

City of Pawtucket's
Responses to Division's Advocacy Section's
Informal Request for Documents
Dated November 20, 2018
Docket D-18-34

1. Proposed closing documents (Purchase and Sale Agreement, Attachment Agreement, etc.) that the City of Pawtucket forwarded to National Grid

Response

Please see attached which was filed with the City of Pawtucket's complaint as Exhibit C.

2. The version of any document provided in 1) that show the proposed edits made by the City of Pawtucket and forwarded to National Grid.

Response

Please see attached which was filed with the City of Pawtucket's complaint as Exhibit C.

AGREEMENT OF SALE

This Agreement of Sale ("Agreement"), is made as of this ____ day of _____, 2016 by and between The Narragansett Electric Company d/b/a National Grid, a corporation organized and existing under the laws of the State of Rhode Island, having its principal place of business at 280 Melrose Street, Providence, Rhode Island, 02907, (hereinafter referred to as the "Seller" or the "Company") and the City of Pawtucket, a municipality organized and existing under the laws of the State of Rhode Island, having its principal place of business at City Hall, 137 Roosevelt Avenue, Pawtucket, Rhode Island 02860 (hereinafter referred to as the "Buyer"). The Seller and the Buyer may hereinafter be referred to individually as a "Party", and, collectively, as the "Parties."

RECITALS

WHEREAS, the Seller presently provides unmetered street and area lighting services to the Buyer pursuant to multiple Company tariffs approved by the Rhode Island Public Utilities Commission (the "PUC"); and

WHEREAS, the Buyer has exercised its rights under R.I.G.L. § 39-30-1, *et seq.* to acquire all of the public street and area lighting equipment of the electric distribution company in the municipality for which the municipality is financially responsible (hereinafter referred to as "Lighting Equipment"); and

WHEREAS, Buyer will hereby purchase said Lighting Equipment pursuant to R.I.G.L. § 39-30-3(b); and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Buyer agree to the following terms and conditions:

I. BASIC UNDERSTANDINGS

1. The Seller agrees to sell, and Buyer agrees to purchase, said Lighting Equipment on an "as is, where is" basis.
2. Upon Closing (as defined below), the Seller will convey to the Buyer all of its rights, title and interests in said Lighting Equipment.
3. The Buyer and Seller understand and agree that a third party shall perform an inspection and comprise a list detailing any and all of the public street and area lighting equipment of the electric distribution company in the municipality (hereinafter referred to as the "Description of Street and Area Lighting Facilities").
4. As of the Closing Date (as defined below), the Buyer shall assume all responsibilities and obligations associated with ownership of the Lighting Equipment.
5. To the extent that Seller possesses existing physical, hardcopy paper maps that appear to relate to the public street and area lighting equipment of the electric distribution company, and such maps are able to be copied in a legible form, Seller shall furnish the Buyer with one (1) copy of each such map in its current form and one (1) copy of each map in an electric, computer compatible, format ("Map(s)") after the Closing as such Maps may be available. Seller shall not have any obligation to create any new maps for the Buyer, nor shall Seller have any obligation to review, update or correct any Maps.

II. PURCHASE PRICE

1. The Buyer shall pay to Seller at Closing a total consideration presently estimated to be \$89,517.76 (“ Estimated Purchase Price”) under R.I.G.L. §39-30-1 *et seq* but subject to partial refund after recalculation under R.I.G.L. §39-30-1 *et seq* upon completion of the Description of Street and Area Lighting Facilities and subsequent final determination of the Lighting Equipment. Such recalculation upon final determination of the Lighting Equipment will determine the total consideration “Final Purchase Price”. The Parties acknowledge that the Final Purchase Price is mutually agreed and is legal and sufficient consideration for the Lighting Equipment.

a. The Parties agree that the Purchase Price shall be the only payment paid by the Buyer to the Seller for the Lighting Equipment under this Agreement and no further payment shall be required.

b. The Buyer, on behalf of itself and its successors, assigns, affiliates, employees, agents, consultants and all other legal representatives, shall release and forever discharge Seller, its affiliates and their respective successors, assigns, affiliates, employees, and agents from any and all actions, causes of action, debts, expenses (including, but not limited to, consultant and attorney fees), claims, and demands of every kind, name and nature, both at law and in equity (“Buyer’s Released Claims”) arising out of, in connection with, or in any way related to the Lighting Equipment, without limitation, any related billing charges, title or otherwise. Notwithstanding the foregoing, the Buyer’s Released Claims shall not include any actions, causes of action, claims or demands arising out of or related to the enforcement of this Agreement or any actions, causes of action, claims or demands arising out of the public street and area lighting equipment of the electric distribution company that are not amongst the Lighting Equipment.

2. The Buyer shall be solely responsible for the payment of all taxes on or relating to the Lighting Equipment, if any, following the Closing Date and thereafter. The Seller shall pay all taxes on the public street and area lighting equipment of the electric distribution company in the municipality up to and including the Closing Date. Notwithstanding the designation of a Party as the owner of record of the public street and area lighting equipment of the electric distribution company in the municipality for tax purposes, unless the tax liability on the Lighting Equipment is abated in its entirety as of the Closing Date, the tax liability shall be apportioned between Buyer and Seller in proportion to the number of days during such tax year within which Buyer and Seller, respectively, owned the Lighting Equipment. If the amount of the tax liability is not known or cannot be determined reliably at the time of the Closing, the tax liability of the Lighting Equipment shall be apportioned on the basis of the tax assessed for the most recent tax year for which such an apportionment or determination can be made, with a reapportionment to be performed as soon as the new tax rate and valuation can be ascertained.

III. CLOSING, TITLE AND DISCLAIMER OF WARRANTIES

1. **CLOSING:** The closing of the purchase and sale of the Lighting Equipment ("Closing") shall occur on or about _____, __, 2016 or such other date as may be mutually agreed by the Parties ("Closing Date"). At the Closing, Buyer shall pay the Estimated Purchase Price to Seller, and Seller shall deliver to the Buyer a Bill of Sale in the form attached hereto as Exhibit A (the "Bill of Sale"), incorporated herein by reference.

2. **LIENS AND ENCUMBRANCES:** Seller represents to Buyer that the Lighting Equipment are free from liens and encumbrances that are known to the Seller.

3. **LICENSE:** Seller hereby provides to Buyer, irrevocable, nonexclusive licenses authorizing Buyer to make attachments to any vertically oriented utility structure used to support electrical conductors and other utility equipment within the municipality necessary to facilitate the operation of an Electric Distribution System owned by Seller and may be used for public street and area lighting equipment and/or any other equipment or technology that may be affixed to such lighting equipment for the purpose of the health, safety, and general welfare of the public so long as such equipment does not unreasonably impact the Seller's utility structure.

4. **BILL OF SALE; DISCLAIMER OF WARRANTY:**

(a) Seller shall transfer title to the Lighting Equipment to Buyer by the Bill of Sale attached hereto as Exhibit A.

(b) THE LIGHTING EQUIPMENT ARE SOLD "AS IS". THERE ARE NO PROMISES, CONVENANTS OR UNDERTAKINGS WITH RESPECT TO THE LIGHTING EQUIPMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LIGHTING EQUIPMENT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR

COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRIC SAFETY CODE (NESC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE LIGHTING EQUIPMENT OR ANY PART THEREOF. ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE LIGHTING EQUIPMENT ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF THE SELLER AND THE SELLER MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

IV. OWNERSHIP AND ATTACHMENT/EASEMENT RIGHTS

1. DEMARCATION OF OWNERSHIP: The point of ownership demarcation shall be deemed to be the existing connection point where the applicable Lighting Equipment is energized from the electric distribution system ("Connection Point"). The Seller shall retain ownership of the electric distribution system up to and including the Connection Point. Buyer shall own the street lighting system from the Connection Point outward inclusive of the applicable Lighting Equipment. To the extent there is any uncertainty or conflict with respect to the Connection Point, the Seller shall, in its sole discretion, define a connection point, so long as Seller's defined connection point does not unreasonably impact the Buyer's Lighting Equipment or unreasonably

limit Buyer's ability to make use of its Lighting Equipment for the purpose of the health, safety, and general welfare of the public.

2. THIRD PARTY LIGHTING: Lighting facilities (including, without limitation poles, standards, arms, brackets, wires, cable, conductor, conduit, foundations and luminaires) owned by Seller and used to provide regulated lighting services to independent third party customers (each, a "Third Party Lighting Asset" or collectively, the "Third Party Lighting Assets") shall not be included in the Lighting Equipment that are being transferred to the Buyer through this Agreement. The transfer of Lighting Equipment shall exclude facilities upon which Third Party Lighting Assets are attached, physically and/or electrically; provided, however, the Seller shall transfer the requested luminaires and associated brackets or arms to the Buyer on these facilities upon which Third Party Lighting Assets are attached upon expressed written request of the Buyer whereby Buyer acknowledges specific luminaires and associated brackets or arms as Third Party Lighting Assets and still wishes to take possession of said Third Party Lighting Assets. The Seller shall continue to provide the regulated lighting services to independent customers in the City of Pawtucket after the Closing Date.

3. JOINT USE INFRASTRUCTURE: The Buyer understands that some of the Lighting Equipment are currently installed or otherwise coexist ("Coexisting Lighting Equipment"), in whole or in part, on or within Seller's conduit, vaults, or other Seller facilities, assets or infrastructure ("Joint-Use Structures"), and that such Coexisting Facilities shall not be separated from the Joint Use Structures prior to Closing.

4. **ATTACHMENT RIGHTS:** Pursuant to R.I.G.L. § 39-30-1, *et seq.*, Seller shall provide attachment rights to the Buyer for Seller's support infrastructure and electric distribution system.

5. **EASEMENT/ACCESS RIGHTS:** Seller shall assign to Buyer the non-exclusive right, in common with Seller and others entitled thereto, to maintain and operate the area lighting equipment and/or any other equipment or technology that may be affixed to such lighting equipment for the purpose of the health, safety, and general welfare of the public so long as such equipment does not unreasonably impact the Seller's utility structure, under any existing easement, license, grant of location or other agreement associated with said equipment, to the extent assignable and allowed by such easements, licenses, grants of location or other agreements without any warranties or representations whatsoever.

V. LIABILITY

From and after the Closing Date, the Seller, its affiliates, and their respective officers, directors, employees, and agents, shall not be liable to Buyer or its officers, officials, employees, representatives or contractors for direct, indirect, consequential, punitive, special, exemplary, or any other damages under any theory of law that is now or may in the future be in effect, including without limitation, contract, tort, R.I.G.L. §6-13.1-1 *et seq.*, strict liability, or negligence, in connection with purchase of the Lighting Equipment, including, without limitation, damages with respect to or arising from the condition, operation of, or failure of operation of the Lighting Equipment. The Buyer's sole remedy for recovery related to causes of action arising from the purchase of the Lighting Equipment shall be limited to an equitable remedy to enforce the transfer of the Lighting Equipment under the Agreement.

VI. INDEMNIFICATION

The Buyer agrees, to the extent permitted by law and to the extent of the Buyer's insurance coverage to defend and to pay, protect, indemnify and save harmless the Seller, its affiliates and their officers, directors, employees, agents, successors and assigns against and from any and all liabilities, claims, suits, fines, penalties, damages, personal injury, losses, fees (including reasonable attorneys' fees), costs, and expenses arising out of or in connection with this Agreement resulting from any act, failure or omission on the part of the Buyer or its officers, officials, employees, representatives or contractors.

VII. INSURANCE

In accordance with the License Agreements, the Buyer shall, at its sole cost and expense, obtain and keep in force comprehensive general liability insurance in terms and amounts commercially reasonable (but not less than any applicable statutory or regulatory limit or cap on liability) covering any action arising in connection with this Agreement, and shall name the Seller as an additional insured thereunder. Such insurance will insure all of the indemnity obligations set forth herein and, upon request, the Buyer shall provide a certificate of insurance to Seller showing such coverage. The Buyer may elect to self-insure provided that the Buyer provides written notice and evidence of self-insurance to the Seller prior to transfer of the Lighting Equipment and execution of this Agreement.

VIII. MISCELLANEOUS

1. **GOVERNING LAW:** This Agreement shall be governed by, performed, and construed in accordance with the laws of the State of Rhode Island without regard to the conflicts of law principles contained therein.

2. **PRIOR AGREEMENTS:** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous agreements, discussions, communications, and correspondence. Any prior agreements, promises, negotiations, or representations not set forth in this Agreement are of no force or effect.

3. **ASSIGNMENT, MODIFICATION:** This Agreement and the rights and obligations set forth herein may be freely assigned by Buyer to third parties. This Agreement may not be amended or modified except in a writing signed by both Parties, and shall inure to and be binding upon the Parties and their respective successors and assigns.

4. **SEVERABILITY:** If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

5. **NOTICE:** Any notice given under this Agreement shall be in writing and shall be hand delivered, sent by registered or certified mail, delivered by a reputable overnight courier, or sent by facsimile with electronic confirmation of receipt, to the other party's representative as follows:

Buyer:

City of Pawtucket
City Hall, 137 Roosevelt Avenue

Pawtucket, Rhode Island
Attention: _____

Seller:

The Narragansett Electric Company d/b/a National Grid
40 Sylvan Road
Waltham, MA 02451
Attention: Outdoor Lighting & Attachments

6. APPLICABLE STATUTE: The Parties understand and agree that this Agreement is made pursuant to R.I.G.L. § 39-30-1, *et seq.*

{Signatures on the following page.}

EXHIBIT B
BILL OF SALE

The Narragansett Electric Company d/b/a National Grid, a Rhode Island corporation with a principal place of business in Providence, Rhode Island, ("Seller"), in consideration of the Estimated Purchase Price paid by the City of Pawtucket ("Buyer"), the receipt of which is hereby acknowledged, does hereby sell, transfer and assign all its right, title, and interest unto Buyer, the existing outdoor street and/or area lighting and associated equipment located within the boundary limits of the City of Pawtucket for which the City is financially responsible, the Lighting Equipment. The Parties understand that a final determination of the purchase will be determined by identifying the Lighting Equipment after a third party performs an inspection and comprises a list detailing any and all of the public street and area lighting equipment of the electric distribution company in the municipality, the Description of Street and Area Lighting Facilities.

THE LIGHTING EQUIPMENT IS SOLD "AS IS." THERE ARE NO PROMISES, CONVENANTS OR UNDERTAKINGS WITH RESPECT TO THE LIGHTING EQUIPMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LIGHTING EQUIPMENT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRIC SAFETY CODE (NEC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, THE SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE LIGHTING EQUIPMENT OR ANY PART THEREOF. ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE LIGHTING EQUIPMENT ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF THE SELLER AND THE SELLER MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

TO HAVE AND TO HOLD the Lighting Equipment herein described unto Buyer, its successors and assigns, to its and their own use and benefit forever.

IN WITNESS WHEREOF, THE NARRAGANSETT ELECTRIC COMPANY has caused these presents to be signed in its name and behalf by its duly authorized representative, this ____ day of _____, 2016.

The Narragansett Electric Company d/b/a
National Grid

By: _____

Name: Christopher Kelly

Title: Acting Senior Vice President, Electric
Process and Engineering

Accepted as to the Terms and Conditions contained herein,

City of Pawtucket

By: _____

Name: Donald R. Grebien

Title: Mayor