$75 million (-25%/+50%), which costs will be recovered through FERC filed rates. Of this \$75 million, the Company estimates that \$59 million (-25%/+50%) is attributable to the cable portion of the Transmission Facilities as follows:

- Submarine Cable: \$40.0 million
- Mainland Underground Cable: \$14.5 million
- Block Island Underground & Overhead Cable: \$4.5 million

National Grid emphasizes that the above estimates are conceptual estimates based on a certain set of assumptions and influenced by copper prices, among other variables. Due to these assumptions, National Grid makes clear that these estimates are subject to change. The Company plans to refine these conceptual estimates following completion of final engineering for the

⁹ Id., p. 4.

project. The Company further acknowledges that the Division, by consenting to the Agreement, is consenting to a maximum purchase price of \$9,486,289 for the Assets, and that such consent shall not be interpreted as waiving any future rights of the Division, in any state or federal proceeding, to challenge the prudence of the total costs that the Company incurs to complete the construction of the Transmission Facilities.¹⁰

Finally, based on the Company's recent discussions with the Division, the Company has agreed that it will not commence the physical installation of the submarine portion of the Transmission Facilities until such time as Deepwater Transmission has delivered evidence, including verification from a third-party verification agent, who will report to the Coastal Resources Management Council, of the commencement of fabrication of the jacket foundation structures that will support the wind turbine generators. The foregoing shall not limit National Grid's ability to commence the planning, design, or procurement of materials necessary for the construction and installation of the submarine portion of the Transmission Facilities.

3. Division's Review and Findings

Under the reviewing requirements set forth in R.I.G.L. Section 39-26.1-7(f), the Division is afforded only twenty (20) days to evaluate the Agreement. The law provides that if the Division "independently" determines that the "terms and pricing" of the Agreement are reasonable, "taking into account the intention of the legislature to advance the project as a policy-making matter,"

¹⁰ Id., pp. 4-5.

the Division is required to provide its written consent to the execution of the Agreement.

In view of the short-duration regulatory review process provided in the law, National Grid approached the Division in the summer of 2013 seeking to discuss the possibility of acquiring Deepwater Transmission's pre-construction assets. At that time, preliminary terms and conditions for the proposed acquisition were identified and discussed. As a result of those discussions between the Division and National Grid, National Grid proffered modified terms and conditions for discussion in January, 2014. Also at this time, the Division retained Richard Hahn of La Capra Associates, Inc., a full-service independent energy consulting firm to assist the Division with its preliminary and overall evaluation of the propriety of the terms and conditions attached to the proposed transmission facilities purchase agreement. Additional discussions and discovery ensued, which resulted in a number of additional modifications, now manifest in National Grid's formal March 13, 2014 Agreement filing.

Through the discussions and discovery process which followed after the receipt of National Grid's January 2014 suggested terms and conditions, the Division and National Grid agreed to several additional modifications, which the Division believes offers additional protections for ratepayers, while still allowing the project to advance, consistent with the legislative intent, *infra*.

The Division acknowledges that R.I.G.L. Section 39-26.1-7(f) gives National Grid the option to own and operate the Transmission Facilities which connect Block Island to the mainland. National Grid is exercising this option

now, rather than waiting until Deepwater Transmission has completed the construction of the Transmission Facilities and then purchasing a finished asset. By exercising this option now, National Grid seeks to acquire certain studies, permits, and other work products, deemed to be assets, that Deepwater has already performed and/or acquired. The Division recognizes that there are certain advantages and disadvantages in National Grid's acquisition of Deepwater Transmission's assets at this time, as opposed to waiting until Deepwater Transmission has finished acquisition and construction of the Transmission Facilities. One advantage is that National Grid is in the business of building, owning, and operating electric transmission systems and has experience with undersea cables. In contrast, Deepwater Transmission is a sole-purpose entity whose only asset is intended to be the Transmission Facilities connected to the Project. Another advantage is that the Division believes that National Grid should be able to secure funding for the installation of the facilities at a lower cost of capital than Deepwater Transmission. Further, by acquiring the pre-construction assets now and installing the physical assets itself, National Grid will be the sole entity responsible for physical construction activities. If Deepwater Transmission constructed the transmission cable and then sold the finished assets to National Grid, it would be very difficult for National Grid, the Commission, and the Division to assess the condition of the completed asset and whether it was properly installed.

The main disadvantage to National Grid acquiring the assets now is that National Grid will need to commit a significant sum of money to procure materials and supplies for the transmission cable prior to the completion of the Deepwater Wind Farm. Construction of the transmission cable and the wind farm will need to occur simultaneously in order for the combined project to meet its expected in-service date. If National Grid acquires the assets now, and the wind farm is cancelled, then National Grid will surely seek to recover these costs from Rhode Island ratepayers through FERC proceedings. However, if National Grid waits until both the transmission cable and the wind farm are constructed by Deepwater then Rhode Island ratepayers will not be exposed to the risk of paying for transmission assets if the wind farm is not constructed.

Through the Division's discussions with National Grid concerning this risk issue, National Grid has agreed not to commence the physical installation of the submarine portion of the Transmission Facilities until such time as Deepwater Transmission has delivered evidence, including verification from a third-party verification agent, who will report to the Coastal Resources Management Council, of the commencement of fabrication of the jacket foundation structures that will support the wind turbine generators. By waiting until after this milestone has occurred before commencing the installation of the transmission cable, the risk to ratepayers will be mitigated, but not eliminated. The Division believes that this condition represents a reasonable compromise, as it offers protection to ratepayers while allowing the wind farm project to go forward. Therefore, the Division shall impose this

requirement as a formal condition of the Division's approval of National Grid's proposed Transmission Facilities Purchase Agreement.

The cost of the acquired Assets, as noted above, was the subject of much discussion and negotiation between National Grid and the Division. The original price identified by National Grid in its July 2013 discussions with the Division was presented as a "not-to-exceed" price of \$10.7 million. This estimate included a development fee based upon a 10.5% rate applied to the Deepwater Wind invoiced expenditures of \$6.5 million. Through discussions with the Division this development fee was subsequently reduced, by agreement, to a rate of 3.85%, which resulted in an overall price reduction of \$1,514,227.

The Division also conducted discovery and performed a review of the prices paid for Deepwater Wind assets developed by third parties. These assets consisted of work performed relating to "permitting," "surveys," "engineering," "regulatory," and "site control." Through this review process the Division was able to confirm that the methodology used by National Grid for determining the validity of these costs, totaling \$6,518,190, was reasonable.

Mr. Hahn of LaCapra Associates performed a review of the proposed Agreement and had participated in the earlier discussions with the parties to the Agreement regarding the version of the Transmission Facilities Purchase Agreement which carried a price of \$10.7 million, with the 10.5% development fee. Mr. Hahn submitted a memorandum to the Division on March 28, 2014 detailing the results of his review of the Agreement, and ultimately

recommended that the Division provide its consent to the execution of the Agreement, subject to certain conditions.

- NGRID shall not commence the physical installation of the submarine portion of the Transmission Facilities until such time as Deepwater Wind has delivered evidence, including verification from a third-party verification agent, who will report to the Coastal Resources Management Council, of the commencement of fabrication of the jacket foundation structures that will support the wind turbine generators.
- The maximum amount to be paid by NGRID for the assets at closing shall be \$9,486,289.
- NGRID shall not change the use of the Integrated Facilities Agreement as the proposed methodology for cost recovery without approval of the Division.
- Any material changes in the closing documents that occur after the Division has granted its consent should be also consented to by the Division.

In the final analysis, the Division finds that National Grid's cost estimate of \$9,486,289 for purchasing Deepwater's pre-construction Transmission Facilities is reasonable. Therefore, the Division shall adopt a not-to-exceed price of \$9,486,289 as a formal condition of the Division's approval of National Grid's proposed Transmission Facilities Purchase Agreement.

The Division also examined the reasonableness of National Grid's commitment to Deepwater "to pay for fifty percent of the actual out-of-pocket litigation expenses incurred by Deepwater and its affiliate... up to a maximum of \$50,000 and without any additional development fee." Through discovery, the Division has determined that the litigation expenses at issue, relate exclusively to the possibility of "an appeal of the CRMC grant of the Submerged Land Lease in the event that there actually is an appeal, which may not

occur.”¹¹ National Grid is treating this potential \$50,000 expense as outside the \$9,486,289 maximum purchase price for the Assets, as quantified in the Agreement; but expects the Division to approve this potential cost as an ancillary finding in this docket.¹²

The Division has considered National Grid’s request that the Division approve this additional \$50,000 potential litigation expense and finds that such approval would be improper and unreasonable. The Division notes that when National Grid and the Division discussed a proper purchase price for Deepwater’s pre-construction Transmission Facilities in July 2013, National Grid included the aforementioned \$50,000 litigation expense in its calculation of an initially proposed not-to-exceed price of \$10.7 million. After much discussion concerning adjustments related to the 10.5% development fee, certain real estate costs and some minor costs expected to be incurred in advance of the closing date, National Grid calculated and adopted an amended not-to-exceed price of \$9,486,289, which coincides with the price contained in National Grid’s March 13, 2014 filing. Based on those discussions and on the documents that National Grid produced at the time, the Division considered the \$50,000 litigation expense to be subsumed within the filed price cap of \$9,486,289. Therefore, the Division will not agree to consent to any amounts above this identified \$9,486,289 price cap. Further, the Division will not waive any right to object to any such costs if and when National Grid attempts to recover these costs before FERC.

¹¹ Discovery Response, dated March 21, 2014.

¹² Discovery Response, dated March 21, 2014.

The Division also reviewed the propriety of the FERC ratemaking methodology that National Grid will use for recovering the costs associated with the instant pre-construction Transmission Facilities Purchase Agreement and the actual construction costs that will follow. National Grid estimates the total cost of the Transmission Facilities (inclusive of the purchase price under the Agreement) to be \$75 million (-25%/+50%).

By placing the Transmission Facilities under FERC jurisdiction, it will be much more difficult for the Division to challenge any cost overruns on the undersea cable. Moreover, FERC has generally allowed higher returns on equity than the Rhode Island commission. However, the Division is unable to force a shift of this cost-recovery regulatory process from FERC to the Commission based on limiting language contained in R.I.G.L. Section 39-26.1-7(f), to wit:

*"If the division independently determines that the terms and pricing of the agreement are reasonable, taking into account the intention of the legislature to advance the project as a policy-making matter, the division shall provide its written consent to the execution of the transmission facilities purchase agreement. **Once written consent is provided, the electric distribution company and its transmission affiliate are authorized to make a filing with the federal energy regulatory commission to put into effect transmission rates to recover all of the costs associated with the purchase of the transmission cable and related facilities and the annual operation and maintenance. The revenue requirement for the annual cable costs shall be calculated in the same manner that the revenue requirement is calculated for other transmission facilities in Rhode Island for local network service under the jurisdiction of the federal energy regulatory commission.**"*

As written, R.I.G.L. Section 39-26.1-7(f) clearly supports National Grid's plan to seek the recovery of its Transmission Facilities costs before FERC.

Nevertheless, the Division has insisted, and the Company has acknowledged, that by consenting to the Agreement the Division is not waiving any future rights, in any state or federal proceeding, to challenge the prudence of the total costs that National Grid incurs to complete the construction of the Transmission Facilities.

4. Conclusion

As an initial observation, after reviewing the filing, supporting documentation and the provisions of R.I.G.L. Section 39-26.1-7(f), the Division expressed uncertainty as to whether its written consent was necessary in this case. The Division acknowledges that R.I.G.L. Section 39-26.1-7(f) permits National Grid the option “to own, operate, or otherwise participate in the transmission cable project.” The Division also recognizes that R.I.G.L. Section 39-26.1-7(f) permits National Grid the option “to purchase the transmission cable and related facilities from the developer or an affiliate of the developer, pursuant to the terms of a transmission facilities purchase agreement negotiated between the electric distribution company and the developer or its affiliate...,” subject to the Division’s review and written consent.

However, in the instant case, National Grid is proposing a hybrid scenario of sorts, and one which may not require the Division’s written consent. Specifically, National Grid is asking the Division to treat its proposed limited purchase of Deepwater’s pre-construction costs as being tantamount to a purchase from Deepwater of a completed transmission cable with all

concomitant facilities. While the latter scenario clearly requires Division consent under the law, the law is silent on the former (instant) scenario.

The Division finds that the language contained in R.I.G.L. Section 39-26.1-7(f) unquestionably permits National Grid “to own, operate, or otherwise participate in the transmission cable project.” But the statute appears to require Division consent only in the case of a decision by National Grid to purchase “the transmission cable and related facilities from the developer or an affiliate of the developer...,” which is not the case here.

Upon raising this jurisdictional uncertainty with National Grid, it became clear that National Grid harbored serious reservations about going forward with its plans to construct the Project’s transmission cable without Division consent to its purchase of Deepwater’s pre-construction Assets. Indeed, it was suggested that without Division consent National Grid may lose interest in going forward with its decision to participate in the construction of the transmission cable, thereby leaving the success of its installation entirely with Deepwater.

In view of National Grid’s hesitation to move forward without the Division’s consent, and “taking into account the intention of the legislature to advance the project as a policy-making matter...,” as required by state law, the Division agreed to treat the instant hybrid arrangement as substantially consistent with the provisions of R.I.G.L. Section 39-26.1-7(f).

The Division has carefully examined the Agreement that was filed by National Grid on March 13, 2014, as well as the evidentiary documents

provided by National Grid in support of the filing and in response to discovery requests that were subsequently propounded by the Division.¹³

Based on the totality of the record produced in this docket, the Division has determined that the terms and conditions contained in the proposed Agreement submitted by National Grid “*are reasonable, **taking into account the intention of the legislature to advance the project as a policy-making matter...***”, and, therefore “***the division shall provide its written consent to the execution of the transmission facilities purchase agreement,***” subject to the conditions identified herein.

Now, therefore, it is

(21413) ORDERED:

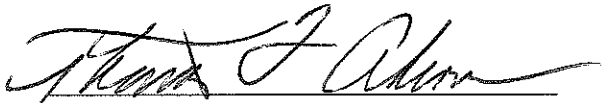
1. That the Transmission Facilities Purchase Agreement filed by the National Grid with the Rhode Island Division of Public Utilities and Carriers on March 13, 2014 is hereby consented to in accordance with the review process established in R.I.G.L., Section 39-26.1-7(f). Accordingly, National Grid and Deepwater Transmission are free to execute the Agreement.
2. That the consent granted herein is conditioned on the following:
 - a. National Grid shall not commence the physical installation of the submarine portion of the Transmission Facilities until such time as

¹³ Also relating to the matter of discovery, as R.I.G.L. §39-26.1-7(f) mandated that the Division carry out its statutory charge within twenty (20) days, the Division found it necessary to deviate from the discovery practices and deadlines prescribed under its Rules of Practice and Procedure and instead institute an expedited discovery protocol in order to be able to complete its review within the time permitted for regulatory scrutiny under the law.

Deepwater Transmission has delivered evidence, including verification from a third-party verification agent, who will report to the Coastal Resources Management Council, of the commencement of fabrication of the jacket foundation structures that will support the wind turbine generators.

- b. That the price for purchasing Deepwater's pre-construction Transmission Facilities shall not exceed \$9,486,289.

Dated and Effective at Warwick, Rhode Island on April 2, 2014.

A handwritten signature in black ink, appearing to read "Thomas F. Ahern", written over a horizontal line.

Thomas F. Ahern
Administrator