

November 8, 2011

**VIA HAND DELIVERY & ELECTRONIC MAIL**

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

**RE: Docket No. 4288**  
**Distributed Generation Standard Contracts Act Classes and Ceiling Prices for 2011;**  
**Distributed Generation Standard Contract**  
**National Grid Reply Comments**

Dear Ms. Massaro:

National Grid<sup>1</sup> submits the following reply to various comments recently filed in this docket regarding the ceiling prices and the standard contract filed with the Rhode Island Public Utilities Commission (“Commission”) for approval.

**Ceiling Prices**

Neither the Company nor the Division has taken issue with the proposed ceiling prices for the 2011 enrollment that were submitted by the Office of Energy Resources (“OER”). The comments from others that take issue with the ceiling prices suggest that the prices do not reflect administrative burdens such as registering and obtaining the project’s eligibility for renewable energy credits and providing the Company with the information necessary for it to act as the “Project Sponsor” and qualify the facility in the forward Capacity Market. The Company believes that requiring developers to fulfill those basic compliance obligations is perfectly reasonable and not onerous. Such requirements are typical in the industry and are already reflected in the ceiling prices.

Additionally, the Company disagrees with the suggestion by Washington County Regional Planning Council and Alteris Renewables, Inc. that the ceiling prices established under the Rhode Distributed Generation Standard Contracts Act (the “Act”) should be adopted by Rhode Island as somehow representing the electric distribution company’s “avoided costs” for general application to all technology sources that are the subject of that pricing, outside of the context of the DG Standard Contracts Program. This is not an issue in this docket. Moreover, the process for determining ceiling pricing under the DG Standard Contracts Act is not intended to calculate the Company’s “avoided costs” for broad application to all energy resources of the type involved in DG standard contracts.

FERC has defined an electric distribution company’s “avoided costs” under PURPA as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or

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

purchase from another source.” 18 C.F.R. § 292.101(b)(6) (2010). On the other hand, the ceiling price set under the Act is a price that is paid for a bundled product of energy and capacity as well as other attributes including Renewable Energy Certificates (“RECs”). The ceiling price is a long-term contract price applicable to a distinct and limited number of contracts that are a carve-out from the contracting levels provided for in the long-term contracting standards. Ceiling prices thus are limited in application to this discreet Distributed Generation Standard Contracts program, with its own standard long-term contract language, provision for an application process, and a bidding procedure from which only smaller projects are excused and for which ceiling prices act as a price cap. Instead of being intended to establish a broadly applicable proxy for “avoided cost” calculation, the methodology for arriving at ceiling prices under the Act is one geared to determine “a price that would allow a private owner to invest in a given project at a reasonable rate of return, based on recent reported and forecast information on the cost of capital, and the cost of generation equipment.” R.I.G.L. §39-26.2-5(a). The suggestion that ceiling prices be applied to generation outside of the Distributed Generation Standard Contracts program runs counter to the limited use for those prices that is set out in the statute.

## **Distributed Generation Standard Contract**

### **Specific Provisions**

It is important to address and clarify some specific issues raised in these comments which are important to the Commission’s consideration of the standard contract.

- Assignment

The assignment provisions in the contract are identical to those approved by the Commission in the Amended PPA for Deepwater Block Island Wind and the Orbit Energy Rhode Island PPA, and with those in the PPA for Rhode Island Landfill Gas Genco. Specifically, the Commission was concerned with the unrestricted assignment provisions in the initial Deepwater Wind PPA. The current provisions require the consent of the Buyer, which may not be unreasonably withheld.

- Capacity Demonstration Test

The provision for a Capacity Demonstration Test to affirm the Contract Maximum Amount specified in the Enrollment Application was developed specifically to address the requirements of the Act. Section 39-26.2-7 (iv) states that the contract must “provide that if the distributed generation facility has not generated the output proposed in its enrollment application within eighteen (18) months after execution of the contract, the contract is automatically voided, and the performance guarantee is forfeited.” Section 39-26.2-7 (iii) provides that the performance guarantee be refunded on a pro-rated basis of energy actually delivered over the course of the first year of the project operation. The Act is silent on how these demonstrations are to be achieved.

The project needs to demonstrate the proposed output in some measureable ways to meet the requirements of the Act. The approach recommended by National Grid, and included in the contract, reconciles the two requirements. The Capacity Demonstration Test demonstrates that the projected maximum hourly generation (the Contract Maximum Amount) has been achieved. The test allows for use of the output from four non-consecutive hours, and allows for a correction for availability of motive energy, e.g., insulation or wind energy, to be accepted by the Buyer with reasonable discretion. Two additional months are provided for the project to achieve commercial operation, which date would begin the 15-year services term of the contract. Once this milestone is achieved, refund of the performance guarantee deposit depends on achievement of the Projected Annual Energy Output, also indicated in the enrollment application.

National Grid maintains that this approach, which explicitly recognizes the intermittent nature of solar and wind resources, is a fair and reasonable interpretation of the statutory requirements. Further, the statute does not allow only for forfeiture of the performance guarantee deposit; termination of the contract is explicitly required.

- Project Useful Life

Some of the comments have pointed out that the Act does not require a representation of project useful life. This requirement was explained in the Working Group, and should not pose a hardship on a project. The Act does provide that the contract be developed from contracting terms typically used in the wholesale power industry, and with all PPA's executed to date, National Grid has addressed accounting concerns. Guidance from National Grid's independent accountants has indicated that the contract term, as a percentage of project useful life should not exceed 75%, if the contract is to be treated as an operating lease. Treatment as an operating lease is important because National Grid is subject to International Financial Reporting Standards (IFRS). Inclusion of reasonable business requirements is not precluded by the Act. Taking such business considerations to the logical limit, the Long Term Contracting Standard specifically provides that the electric distribution is not required to enter into any contract which it reasonably believes is commercially unreasonable.

- Test Energy

As a simplification, the provisions for purchase of test energy were removed from the Orbit Energy contract. The start-up period for small renewable energy facilities would be expected to be much shorter than for a more complex generating facility. Thus, the time between initial operation and commercial operation, would be limited. Nothing in the standard contract would preclude sale of energy to ISO-NE nor sale of any RECs to other parties, or even to National Grid as part of period short-term purchases for Standard Offer Services. And in no circumstances would the test energy be a "windfall" for National Grid.

- Compliance with ISO-NE, NEPOOL GIS, and FERC Requirements

There were a number of general comments that referred to the burden of operating under these requirements. The contract requires compliance only with applicable requirements, and in some cases, e.g., the ISO-NE Forward Capacity Market, National Grid has agreed to act as a "project sponsor," assuming an administrative burden, but still requiring cooperation of the generator. A number of those parties who commented have apparently glossed over the fact that the projects selected in the enrollments, regardless of generation scale, will be operating in an organized wholesale market.

- Termination Payment

Comments from Seth Handy on behalf of the Washington County Regional Planning Council state that a termination payment to Buyer is not contemplated by the statute and should be removed. This is another business consideration that falls into the contracting terms generally used in the wholesale power industry category. As discussed in the Working Group, this provision is appropriate as long as there is a similar provision applicable to the Seller, i.e., there should be "symmetry" in the provisions. This provision would be entirely appropriate if, because of the market value of the products, the Buyer terminated the contract in order to take advantage of these market conditions. There would then be a termination payment to Buyer only in the event that the projected market value of the products exceeded the contract price. Given that the ceiling prices are "above market," this is an unlikely circumstance, but the provision provides for some compensation to customers should this occur.

**Recommendation**

The Company recommends approval of the standard contract that was formulated by the Working Group and submitted by the OER. The statutory framework provides for a Working Group to avoid what would otherwise be an unwieldy process of attempting to negotiate and address varying and conflicting interests. Indeed, the OER, in compliance with the statutory framework, assembled a Working Group to craft a standard contract, which was developed from contracting terms typically utilized in the wholesale power industry. The standard contract that was negotiated and produced balances the need for projects to obtain financing against the need for the distribution company to protect itself and its distribution customers against unreasonable risks. Further, the number and nature of some of the comments notwithstanding, the OER Report documents that the Working Group reached consensus that the contract fulfilled statutory requirements.

The Company has indicated that it supports a review of the performance of the contract after the completion of the 2011 enrollment. This review can again address some of the specific suggestions included in these comments, and any new issues that arise in the initial enrollment. However, the Company counsels against proposals of annual reviews and editing to the contract terms as being unsupported in the statute and likely to inject uncertainty and administrative burden into the process. The Company also counsels against starting over with an adaptation of some existing “standard” contracts from other jurisdictions that may be favored by some parties.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

cc: Docket 4288 Service List  
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## Certificate of Service

I hereby certify that a copy of the cover letter and / or any materials accompanying this certificate has been electronically transmitted, sent via U.S. mail or hand-delivered to the individuals listed below.



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Joanne M. Scanlon

11/8/2011  
Date

**Docket No. 4288 – Office of Energy Resources Filings: 1) Proposed Distributed Generation (DG) Standard Contract Act Classes and Ceiling Prices for 2011; and 2) Proposed DG Standard Contract Service List updated 11/3/11**

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