

June 28, 2017

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**RE: Docket 4265 - Review of Power Purchase Agreement Between The Narragansett Electric Company d/b/a National Grid and Orbit Energy Rhode Island, LLC Pursuant to R.I.G.L. § 39-26.1-7 Fifth Amendment to Power Purchase Agreement dated May 27, 2016**

Dear Ms. Massaro:

This letter is to notify the Rhode Island Public Utilities Commission (PUC) that National Grid<sup>1</sup> has executed the following amendment to the Power Purchase Agreement (PPA) between National Grid and Orbit Energy,<sup>2</sup> which the PUC approved by written order dated August 18, 2011 in Docket No. 4265, and which was amended by the First Amendment to Power Purchase Agreement dated as of April 11, 2013 (First Amendment) and the Second Amendment to Power Purchase Agreement and Acknowledgement dated as of December 9, 2013 (Second Amendment), as approved by the PUC on April 11, 2014 in Docket No. 4265, the Third Amendment to Power Purchase Agreement and Acknowledgement dated as of January 9, 2015 (Third Amendment), as approved by the PUC on March 31, 2015 in Docket No. 4265, and the Fourth Amendment to Power Purchase Agreement and Acknowledgement dated as of May 27, 2016 (Fourth Amendment), as approved by the PUC on October 13, 2016 in Docket No. 4265. The Company requests that the PUC approve the enclosed fifth amendment:

- Fifth Amendment to Power Purchase Agreement dated as of June 28, 2017 (Fifth Amendment) to (i) modify the critical milestone date set forth in clause (vi) of Section 3.1(a) of the PPA to achieve the Commercial Operation Date, and (ii) waive the requirement in Section 3.3(b)(vii) for participation in the forward market (FCM) as a requirement for commercial operation.

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid (herein referred to as National Grid or the Company).

<sup>2</sup> Orbit Energy Rhode Island, LLC (herein referred to as Orbit Energy).

The PPA is for a 3.2 MW anaerobic digester biogas project with an initial bundled price of 9.5 cents per kilowatt-hour in 2013, subject to an interconnection cost adjustment with an initial price cap of 10.0 cents per kilowatt-hour in 2013.

Pursuant to the Fourth Amendment, the parties agreed to extend the Commercial Operation Date to June 30, 2017. There are no further extensions allowed under the PPA. Orbit Energy has approached the Company regarding a further modification of the Commercial Operation Date to accommodate the finalization of interconnection, the asset registration with ISO-NE and other related administrative activities. The parties have, therefore, agreed to extend the Commercial Operation Date by an additional two months until August 31, 2017. This extension is necessary in order to accommodate the final steps for interconnection, and provide adequate time for Orbit Energy to subsequently complete the asset registration process and obtain a final statement of qualification from the PUC certifying the facility as an eligible renewable energy resource in accordance with Section 6.0 of the PUC's Rules and Regulations Governing the Implementation of a Renewable Energy Standard.<sup>3</sup> The parties also agreed to waive the requirement that Orbit Energy participate in the FCM as a condition of commercial operation because Orbit has not yet satisfied that requirement. This waiver is reasonable because if Orbit fails to participate in the FCM in the future, pursuant to Section 4.8 and Exhibit E of the PPA, the Company would pay a reduced price.

The Company acknowledges the PUC's concerns regarding the credibility of the Commercial Operation Date as enunciated in its written order dated October 13, 2016 concerning the Fourth Amendment. The Company believes that the Orbit Energy PPA continues to satisfy state policy through the Long-Term Contracting for Renewable Energy Standard. Orbit Energy continues to show progress with the project and make a good faith effort to achieve commercial operation. The two-month extension is reasonable in order to accommodate the final requirements for achieving commercial operation under the PPA. In addition, the changes reflected in the Fifth Amendment do not alter the bundled price under the PPA or the size and scope of the project. For these reasons, the Company continues to support the PPA and urges the PUC to approve the Fifth Amendment.

The Company has consulted with the Rhode Island Division of Public Utilities and Carriers (Division), and they have indicated their support for the Fifth Amendment. By filing this letter, National Grid requests that the PUC issue a ruling at an Open Meeting that affirmatively approves the Fifth Amendment and authorizes the Company to proceed under the PPA, as amended.

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<sup>3</sup>As of the date of this filing, Orbit Energy has received a Conditional Order from the PUC.

Luly E. Massaro, Commission Clerk  
Fifth Amendment to Orbit Energy PPA  
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Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at 401-784-7288.

Very truly yours,



Jennifer Brooks Hutchinson

Enclosures

cc: Docket 4265 Service List  
Leo Wold, Esq.  
Jon Hagopian, Esq.  
Steve Scialabba, Division

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.

\_\_\_\_\_  
Joanne M. Scanlon

June 28, 2017  
Date

**Docket No. 4265 National Grid – PPA w/ Orbit Energy RI  
Service List updated 10/14/16**

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## FIFTH AMENDMENT TO POWER PURCHASE AGREEMENT

This FIFTH AMENDMENT TO POWER PURCHASE AGREEMENT (this "Amendment") is entered into as of June 28, 2017, by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation ("**Buyer**"), and Orbit Energy Rhode Island, LLC, a Rhode Island limited liability company ("**Seller**"). Buyer and Seller are individually referred to herein as a "Party" and are collectively referred to herein as the "Parties").

**WHEREAS**, Buyer and Seller are parties to that certain Power Purchase Agreement dated as of May 26, 2011 and approved by the Rhode Island Public Utilities Commission ("**PUC**") on August 18, 2011 in Docket No. 4265, as amended by the First Amendment to Power Purchase Agreement dated as of April 11, 2013, by the Second Amendment to Power Purchase Agreement and Acknowledgement dated as of December 9, 2013, as approved by the PUC on April 11, 2014 in Docket No. 4265, as amended by the Third Amendment to Power Purchase Agreement dated as of January 9, 2015, as approved by the PUC on March 31, 2015 in Docket No. 4265, and as amended by the Fourth Amendment to Power Purchase Agreement dated as of May 27, 2016, as approved by the PUC on October 13, 2016 in Docket No. 4265 (the "Agreement"), pursuant to which Seller has agreed to sell and deliver, and Buyer has agreed to purchase and receive, the Products generated by or associated with the Facility during the Services Term (in each case as defined in the Agreement); and

**WHEREAS**, pursuant to Section 3.3(b)(vii) of the Agreement, it is a condition precedent to achieving the Commercial Operation Date that Seller "has caused the Facility to be qualified as an Existing Capacity Resource under the ISO-NE Rules with a Seasonal Capability equal to or greater than the Contract Capacity" ("**Capacity Condition**"); and

**WHEREAS**, Seller has not satisfied the Capacity Condition and has requested that Buyer waive the condition; and

**WHEREAS**, Seller has exercised all of its rights to extensions of the dates for the Critical Milestones under Section 3.1(c) of the Agreement and under the Third Amendment to Power Purchase Agreement; and

**WHEREAS**, Seller has requested a further extension of the deadline to achieve the Commercial Operation Date under Section 3.1(a) of the Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The text of clause (vi) of Section 3.1(a) of the Agreement is deleted in its entirety and replaced with the following:

(vi) achievement of the Commercial Operation Date by August 31, 2017.

2. The text of clause (vii) of Section 3.3(b) is deleted in its entirety and replaced with "Intentionally Omitted."

4. The deletion of clause (vii) of Section 3.3(b) shall not be deemed to be a waiver or other modification of any other rights and obligations of the Parties under the Agreement relating to Capacity, including but not limited to those set forth in Section 4.8 and Exhibit E of the Agreement.

5. This Amendment is conditioned upon and shall not become effective unless and until either (a) the PUC confirms, in a manner that is acceptable in form and substance to Buyer in its sole discretion, that PUC approval is not required in order for the effectiveness of this Amendment or (b) the PUC approves this Amendment without material modification or conditions, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

6. The usage in this Amendment of terms which are defined in the Agreement is in accordance with the usage thereof in the Agreement.

7. Except as specifically amended hereby, all terms and provisions contained in the Agreement shall remain unchanged and in full force and effect, and each of the Parties ratifies and confirms all such terms and provisions. In the event of a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

8. Two or more counterparts of this Amendment may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument. Facsimile signatures hereon shall be deemed to have the same effect as original signatures.

9. Interpretation and performance of this Amendment shall be in accordance with, and shall be controlled by, the laws of the State of Rhode Island (without regard to its principles of conflicts of law).

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID**

By: \_\_\_\_\_  
Name:  
Title:

**ORBIT ENERGY RHODE ISLAND, LLC**

By:   
Name: John J. Fosina  
Title: Chief Financial Officer

**IN WITNESS WHEREOF**, each of Buyer and Seller has caused this Amendment to be duly executed on its behalf as of the date first above written.

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID**

By: \_\_\_\_\_

Name: John V. Vaughn  
Title: Authorized Signatory

*CRC*  
*CMS*

**ORBIT ENERGY RHODE ISLAND, LLC**

By: \_\_\_\_\_

Name:  
Title: