

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS  
89 JEFFERSON BOULEVARD  
WARWICK, RHODE ISLAND 02888**

IN RE: Joint Petition for Purchase and Sale of :  
Assets By The Narragansett Electric : Docket No. D-14-20  
Company and the Block Island Power :  
Company :

**ORDER**

Whereas: On June 3, 2015, the Narragansett Electric Company d/b/a National Grid (“National Grid”), and the Block Island Power Company (“BIPCo”) (together, the “Petitioners”) filed a joint petition with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking approval of the Division for a Utility Transaction (“Joint Petition”) pursuant to R.I.G.L. §39-3-24.<sup>1</sup>

Whereas: According to the Joint Petition, and accompanying supporting documents (collectively, “the filing”), National Grid plans to purchase real property rights from BIPCo in connection with National Grid’s construction of the submarine transmission cable and related facilities as part of the Town of New Shoreham project (the “Project”) pursuant to R.I.G.L. §39-26.1-7. The Joint Petition reflects that as contemplated by R.I.G.L. §39-26.1-7(f), National Grid entered into a Transmission Facilities Purchase Agreement (“Purchase Agreement”) with Deepwater Wind Block Island Transmission, LLC (“DWBIT”) to purchase the development work, including the property rights, major permits, and engineering work for the construction of the submarine cable from DWBIT for

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<sup>1</sup> The Petitioners opted to file their Joint Petition in Docket No. D-14-20 as the instant matter directly flows from a related transaction that was consented to by the Division on April 2, 2014 (see Order No. 21413). The Division does not object to the docket number designation used by the Petitioners in this matter.

a not to exceed purchase price of \$9,486,289. The filing indicates that Schedule 1 to the Purchase Agreement provides a description of the Transmission Facilities, which includes a new 34.5kV substation on BIPCo's property in New Shoreham; and that Schedule 2, Part 1 of the Purchase Agreement provides a list of property rights that National Grid will acquire from DWBIT, which includes, among other rights, DWBIT's rights under Option Agreement dated August 29, 2012 between BIPCo, as optionor, and Deepwater Wind Block Island, LLC ("DWW") and DWBIT, as optionee, recorded in Volume 452, Page 19 of the land records of New Shoreham, as assigned to National Grid pursuant to a written Assignment and Assumption Agreement (collectively, the "BIPCo Option"). The filing contains a copy of the BIPCo Option. The filing also notes that the Division issued its consent to the execution of the Purchase Agreement and payment of the purchase price in accordance with R.I.G.L. §39-26.1-7(f) in a written Report and Order dated April 2, 2014.<sup>2</sup>

Whereas: National Grid received an assignment of rights under the BIPCo Option after it closed on the Purchase Agreement on January 30, 2015. The filing reflects that upon National Grid's exercise of the BIPCo Option, BIPCo will convey to National Grid a condominium unit deed for certain real property upon which National Grid will construct the new 34.5kV substation, as well as related access and transmission right of way easements. The filing contains a draft copy of the Declaration of Condominium and Warranty Deed that National Grid will receive. The filing also reflects that National Grid intends to pay BIPCo at closing a total of

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<sup>2</sup> See Division Order No. 21413.

\$332,500 for the real property rights, which amount is broken down as follows: (1) Condominium Unit 1: \$280,000; (2) Right-of-way Easement: \$34,125; and (3) Access Easement: \$18,375. The filing further indicates that the \$332,500 that National Grid pays to BIPCo to acquire the condominium unit and related easements to construct the new substation will be included in the total costs of the Project, which will be recovered through FERC-approved transmission rates pursuant to R.I.G.L. §39-26.1-7(f).

Whereas: The Petitioners maintain that while it is not clear that R.I.G.L. §39-3-24 applies to National Grid's exercise of the BIPCo Option, especially since the Division already consented to the Purchase Agreement in April of 2014, they acknowledge that the Division retains its traditional regulatory authority over the Petitioners. Accordingly, the Petitioners seek the Division's approval for National Grid to exercise the BIPCo Option and to purchase the condominium unit and related easements from BIPCo, and for BIPCo to sell said condominium unit and related easements to National Grid, pursuant to R.I.G.L. §39-3-24.

Whereas: In further support of its approval request, the Petitioners argue that National Grid's exercise of the BIPCo Option is a necessary next step for the Project to proceed; and that absent the ability to exercise that right, National Grid would be unable to construct the new 34.5kV substation and interconnect the submarine transmission cable with BIPCo, thereby rendering the acquisition of the BIPCo Option as pointless and frustrating the legislative purpose and intent of the statute.

Whereas: After a period of formal discovery, the Advocacy Section of the Division submitted a written recommendation to the Hearing Officer on June 26, 2015. In its recommendation, the Advocacy Section indicates that based upon its review of the filing and the discovery responses it received from the Petitioners, it has concluded that the condominium land transfer proposed by the Petitioners “is lawful” and that “the proposed transaction is a reasonable arm’s length transaction supported by agreed upon consideration.” The Advocacy Section thereupon indicated that it has “no objection” to the proposed transaction.

### **Findings**

Before reaching a finding in this docket, a close examination of the pertinent law is instructive. The relevant provisions of Rhode Island General Laws, Sections 39-3-24 and 39-3-25 are reproduced below:

- **39-3-24. Transactions between utilities for which approval required.** - *With the consent and approval of the division, but not otherwise:  
(2) Any public utility may purchase or lease all or any part of the property, assets, plant, and business of any other public utility or merge with any other public utility, and in connection therewith may exercise and enjoy all of the rights, powers, easements, privileges, and franchises theretofore exercised and enjoyed by the other public utility with respect to the property, assets, plant, and business so purchased, leased, or merged.  
(3) Any public utility may merge with any other public utility or sell or lease all or any part of its property, assets, plant, and business to any other public utility, provided that the merger or a sale or lease of substantially all of its property, assets, plant, and business shall be authorized by a vote of at least two-thirds (2/3) in interest of its stockholders at a meeting duly called for the purpose...*
- **39-3-25. Proceedings for approval of transactions between utilities.** - *The proceedings for*

*obtaining the consent and approval of the division for such authority shall be as follows: There shall be filed with the division a petition, joint or otherwise, as the case may be, signed and verified by the president and secretary of the respective companies, clearly setting forth the object and purpose desired, stating whether or not it is for the purchase, sale, lease, or making of contracts or for any other purpose in §39-3-24 provided, and also the terms and conditions of the same. The division shall upon the filing of the petition, if it deem a hearing necessary, fix a time and place for the hearing thereof. If, after the hearing, or, in case no hearing is required, the division is satisfied that the prayer of the petition should be granted, that the facilities for furnishing service to the public will not thereby be diminished, and that the purchase, sale, or lease and the terms thereof are consistent with the public interest, it shall make such order in the premises as it may deem proper and the circumstances may require.*

As an initial finding, the Division observes that the assets BIPCo is conveying to National Grid does not approach the statutory standard of a sale of “all or substantially all” of BIPCo’s assets. Therefore, the Division finds that BIPCo is not subject to the two-thirds shareholder vote requirement contained in R.I.G.L. §39-3-24(3) and that the provision does not apply in this case.

The Division also finds that National Grid is similarly not subject to the two-thirds shareholder vote requirement contained in R.I.G.L. §39-3-24(3). The Division finds that the provision conceptually applies only to the shareholders of the “selling” utility company.

Next, in addressing the legal standards set forth in R.I.G.L. §39-3-25, after an examination of the filing and the statutory framework which authorizes the Project, and in view of the Division’s previous consent to the Purchase Agreement in 2014, *supra*, the Division is compelled to find that the proposed transaction, if

approved, will not diminish BIPCo's facilities for furnishing service to the public and that the proposed transaction is "consistent with the public interest."

Now, therefore, it is

(21961) ORDERED:

That the June 3, 2015, joint petition filing by the Narragansett Electric Company d/b/a National Grid and the Block Island Power Company seeking approval of the Division for a Utility Transaction pursuant to R.I.G.L. §39-3-24, is hereby approved.

Dated and Effective at Warwick, Rhode Island on June 30, 2015.

Division of Public Utilities and Carriers

  
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John Spirito, Jr., Esq.  
Hearing Officer

APPROVED:   
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Thomas F. Ahern  
Administrator