

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION**  
**DOCKET NO. 4111**  
**DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO**  
**THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS**  
**SET 1**

**Comm. 1-1:** Please provide a schedule listing each provision of the unsigned Purchase Power Agreement (“PPA”) where there is an outstanding dispute between National Grid and Deepwater Wind as Deepwater Wind understands the issue. On the same schedule, please indicate whether or not Deepwater Wind believes the issue is arbitrable and why or why not.

**Status of Negotiations**

The negotiations between Deepwater Wind Block Island, LLC (“Deepwater”) and National Grid resulted in a draft PPA that is in substantially agreed form, with only a short list of unresolved issues. Deepwater agrees with National Grid’s characterization of the issues in its letter of October 21, 2009, *i.e.* that “the issue relating to fixed pricing is a threshold issue.”

With respect to pricing, Deepwater is prepared to negotiate a fixed price PPA with National Grid and is confident that an acceptable outcome can be achieved. Deepwater is committed to achieving a favorable price for the Rhode Island ratepayer and to demonstrate the viability of its proposed larger Rhode Island Sound project.

With respect to issues other than price, Deepwater observes that many of these issues were raised very late in the negotiating process and can be resolved to both parties’ satisfaction in short order if both parties agree to resume direct negotiations, whether on a bilateral basis or pursuant to a non-binding dispute resolution process ordered by the Commission (for example, with the assistance of a mediator appointed by the Commission).

Deepwater believes that such a process would result in an executable contract well in advance of the December 31, 2009 deadline imposed on the Commission, but recognizes that the Commission may require additional time to consider the contract submitted by the parties and is prepared to discuss a revised deadline with the Commission and National Grid.

**Response**

Deepwater interprets R.I.G.L. § 39-26.1-7, which grants the Commission “the discretion to order the parties to arbitrate the dispute on an expedited basis,” as empowering the Commission to direct Deepwater and National Grid to enter into non-binding dispute resolution procedures, including but not limited to, mediation or continued negotiations aided by a mediator, with a view to arriving at a mutually acceptable outcome for both parties.

Deepwater submits the following schedule of outstanding issues between the parties and believes that all of the outstanding issues can be resolved in direct negotiations or pursuant to the dispute resolution process contemplated in R.I.G.L. § 39-26.1-7. Accordingly, Deepwater commits that it will fully engage in direct negotiations with National Grid, or in a non-binding dispute resolution process should the Commission decide to order as such in this proceeding.

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION  
DOCKET NO. 4111  
DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO  
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS  
SET 1**

<b>Issue</b>	<b>Description</b>
1. Pricing	<p><b>Issue: The parties have not agreed on the pricing structure for the PPA.</b></p> <p>Deepwater had proposed, and the parties had negotiated, at length, a pricing structure that would have enabled Deepwater to pass along savings in capital expenditures in the form of a lowered power price. National Grid has indicated that it prefers a fixed price approach, and as indicated above, Deepwater is prepared to negotiate on this basis.</p> <p><b>PPA provisions affected by this issue: Exhibit E (Pricing Schedule).</b></p>
2. Number of Turbines	<p><b>Issue: Whether the size of the project should be six, seven or eight turbines.</b></p> <p>The parties have not reached agreement as to the size of the project. Deepwater did not propose and does not support the six (6) turbine project described in National Grid's filing. Deepwater is proposing a project consisting of eight (8) turbines, with an option to reduce the number of turbines to seven (7) if so dictated by final site and engineering studies</p> <p>Deepwater believes that a project of seven (7) turbines or more is necessary to achieve greater economies of scale and to lower the cost of power to Rhode Island ratepayers.</p> <p>National Grid asserts that the law does not permit a project with more than six (6) turbines. It reaches this conclusion by applying a capacity factor of 40% to the generating capacity of six (6) wind turbines rated at 3.6 MW each and by asserting that R.I.G.L. § 39-26.1-7 imposes a statutory limit of ten (10) MW on the project. This methodology is flawed for at least two reasons:</p> <p>First, the 40% capacity factor is an imputed estimate based on today's limited meteorological data of the wind resource at various locations around the Block Island region, rather than actual site-specific data, and may not accurately describe the project's actual operation. Because the wind resource studies necessary to support the project are still preliminary, it is more appropriate to consider a reasonable range of expected capacity factors – given the variability of the wind resource and the early stage of resource validation. Deepwater can demonstrate that expected ranges of capacity factors result in seven (7) and eight (8) turbine projects producing output that fall within the ten (10) MW "statutory limit" that National Grid asserts.</p> <p>Second, Deepwater disagrees with National Grid's assertion that R.I.G.L. § 39-26.1-7 imposes a statutory limit of ten (10) MW on the project. The legislation does not restrict National Grid's ability to propose, or the Commission's ability to approve, a larger project. The only obligation the statute imposes is a solicitation by National Grid for a ten (10) MW project. The statute does not restrict the size of the project's output in the final contract. Indeed, the statute's primary directive to the parties is to negotiate a contract with commercially reasonable terms. Deepwater has made the case to National Grid that projects of seven (7) and eight (8) turbines result in lower per</p>

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION  
DOCKET NO. 4111  
DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO  
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS  
SET 1**

	<p>megawatt hour pricing for ratepayers.</p> <p><b>PPA provisions affected by this issue: all of the PPA terms related to pricing, including Exhibit E, are affected by the size of the project.</b></p>
<p>3. Transmission Cable Ownership and Obligations</p>	<p><b>Issue: Whether Deepwater's obligations under the PPA should become effective in the absence of a mutually acceptable arrangement for the transmission cable to the mainland.</b></p> <p>The parties have not agreed whether Deepwater's obligations under the PPA should take effect absent a mutually acceptable arrangement between the parties with respect to the transmission cable ("Cable") connecting the Town of New Shoreham to the mainland of the State. The Cable, as contemplated by R.I.G.L. § 39-26.1-7(b), is integral to the project. Deepwater is proposing to build the Cable and transfer ownership to National Grid. While National Grid has stated that it is amenable to owning the Cable, it has expressly reserved the right to refuse ownership. Accordingly, Deepwater is proposing several contractual provisions to protect against a situation in which it would be developing what could become a stranded asset.</p> <p>Grid is proposing that the PPA become effective upon receipt of Commission approval of the PPA without regard to the status of any arrangements regarding the Cable. Deepwater is proposing that the effectiveness of the PPA be subject to (a) mutual agreement with respect to the Transmission Cable Purchase Agreement, the Transmission Cable Cost Arrangement, and the Interconnection Agreement; and (b) the Transmission Cable Regulatory Approvals (each, as defined in the PPA). Deepwater should not have a contractual obligation to post credit support, or to assume any other obligations to National Grid, prior to the parties reaching an acceptable arrangement regarding the Cable.</p> <p>To the extent that the Commission does not approve National Grid's ownership of the Cable, Deepwater is proposing that the parties be required to negotiate in good faith an adjustment to the PPA pricing to factor in Deepwater's transmission charges related to use of the Cable. National Grid's proposal effectively provides that the consideration of any such alternative pricing arrangement would be at National Grid's option.</p> <p>Further, once National Grid agrees to own the Cable and it has received the necessary regulatory approvals to do so, Deepwater submits that National Grid should be required to respect and perform the obligations it has agreed to, rather than have the right to opt out of such arrangements as provided in Section 8.5(e) of National Grid's proposed PPA.</p> <p><b>PPA provisions affected by this issue: Section 6.1(a), Section 8.1 (a), Section 8.5(a), Section 8.5(b), Section 8.5(d) and Section 8.5(e).</b></p>
<p>4. Transmission Cable Outages and Force Majeure</p>	<p><b>Issue: Whether National Grid should have the obligation to purchase delivered power if the Cable (owned and operated by National Grid) is out of service.</b></p>

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION  
DOCKET NO. 4111  
DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO  
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS  
SET 1**

	<p>The parties have not agreed who should bear the risk under the PPA during Cable outages. Negotiations on this issue have assumed that National Grid will own the Cable. While the parties generally agree that title and risk of loss for energy generated by the project will pass at the delivery point on Block Island, National Grid is proposing that it should not have to pay Deepwater for energy delivered to the delivery point if the Cable is not in service for any reason, including an outage due to the fault of National Grid.</p> <p>Deepwater proposes that National Grid should accept power except when the Cable outage occurs through no fault of National Grid, rather than National Grid's proposal that it should be excused even if it has not maintained the Cable in accordance with industry standards.</p> <p>Deepwater further proposes that absent fault, any force majeure event excusing performance should extend the contract by the duration of the force majeure. Deepwater also is proposing a termination right after three years of suspension due to force majeure events.</p> <p><b>PPA provisions affected by this issue: Section 4.4 and Article 10.</b></p>
<p>5. Interconnection Agreement Cross-Default</p>	<p><b>Issue: Whether a default by Deepwater under the project's interconnection agreement should be an event of default under the PPA.</b></p> <p>The parties have not agreed whether Deepwater's noncompliance with the project's interconnection agreement should be treated as an event of default under the PPA. National Grid is proposing a cross-default scenario in which a default under the interconnection agreement would permit National Grid to exercise its remedies for breach of the PPA, including termination and termination payment rights. Deepwater does not agree that compliance with the interconnection agreement should be an obligation under the PPA because both agreements are standalone contracts.</p> <p>Further, a default by Deepwater under the interconnection agreement may not impact National Grid in its capacity as the offtaker under the PPA. Accordingly, Deepwater is proposing to eliminate the cross-default provision or, in the alternative, provide for automatic termination of the PPA in the event of a default under the interconnection agreement.</p> <p><b>PPA provisions affected by this issue: Section 3.4(d).</b></p>
<p>6. Scope of Environmental Indemnity</p>	<p><b>Issue: Whether Deepwater must indemnify National Grid for environmental claims resulting from National Grid's own negligence.</b></p> <p>The parties have not agreed on the scope of Deepwater's environmental indemnity obligations. Deepwater has agreed to indemnify National Grid against certain environmental claims; however, National Grid is proposing that Deepwater should indemnify National Grid even if the basis for the claim is an</p>

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION  
DOCKET NO. 4111  
DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO  
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS  
SET 1**

	<p>act of negligence committed by National Grid. Deepwater's position is that it should not be required to bear any losses associated with environmental claims resulting from National Grid's own negligence.</p> <p><b>PPA provisions affected by this issue: Section 13.2.</b></p>
--	---

Prepared by: William Moore, Chief Executive Officer, Deepwater Wind Holdings, LLC

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION**  
**DOCKET NO. 4111**  
**DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO**  
**THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS**  
**SET 1**

**Comm. 1-2:** Please provide a list of each Deepwater Wind employee, consultant or attorney, whether in-house or outside the Deepwater Wind who participated in negotiations of the unsigned PPA on behalf of Deepwater Wind. Please provide the identity of the law firm with which any outside attorney is associated and the consulting firm of any outside consultant utilized.

A. Employees

Name	Title
Bill Moore	Chief Executive Officer, Deepwater Wind Holdings
David Schwartz	General Counsel, Deepwater Wind Holdings
Paul Rich	Chief Development Officer, Rhode Island, Deepwater Wind Holdings

B. Outside Counsel

Name	Title
Jeff Grybowski	Partner, Hinckley, Allen & Snyder LLP
Jessica Friedman	Partner, Van Ness Feldman

C. Investor Representatives

Name	Title
Justin Chan	Investor representative (D. E. Shaw)
Jingbo Wang	Investor representative (D. E. Shaw)

Prepared by: William Moore, Chief Executive Officer, Deepwater Wind Holdings, LLC

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION  
DOCKET NO. 4111  
DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO  
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS  
SET 1**

**CERTIFICATION**

I hereby certify that on October 27, 2009, I sent by electronic mail and regular mail a copy of the within to all parties set forth on the attached Service List.

<b>Name/Address</b>	<b>E-mail Distribution</b>	<b>Phone/FAX</b>
Thomas R. Teehan, Esq. National Grid. 280 Melrose St. Providence, RI 02907	<a href="mailto:Thomas.teehan@us.ngrid.com">Thomas.teehan@us.ngrid.com</a>	401-784-7667 401-784-4321
	<a href="mailto:Joanne.scanlon@us.ngrid.com">Joanne.scanlon@us.ngrid.com</a>	
Ronald T. Gerwatowski, Esq. National Grid 40 Sylvan Rd. Waltham, MA 02451	<a href="mailto:Ronald.gerwatowski@us.ngrid.com">Ronald.gerwatowski@us.ngrid.com</a>	
Joseph A. Keough, Jr., Esq. Keough & Sweeney 100 Armistice Blvd. Pawtucket, RI 02860	<a href="mailto:jkeoughjr@keoughsweeney.com">jkeoughjr@keoughsweeney.com</a>	401-724-0600
Michael McElroy, Esq. Schacht & McElroy PO Box 6721 Providence RI 02940-6721	<a href="mailto:McElroyMik@aol.com">McElroyMik@aol.com</a>	401-351-4100 401-421-5696
Leo Wold, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	<a href="mailto:lwold@riag.ri.gov">lwold@riag.ri.gov</a>	401-222-2424 401-222-3016
	<a href="mailto:Steve.scialabba@ripuc.state.ri.us">Steve.scialabba@ripuc.state.ri.us</a>	
	<a href="mailto:Al.contente@ripuc.state.ri.us">Al.contente@ripuc.state.ri.us</a>	
Jon Hagopian, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	<a href="mailto:jhagopian@riag.ri.gov">jhagopian@riag.ri.gov</a>	
	<a href="mailto:Dmacrae@riag.ri.gov">Dmacrae@riag.ri.gov</a>	
	<a href="mailto:Mtobin@riag.ri.gov">Mtobin@riag.ri.gov</a>	
<b>Original &amp; nine (9) copies w/:</b> Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick RI 02889	<a href="mailto:Lmassaro@puc.state.ri.us">Lmassaro@puc.state.ri.us</a>	401-780-2017 401-941-1691
	<a href="mailto:Cwilson@puc.state.ri.us">Cwilson@puc.state.ri.us</a>	
	<a href="mailto:Nucci@puc.state.ri.us">Nucci@puc.state.ri.us</a>	
	<a href="mailto:Anault@puc.state.ri.us">Anault@puc.state.ri.us</a>	
	<a href="mailto:Sccamara@puc.state.ri.us">Sccamara@puc.state.ri.us</a>	
Matt Auten, Office of Lt. Governor	<a href="mailto:mauten@ltgov.state.ri.us">mauten@ltgov.state.ri.us</a>	

STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION  
DOCKET NO. 4111  
DEEPWATER WIND BLOCK ISLAND, LLC'S RESPONSE TO  
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION'S DATA REQUESTS  
SET 1



---

Joseph A. Keough, Jr., Esquire # 4925  
KEOUGH & SWEENEY, LTD.  
100 Armistice Boulevard  
Pawtucket, RI 02860  
(401) 724-3600