



Luly E. Massaro, Commission Clerk  
Public Utilities Commission  
89 Jefferson Blvd.  
Warwick, RI 02888

March 21, 2019

RE: PowerOptions Comments on Docket No. 4929

In accordance with the Notice of Public Comment Hearing issued on February 23, 2019, PowerOptions appreciates the opportunity to provide written comment on National Grid's proposed purchase power agreement with DWW Rev. I, LLC ("DWW") for the 400 MW Revolution Wind facility ("PPA") and its remuneration rate request in the above-captioned proceeding. PowerOptions is a not-for-profit energy purchasing consortium formed in 1996. Our more than 400 nonprofit commercial and industrial ("C&I") members in Rhode Island, Massachusetts, and Connecticut include hospitals and healthcare systems, colleges and universities, community and human service agencies, K-12 public and private schools, museums, as well as municipalities and housing authorities, with approximately one billion kWh of annual load, 200 MW of peak load, and 11 million dekatherms of annual gas usage. With our electricity supplier Constellation, we serve the Rhode Island League of Cities and Towns through the Rhode Island Energy Aggregation Program. In addition, PowerOptions participates as a valuable and articulate resource in energy policy discussions throughout New England, including as a member of NEPOOL's End User Sector.

PowerOptions supports the effort to deliver commercially reasonable and cost-effective offshore wind energy to Rhode Island, but we have three primary concerns with National Grid's filing. First, PowerOptions submits that the PPA does not secure customer benefits with regard

to DWW's participation in ISO New England's Forward Capacity Market ("FCM"). Second, PowerOptions believes that National Grid's proposal for a 2.75% annual remuneration under R.I.G.L. § 39-31, the Affordable Clean Energy Security Act ("ACES"), for the life of the contract is not justified. Third, PowerOptions believes that National Grid's proposal to retain the RECs associated with the project amounts to a subsidization of Standard Offer service customers at the expense of all other customers. Additionally, PowerOptions submits that the Commission should require National Grid to be vigilant in its role as counterparty to the DWW PPA, and enforce customer-protection provisions if and when liquidated damages or other benefits would accrue to customers.

#### 1. Forward Capacity Market Participation

As filed, the PPA does not require DWW to attempt to clear in the FCM and obtain a Capacity Supply Obligation ("CSO").<sup>1</sup> PowerOptions believes that the Commission should condition approval of the contract on a contract amendment that would require DWW to take commercially reasonable actions to attempt to annually obtain a CSO in the FCM and, in the event it fails to obtain a CSO, provide a report to National Grid and the Commission in this docket outlining the commercially reasonable actions taken to attempt to clear. Leaving the capacity issue largely unaddressed is not in the best interests of the customers who are making this purchase possible.

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<sup>1</sup> With regard to capacity, the PPA states, "Seller shall apply to participate in the FCM auction qualification process and pursue that application to the extent required for ISO-NE to determine prior to the Commercial Operation Date the maximum CNR Capability of the Facility and any associated Network Upgrades required. No later than the Commercial Operation Date, Seller shall be eligible for Capacity Network Resource Interconnection Service for the CNR Capability of the Facility to allow ISO-NE to determine which Network Upgrades would be required to deliver such CNR Capability. Seller shall have no obligation during the Term to participate in the FCM other than as provided in this Section 7.3. In the event that Seller elects to participate in the FCM during the Term, any such participation shall be solely for the benefit and account of Seller." (Initial Filing at 000091 (Schedule NG-1 at 44)).

The PPA, arising from a solicitation compliant with ACES, is fully funded by Rhode Island customers. It follows that the contract should be structured so as to provide the greatest customer benefit. The absence of a requirement that DWW participate and attempt to clear in the FCM, however, leaves the possibility that customers will not see the full benefit of the contract they have enabled. In fact, in the Massachusetts regulatory proceeding requesting approval of the PPAs for the Vineyard Wind 800 MW offshore wind generation facility, National Grid recognized that FCM non-participation by qualified resources will lead to suboptimal capacity commitments and inefficient capacity markets. Specifically, the Massachusetts distribution companies (including National Grid witness Brennan, who also testifies in this docket) state, “Greater participation of qualified resources will not only facilitate the ability of the ISO to procure the capacity necessary to meets [sic] system reliability requirements, but also contribute to a more competitive FCA, and thus more efficient market results for customers” (See Section 83C Long-term Contracts for Offshore Wind Energy Generation, MA D.P.U. 18-77, Joint Supplemental Testimony of Jeffrey S. Waltman, Timothy J. Brennan and Lisa S. Glover, at 3-4 (2018)).

National Grid explains that the DWW’s Revolution Wind project was selected because it was a cost-effective bidder on the Massachusetts Section 83C solicitation and ACES allows National Grid to procure renewable energy as part of a multi-state solicitation (Initial Filing at Bates 000012 (Direct Testimony of Timothy J. Brennan and Corinne M. Dedomenico, at 9)). When accounting for the 800 MW procured by Massachusetts in the Section 83C solicitation, the 300 MW procured by Connecticut, and the PPA at issue in this proceeding, the New England states will be procuring a total of 1,500 MW of offshore wind in short order. This substantial

amount of generating capacity should be reflected in the capacity requirements for the region. In fact, these procurements are of such magnitude that the capacity market rules at the wholesale level have already been altered to accommodate their participation, referred to as the CASPR rules for a substitute auction.<sup>2</sup> In testimony to FERC, ISO New England Witness Geissler expressed that the contracts arising from multi-state solicitations were one of the main reasons for changing the market rules, “Concerns about out-of-market contracting have grown over the last several years as some of the New England states pursue contracts for the development of significant new resources under the Multi-State Clean Energy request for proposals, and the clean energy procurements required by the 2016 Massachusetts Energy Diversity Act” (Testimony of Christopher Geissler on behalf of ISO New England Inc., F.E.R.C. Docket No. ER18-619-000, at 9 (Jan. 8, 2018)). Since the market rules have been altered to ensure that these contracts would be able to participate, DWW should not be allowed to withhold project capacity from the wholesale markets, effectively withholding anticipated customer value. A scenario in which DWW elects to not bid the project capacity into the FCM (and accept a CSO if it clears in the auction) would lead the region to procure excess capacity above what is truly needed to satisfy reliability requirements. This would “represent a costly and inefficient use of society’s resources” (Geissler Testimony, F.E.R.C. Docket No. ER18-619-000, at 9).

For the reasons articulated above, the PPA should be amended to require that DWW take all commercially reasonable actions to obtain a CSO in each year during the contract term

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<sup>2</sup> In March 2018, the Federal Energy Regulatory Commission (“FERC”) granted ISO New England’s petition for a change in its tariff to implement the Competitive Auctions with Sponsored Policy Resources construct, which altered the mechanics of the FCM. *ISO New England Inc.*, 162 F.E.R.C. ¶ 61,205 (2018).

and, if the project does not obtain a CSO, provide a report to National Grid and the Commission on the actions taken and the reasons for failing to clear.

## 2. Remuneration Rate

National Grid's remuneration witness admits that the enabling legislation for this procurement, the ACES Act, does not "contain express provisions regarding remuneration," but that, in approving these contracts, the Commission is given "the authority to '[a]pprove any other proposed regulatory or ratemaking changes that reasonably advance the goals set forth herein'" (Initial Filing at 000380 (Robert B. Hevert Direct Testimony at 6)). As such, National Grid proposes to recover a remuneration of 2.75% annually for the twenty years of the contract. National Grid claims that "[i]t is important to bear in mind that the Company is not an equity participant in the Project, and is not making an investment on which it would earn a return. Nonetheless, it is the investors' capital, and the Companies' prudent management of that capital, that enables the Project's cost-effective financing, and the policy objectives contemplated by the ACES Act. The Company's proposed Remuneration Rate simply compensates the Company and its investors for the use of their capital." (Initial Filing at 000381.) However, National Grid and its investors are not expending their capital; this contract is fully funded by customers. Throughout the filing, National Grid fails to prove that a 2.75% remuneration rate is warranted.

Should the Commission find that that some level of remuneration to National Grid is appropriate for entering into the long-term offshore wind contract under ACES, we believe that 2.75% for the entire duration of the contracts is arbitrary and is not supported by the evidence.

Witness Hevert believes that any amount other than a static 2.75% remuneration level for the life of the contracts will signal a weakening of the regulatory environment in Rhode Island. He states,

*“As noted earlier, the Long-Term Contracting Standard for Renewable Energy entitles the Company to a Remuneration Rate of 2.75 percent. Because the regulatory environment is of great concern to investors and rating agencies, both likely would view a departure from that 2.75 percent Remuneration Rate as a departure from the Commission’s credit-supportive practices. The corresponding increase in perceived regulatory risk would extend beyond the Contract, putting downward pressure on the Company’s credit and financial profile.”* (Initial Filing at 000398-399.)

PowerOptions disagrees with this assessment. Here, the Commission is not departing from a precedent, but rather determining an appropriate remuneration level for this specific contract filing under ACES, if at all. There is no evidence that the credit rating agencies would view a well-reasoned, contract-specific remuneration award as a signal of a weakening regulatory environment.

PowerOptions proposes the concept of a declining remuneration rate for stakeholder and Commission consideration, as an alternative to National Grid’s proposal, if the Commission determines that remuneration is warranted. We propose that every five years the remuneration rate is decreased by one-quarter of the initially approved remuneration rate.<sup>3</sup> A declining remuneration concept appropriately compensates National Grid for accepting the

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<sup>3</sup> For instance, were the Commission to find that the appropriate remuneration level at the outset of the contracts is 2%, the remuneration level would be set at 2% for years 1-5 of the PPA. In years 6-10, the remuneration could be set at 1.5%. For years 11-15, remuneration could be 1%, and, for years 16-20, remuneration could be set at 0.5%.

financial obligation of the contract, while also recognizing that customers should not be paying an unnecessarily high remuneration rate for twenty years, and that National Grid's financial obligation lessens over time. Witness Hevert asserts that the total financial commitment associated with the Revolution Wind project is \$3.21 billion over the lifetime of the contract. (Initial Filing at 000388 (Robert B. Hevert Direct Testimony at 14).) By year 10 of the contract, however, that value will be halved to \$1.605 billion. Since the total financial commitment (and therefore the financial obligation) of this contract decreases over time, it is unjust for customers to be paying in their electricity rates the same remuneration level to National Grid at year 1 as they do at year 20.

### 3. Enforcement of PPA Provisions

PowerOptions further recommends that remuneration be conditioned on continued enforcement of the customer-protection provisions of the contract. While we do not doubt that National Grid will work to enforce customer protection provisions, PowerOptions nevertheless believes that the incentives of National Grid and its customers must be more closely aligned. As proposed, the PPA does not require National Grid to demonstrate that it is enforcing the protection provisions of the PPA. As such, PowerOptions recommends that National Grid be required to file an annual report with the Commission detailing any enforcement activities it pursued in conjunction with the contract or, in the event no enforcement activities were pursued, what actions were taken to ensure compliance with the PPA. Activities may include verifying output and billing, collecting Delay Damages, and enforcing other provisions in the PPA that require National Grid to be proactive. If National Grid is found to be inadequately enforcing customer protection provisions of the PPA, the Commission should reduce or

eliminate remuneration altogether. Because National Grid is receiving full cost recovery for the PPA and has also requested remuneration, it is National Grid's duty to demonstrate that it is proactively monitoring the Revolution Wind project and ensuring compliance with the contract.

#### 4. Treatment of RECs

PowerOptions is concerned that National Grid's proposal to retain the RECs associated with the project for the purpose of meeting National Grid's annual Renewable Energy Standard ("RES") obligation (Initial Filing at 000043-44 (Brennan/DiDomenico Testimony at 40-41); Initial Filing at 000300 (Schedule NG-5 at 2)) represents a subsidization of Standard Offer service customers at the expense of those customers on competitive supply. All Rhode Island electric distribution customers will pay for the energy and RECs associated with this procurement regardless of their supply arrangements. However, as proposed in the filing, only Standard Offer service customers will benefit from National Grid's proposal to retain project RECs to satisfy its RES obligation. This structure is fundamentally unfair to those customers receiving competitive supply, who will double-pay for RECs – once through this tariff and again through their competitive supply contract. PowerOptions recommends that National Grid be required to create a transfer price, based on the average REC market prices at the time of transfer, at which RECs will be sold to Standard Offer service. The difference between the transfer price and the contract price for RECs will be credited towards the contract costs for all customers.<sup>4</sup> This will mitigate the cost-shifting from competitive supply customers to Standard Offer service

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<sup>4</sup> This proposal aligns with how RECs and other environmental attributes retained for satisfaction of basic service RPS requirements is handled in Massachusetts. (See [Section 83C Long-term Contracts for Offshore Wind Energy Generation](#), MA D.P.U. 18-77, Exhibit PO-1-1, at 2 (2018). Specifically, the distribution company witnesses stated, "As approved in the Section 83A proceeding, the Distribution Companies will create a transfer price based on the average REC market prices at the time of transfer.")



customers, while also allowing National Grid to save on the transaction costs of actually purchasing RECs from the market.

### Conclusion

PowerOptions supports Commission approval of the PPA. As stated above, in order to maximize customer benefits, PowerOptions recommends that approval of the PPAs be conditioned on a requirement that Deepwater Wind take commercially reasonable actions to obtain a CSO annually and, in the event it fails to obtain a CSO, provide a report to the Commission and to National Grid on the reasons it failed to do so. PowerOptions also believes that National Grid has not substantiated its request for remuneration. If the Commission finds remuneration is warranted, PowerOptions recommends a declining remuneration percentage over the life of the contracts. Further, PowerOptions recommends that the Commission require National Grid to file an annual report detailing any enforcement activities it pursued in conjunction with the PPA or, in the event no enforcement activities were pursued, what actions it took to ensure compliance with the PPAs. Lastly, PowerOptions recommends that the Commission direct National Grid to create a transfer price for the project RECs that it intends to retain to satisfy Standard Offer service RPS requirements and credit that amount to the cost of the contracts.

Sincerely,



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