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July 30, 2010

VIA MESSENGER

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, MA 02110

Re: Petition Of Massachusetts Electric Company And Nantucket Electric Company, Each d/b/a National Grid, For Approval By The Department Of Public Utilities Of Two Long-Term Contracts To Purchase Wind Power And Renewable Energy Certificates, Pursuant To G.L. c. 169, § 83 And 220 C.M.R. §17.00 et seq., D.P.U. 10-54

Dear Secretary Marini:

Enclosed for filing in the above-referenced matter, please find the Testimony of Michael E. Hachey, filed on behalf of TransCanada Power Marketing Ltd.

In order to acknowledge receipt, please date stamp the enclosed copy of this letter and return it to our messenger. If you have questions, please contact me. Thank you for your attention to this matter.

Sincerely,

/s/ Robert M. Buchanan, Jr.

Robert M. Buchanan, Jr.

Enclosures

cc: Laura Bickel, Hearing Officer
Official Service List

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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

_____)
Petition of Massachusetts Electric Company and)
Nantucket Electric Company each d/b/a)
National Grid for Approval of Proposed)
Long-Term Contracts for Renewable Energy with)
Cape Wind Associates, LLC Pursuant to)
St. 2008, c. 169, § 83)
_____)

D.P.U. 10-54

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TESTIMONY

OF

MICHAEL E. HACHEY

ON BEHALF OF

TRANSCANADA POWER MARKETING LTD

JULY 30, 2010

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COMMONWEALTH OF MASSACHUSETTS

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DEPARTMENT OF PUBLIC UTILITIES

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D.P.U. 10-54

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Background and Qualifications

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Q. Please state your name and business address.

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A. My name is Michael E. Hachey. My business address is 110 Turnpike

17

Road – Suite 203, Westborough, MA 01581-2863.

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Q. Who is your current employer and what positions do you hold?

19

A. I am employed by TransCanada Power Marketing Ltd. (“TCPM”). My

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current position is Vice President and Director, Eastern Commercial.

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Q. What is your background and what are your qualifications?

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A. I have a Bachelor of Science in Electrical Engineering from Northeastern

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University and a Master of Engineering Degree in Electric Power Engineering from

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Rensselaer Polytechnic Institute. I have over 30 years experience in the electric power

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industry, including 11 years with TCPM. I was previously employed by New England

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Power Company for 21 years. I have participated in proceedings before the

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Massachusetts Department of Public Utilities, the Federal Energy Regulatory

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Commission, and other state regulatory commissions. In my current position I am

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responsible for government and regulatory affairs, retail marketing, and property taxes.

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The Kibby Wind Facility

Q. What is the Kibby Wind Facility?

A. The Kibby Wind Facility is a 132 MW wind project located in Kibby and Skinner Townships in northwest Franklin County, Maine. The project is comprised of 44-3 MW Vestas wind turbines.

What is the Commercial Operations Date of the project?

A. One-half of the Kibby Wind Facility achieved commercial operation in late October, 2009. The second half of the project is expected to achieve commercial operation in the Fall of 2010.

Q. Is TransCanada developing any additional wind facilities in New England?

A. Yes. TransCanada is presently seeking regulatory approval for an additional wind facility on Sisk Mountain, an area in the proximity of the Kibby Wind Facility. The Sisk project will consist of between eleven and fifteen turbines totaling between 33 and 45 MW, depending on the outcome of licensing and permitting processes. Additionally, TransCanada is pursuing other wind projects in the region, although the locations of these projects have not been disclosed by TransCanada.

Q. Has the Kibby Wind Facility sold any of its output?

A. Yes. NSTAR signed a power purchase agreement and agreement for the sale of renewable energy certificates with TransCanada each dated June 7, 2007 for 30 MW of energy and associated renewable energy certificates (RECs) from the Kibby Wind Facility. The remainder of the Kibby Wind Facility is available for contract.

1 A. No. The pricing under the Cape Wind Contract, 20.7¢ per kilowatt hour
2 escalating at 3.5%, is one of the highest priced contracts ever signed by a Massachusetts
3 utility. Available data shows that renewable projects in the U.S. Northeast and Canada
4 have signed contracts at far lower prices. As I stated previously, TransCanada's Kibby
5 Wind Facility is expected to be available at a price under 11¢/kilowatt-hour for energy,
6 capacity, and RECs. The Rollins wind farm has recently sold wind energy to Central
7 Maine Power Company for a floor price stream that ranges from 5.5¢ to 6.5¢ per
8 kilowatt-hour. Numerous wind projects have sold to Hydro Quebec for prices in the 10¢
9 range or below. In Delaware, Delmarva Power received bids under 10¢ per kilowatt-hour
10 for inland wind power and 14 ¢ per kilowatt-hour for offshore wind power.

11 **Q. National Grid has argued that there will be insufficient renewables**
12 **available to meet state RPS objectives, and off-shore wind projects must be built to**
13 **satisfy state RPS objectives. Based on your experience, is this valid reasoning?**

14 A. No. First, National Grid cannot make this assertion without making a
15 valid and legitimate region-wide solicitation. It has not done that. A study by Levitan &
16 Associates, Inc. dated March, 2008¹ identified 47,000 megawatts of onshore wind
17 potential in the New England states. More wind potential is available in neighboring
18 New York, Quebec, and New Brunswick. Further, the recent NSTAR RFP for
19 renewables, limited to only Massachusetts projects, elicited 1,180 megawatts of bids from
20 among 35 projects and 27 bidders. According to the Levitan study, New Hampshire and

¹ Phase II Wind Study, Levitan & Associates, Inc., March 2008, available at http://www.iso-ne.com/committeess/comm_wkgrps/prtcpnts_comm/pas/mtrls/2008/may202008/lai_5-20-08.pdf.

1 Vermont have similar wind potential to Massachusetts, and Maine significantly exceeds
2 all those states.

3 **Q. Is the pricing under the Cape Wind contract cost-effective?**

4 A. No. As Dr. Lesser has commented on behalf of the Alliance to Protect
5 Nantucket Sound: “once the price of RECs, emissions reductions and the various tax
6 credits are accounted for, if the project still requires an above-market PPA, then it is
7 simply too costly given how Federal and Commonwealth policy makers have themselves
8 determined the value of the non-market attributes.”²

9 **Q. Does the pricing under the Cape Wind Contract meet the Department’s**
10 **own standards for approval?**

11 A. No. In DPU Docket 07-64-A the Department clearly laid out its standards for
12 contract approvals:

13 The Department has construed G.L. c. 164, § 94A to include a
14 determination of whether the electric distribution company has
15 demonstrated that the contract is in the best interests of customers and is
16 cost-effective. New England Electric System/Nantucket Electric
17 Company, D.P.U. 95-67, at 21-22 (1995), citing New England Power
18 Company, et.al., D.P.U. 1204 (1982), New England Hydro-Transmission
19 Electric Company, Inc. and New England Power Company, D.P.U. 86-247
20 (1987), and Nantucket Electric Company, D.P.U. 94-114, at 9-10 (1995).

21 The objectives of the contract must be consistent with the public interest.

22 D.P.U. 95-67, at 21-22. To be in the public interest, a contract should be

² Affidavit of Jonathan Lesser, on behalf of the Alliance to Protect Nantucket Sound, June 21, 2010, at 33:63.

1 likely to result in net savings for customers. Green Mountain
2 Power/Fitchburg Gas and Electric Light Company, D.P.U. 89-84, at 4
3 (1990), citing Fitchburg Gas and Electric Company/Northeast Utilities,
4 D.P.U. 89-153, at 4 (1989).

5 National Grid's Exhibit MNM-2 shows that the price of the Cape Wind contract
6 (reduced to present value) exceeds the market value of the facility's output by \$700-\$900
7 million, depending on the forecast used. The contracts are not cost effective and are not
8 likely to result in net savings for customers.

9 **Q. What do the parties to the Cape Wind contracts believe to be the**
10 **appropriate standard for the Department's contract review?**

11 A. In their Memorandum of Understanding dated December 1, 2009, the
12 parties and the state's Commissioner of Energy Resources all agreed:

13 "Any such PPA will be subject to the standards set forth in Section 83 of
14 the GCA, 220 C.M.R. 17.00, et. seq. and other applicable Department
15 precedent."³

16 The signatories to the document were Ronald T. Gerwatowski, Deputy General Counsel
17 for Massachusetts Electric Company and Nantucket Electric Company; Philip Giudice,
18 Commissioner of the Massachusetts Department of Energy Resources; and James
19 Gordon, President of Cape Wind Associates, LLC.

20 **Q. Is the National Grid ratemaking proposal for the Cape Wind**
21 **contracts equitable for its non-supply customers?**

³ Memorandum of Understanding dated December 1, 2009 by and among Massachusetts Electric Company and Nantucket Electric Company each doing business as National Grid, the Massachusetts Department of Energy Resources, and Cape Wind at 3.

1 A. No. National Grid proposes to use the energy and RECs from the Cape
2 Wind facility to serve Basic Service customers. “The amount of above-market contract
3 costs would then be spread to all of the Company’s distribution charges.”⁴ Thus, Basic
4 Service customers will receive Cape Wind’s energy and REC products, while non-supply
5 customers will pay a portion of the expected large above-market contract costs and will
6 receive nothing.

7 **Q. Is this rate treatment consistent with the statute?**

8 A. No. The statute only provides two possible rate treatments. National Grid
9 could either (i) “elect to use any energy purchased under such contracts for resale to its
10 customers, and may elect to retain RECs for the purpose of meeting the applicable annual
11 RPS requirements”; or (ii) “shall sell such purchased energy into the wholesale spot
12 market and shall sell such purchased RECs through a competitive bid process.”⁵

13 **Q. Does National Grid purport to justify the Cape Wind contract based on**
14 **carbon reduction?**

15 A. Yes. Existing and assumed future mandates from policy makers are
16 internalized in the energy forecasts National Grid used to evaluate the Cape Wind
17 contracts. These forecasts clearly show that, given existing and forecast greenhouse gas
18 mandates from policy makers at the regional and national level, the contracts are not cost-
19 effective.

20 **The National Grid Procurement Process was Deeply Flawed**

21 **Q. How did National Grid procure the Cape Wind contract?**

⁴ Direct Testimony of Madison N. Milhous, Jr. National Grid, June 4, 2010 at 31:12-14.

⁵ Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”) (St. 2008, c. 169, § 83).

1 A. According to documents filed with the Department by National Grid, it
2 entered into negotiations with Cape Wind because the date for completion of “a potential
3 state-wide RFP process” was uncertain, “potentially jeopardizing the availability of
4 certain tax and financing programs for attractive projects such as Cape Wind ...”⁶
5 National Grid contended it needed to “engage in timely individual negotiations as a
6 method of obtaining a potentially favorable long-term contract with Cape Wind.”⁷

7 **Q. In your view, what is the actual result of the National Grid**
8 **negotiations?**

9 A. The result of the negotiations is that National Grid has entered into one of
10 the highest priced power purchase contracts ever signed by a Massachusetts utility and
11 created a conflict with their express intent of “...obtaining a potentially favorable long-
12 term contract.”

13 **Q. What flaws do you see in this procurement?**

14 A. The first flaw is National Grid’s failure to use a region-wide competitive
15 procurement. New England utilities have a long history of making power purchases on a
16 competitive basis. These purchases were made both before and after deregulation of the
17 industry in New England. Even if National Grid truly believed it needed to conduct
18 negotiations with Cape Wind on a sole-source basis to obtain favorable pricing, it needed
19 to, at a bare minimum, discipline the Cape Wind pricing within a competitive backdrop.
20 It did not.

⁶ Letter from R.T. Gerwatowski, Deputy General Counsel, Legal Department, National Grid, to Mark D. Marini, Secretary, Massachusetts Department of Public Utilities (Dec. 3, 2009).

⁷ Id.

1 The second flaw is the fact that National Grid was not a disinterested, objective
2 buyer. National Grid will reap 4% of contract revenues from rate payers, which will
3 accrue to its earnings, as an apparent incentive for signing a contract. Over the contract's
4 term, National Grid expects to receive \$120 million from its customers for this
5 "incentive." Since National Grid had ample motivation to maximize the pricing of any
6 renewable contract it signed, it should have undertaken protective measures in its
7 procurement process to allow the Department and National Grid's ratepayers to have
8 confidence in the integrity of its procurement and negotiation process. National Grid
9 undertook no such measures, resulting in a deeply flawed procurement process.

10 **Q. Can you comment on the Commerce Clause issues with respect to**
11 **National Grid's procurement?**

12 A. The Commerce Clause of the U.S. Constitution bars a state from
13 discriminating against out-of-state producers. The Department recognized this precept
14 when it issued its June 9, 2010 Order, which suspended the jurisdictional limitation in
15 Section 83. National Grid conducted its procurement process before the Department
16 issued its June 9 Order. At that time Section 83, on its face, did not permit bids from out-
17 of-state generators. National Grid's procurement process did not invite bids from out-of-
18 state generators. Why not? Perhaps because National Grid believed that Section 83 did
19 not permit bids from out-of-state generators, or perhaps because state officials
20 encouraged National Grid to favor in-state generators. Each of those scenarios raises
21 concern under the Commerce Clause. The Department should not approve any long-term
22 contracts under Section 83 until out-of-state generators have received an equal
23 opportunity to bid, and to have their bids evaluated on the merits.

1 **Q. Is there any evidence to indicate the cost to consumers of National**
2 **Grid’s process flaws?**

3 A. Yes. As I’ve stated previously, inland wind projects such as
4 TransCanada’s Kibby Wind Facility project are available at half the cost of the Cape
5 Wind project. Given the total contract costs of \$3 billion for PPA 1 only, this means
6 National Grid seems prepared to proceed with a contract that results in an excess cost to
7 consumers of about \$1.5 billion.

8 However, even if we accept National Grid’s erroneous contention that it needed to
9 select offshore wind, although there is no such requirement in the statute, the excess cost
10 to consumers may exceed \$1 billion.

11 We know this because in contrast, in a competitive procurement conducted by a
12 disinterested utility buyer in Maryland, the utility obtained a price of 14¢/kilowatt-hour,
13 escalating at 2.5%, for an offshore wind project. This procurement was conducted by
14 Delmarva Power, and the utility signed a 200MW contract for energy, RECs and capacity
15 with Bluewater Wind, an offshore wind project to be located 11 miles east of Rehoboth
16 Beach, Delaware.

17 **Q. Does this complete your testimony?**

18 A. Yes. It does.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Petition of Massachusetts Electric Company And)
Nantucket Electric Company, Each d/b/a National)
Grid, For Approval By The Department Of Public)
Utilities Of Two Long-Term Contracts To Purchase)
Wind Power And Renewable Energy Certificates,)
Pursuant to G.L. c. 169, § 83 And 220 C.M.R.)
§17.00 et seq.)

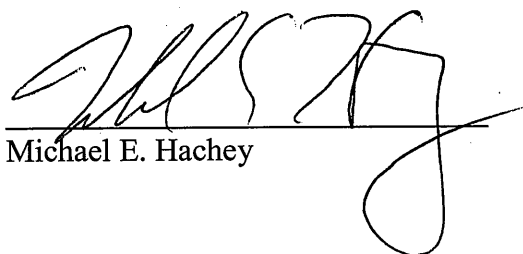
D.P.U. 10-54

AFFIDAVIT OF MICHAEL E. HACHEY

Michael E. Hachey does hereby depose and say as follows:

I, Michael E. Hachey, on behalf of TransCanada Power Marketing Ltd., certify that the testimony filed with the Department of Public Utilities in the above-captioned matter that bears my name was prepared by me or under my supervision and is true and accurate to the best of my knowledge and belief.

Signed under the pains and penalties of perjury this 29th day of July, 2010.



Michael E. Hachey

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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Nantucket Electric Company, Each d/b/a National)
Grid, For Approval By The Department Of Public)
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Wind Power And Renewable Energy Certificates,)
Pursuant To G.L. c. 169, § 83 And 220 C.M.R.)
§17.00 et seq.)

CERTIFICATE OF SERVICE

I certify that I have this day caused the foregoing to be served upon the
Department of Public Utilities and the Official Service List in the above-docketed
proceeding in accordance with the requirements of 220 C.M.R. 1.05.

/s/ Robert M. Buchanan, Jr.
Robert M. Buchanan, Jr. (BBO# 545910)
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Two International Place
Boston, MA 02110
(617) 248-5000
rbuchanan@choate.com

Dated: July 30, 2010