

March 23, 2010

VIA HAND DELIVERY & ELECTRONIC MAIL

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

**RE: Docket 4111 – Review of Proposed Town of New Shoreham Project
Pursuant to RI General Laws § 39-26.1-7
National Grid Initial Brief**

Dear Ms. Massaro:

Enclosed please find ten (10) copies of the Initial Brief of National Grid¹ in the above-referenced proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me or Jennifer Brooks Hutchinson at (781) 907-2121.

Very truly yours,



Ronald T. Gerwatowski

cc: Leo Wold, Esq.
Steve Scialabba, Division

¹ Submitted on behalf of The Narragansett Electric Company d/b/a National Grid.

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate were electronically submitted, hand delivered and mailed to the individuals listed below.



Joanne M. Scanlon
National Grid

March 23, 2010
Date

**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4111 - Service List Updated 3/17/2010**

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND PUBLIC UTILITIES COMMISSION

The Narragansett Electric Company)
d/b/a National Grid)
Review of Town of New Shoreham Project)
Pursuant to R.I. Gen. Laws § 39-26.1-7)

Docket No. 4111

INITIAL BRIEF OF NATIONAL GRID IN SUPPORT OF APPROVAL

National Grid¹ submits this initial brief in support of the Power Purchase Agreement executed on December 9, 2009 (the “PPA”) between National Grid and Deepwater Wind Block Island, LLC (“Deepwater”).

The matter before the Commission in this docket requires the Commission to determine if the PPA reasonably carries out the policy objectives associated with facilitating the financing and construction of a renewable generation project off the coast of Block Island. All parties acknowledge that this eight-turbine wind project is more expensive than traditional generation resources. It also appears to be more expensive than other renewable generation alternatives that could become available. But that should not be the dispositive issue for these proceedings as the law fully recognizes that renewable generation is more expensive. If it were not, there would have been no need for special legislation to facilitate this special project off the coast of Block Island. Further, finding a renewable project with the lowest possible cost was never the objective of this special section of the law pertaining to New Shoreham. If it were, there would have been a clear standard set forth that required

¹ The Narragansett Electric Company d/b/a National Grid hereinafter referred to as “National Grid” or the “Company.”

the Commission to make a determination that such a project had been identified, and there would have been no requirement related to New Shoreham. Instead, the special section of the law targeted a renewable project that had up to eight wind turbines and included a special transmission cable project to interconnect Block Island to the mainland. By these specifications, it was inevitable that the project would be more expensive than other alternatives. The question before the Commission, therefore, is whether the PPA in this case is reasonable given those parameters.

Understandably, the Commission is concerned about rate impacts. National Grid also has been concerned since the beginning of negotiations last fall. Given the law, it was National Grid's primary objective to achieve the lowest price possible for this project, taking into account all the requirements of the statutory provisions, the size limitations, and the need for the developer to obtain financing. After rejecting several proposals made by Deepwater during the negotiations, National Grid eventually agreed because it concluded that it had achieved a commercially reasonable price, taking into account the parameters of the law and the legislative intent to move forward with a project of this kind. The Company did not come to agreement because the price of the power would save energy costs for customers. Nor did the Company do so because it was the lowest cost renewable generation project that could be found. Rather, National Grid came to agreement after taking into consideration the legislative policy and purpose surrounding the project.

Certainly, this project is small scale. Thus, taken in isolation, it is not going to significantly reduce dependency on fossil fuels, nor will it have a material impact on the environment. But the point of the law was to establish a starting point for making off-shore wind power a reality for the state and the region. To be consistent with this statutory intent,

National Grid believes that the reasonableness of the terms must be measured in a way that takes into account all the specifications of the law. While National Grid acknowledges that reasonable minds could differ regarding the policy question whether a small scale eight-turbine wind project such as this is “worth the price” to be paid under the PPA, it was National Grid’s role to carry out the legislative initiative in good faith to achieve the best outcome under the circumstances for its customers. By the same measure, it is now the Commission’s role to assure that the project, as constituted through the PPA, meets the intent and objectives of the law in a reasonable manner. National Grid believes that the PPA terms accomplish that goal and that the record in this case supports this conclusion.

Having said this, approval of the PPA is still only the first step. Once the PPA is approved, the parties will move forward in an attempt to achieve a reasonable agreement to facilitate the transmission cable portion of the project. Assuming that can be achieved, the parties will return to the Commission for further review. But with respect to the PPA before the Commission in this proceeding, National Grid respectfully requests the Commission to approve it, thus allowing the parties to take the next steps.

For the reasons that will be set forth in this brief, National Grid believes that the relevant legal standards have been met for the Commission to approve the PPA. The remainder of this brief will focus on the applicability of those legal standards to this case, in support of approval of the PPA.

I. The PPA Contains Commercially Reasonable Terms and Conditions

Given the limitations set forth in Section 39-26.1-7, which is narrowly tailored to apply specifically to the Town of New Shoreham project, the terms and conditions set forth in this agreement are commercially reasonable. Unlike the other provisions of Chapter 39-

26.1, Section 7 limits the project to eight wind turbines with aggregate nameplate capacity of no more than thirty megawatts. See R.I.G.L. § 39-26.1-7(a). If the Commission applies a commercial reasonableness standard² in determining whether to approve or disapprove the PPA, it is only appropriate that the Commission apply this standard in the context of a small demonstration project that has been statutorily limited to eight turbines. Therefore, the threshold question is whether the project is commercially reasonable given the statutory limitation for a small-scale offshore wind project.

National Grid recognizes that the price of 24.4 cents per kWh (\$244 per MWh) in 2013 dollars with a 3.5% escalator appears to be more expensive than other alternative renewable energy sources, and that this price, on its own, may not represent what an experienced power market analyst would expect to see generally with other types of newly developed renewable projects that do not present the same complexities as a small-scale demonstration project such as the Block Island project. See Mihous Pre-Filed Testimony at 7. For example, given that this project is statutorily capped at eight wind turbines, Deepwater was not able to achieve certain economies of scale that one would expect to achieve with a larger-scale project that should result in a lower unit cost of power. See Company's Response to Division Data Request 2-1; Nickerson Pre-filed Testimony at 15.

In addition, this type of offshore wind demonstration project is the first of its kind. The natural complexities of offshore wind projects coupled with the limited size of this

² In the Company's initial filing letter dated October 15, 2009, National Grid stated its belief that the Commission had wide latitude in determining whether to approve or disapprove the PPA and could exercise the powers it traditionally exercises over utility ratemaking matters, which considers, among other factors, the costs and benefits of a proposal. National Grid further acknowledged in its November 9, 2009 Objection to the Rhode Island Building and Construction Trades Council's Motion to Intervene that there is first a threshold question of whether the proposed PPA is commercially reasonable in order to give effect to the language of Section 7(a) that states "[n]egotiations shall proceed in good faith to achieve a commercially reasonable contract." R.I.G.L. § 39-26.1-7(a). This determination of commercial reasonableness needs to be made within the context of the statutory limitations.

project easily distinguish it from other renewable energy sources that may be less costly. See Nickerson Pre-Filed Testimony at 11-12. Lastly, this project is unique in the sense that it was singled out by the legislature. This is made evident by the fact that in response to the ongoing proceedings the legislature passed an amendment to Section 39-26.1-7 that expressly allowed for the type of small-scale offshore wind project that Deepwater has proposed. When applied in this context, the PPA meets the “commercially reasonableness” test.³

There also are valid policy reasons to approve the PPA in the context of Section 39-26.1-7. First, the development of offshore wind power through a small-scale demonstration project will provide “first mover” advantage for the State of Rhode Island, making it possibly the first in the nation to construct and operate this type of renewable energy project. See Milhous Pre-Filed Testimony at 5-6; Rhode Island Economic Development Corporation Pre-Filed Testimony at 6. Second, this project is a reasonable starting point for the State of Rhode Island to meet its climate change objectives through the development of offshore wind. See Milhous Pre-Filed Testimony at 6. These objectives clearly underlie the intent of Section 39-26.1-7 that calls for one newly developed renewable energy resources project of ten megawatts or less and a maximum of eight wind turbines with aggregate nameplate capacity of no more than thirty megawatts. See R.I.G.L. § 39-26.1-7(a).

Finally, in urging the Commission to approve this PPA as commercially reasonable, National Grid firmly believes that the project is distinguishable from other projects that may be considered in the future. As discussed above, Section 39-26.1-7 is a stand-alone provision that applies solely to the Town of New Shoreham project. This section of the statute is

³ The pre-filed direct testimony of Madison Milhous and Deepwater’s witness, David Nickerson, further supports a determination that the PPA is commercially reasonable in the context of a small-scale demonstration project for the reasons set forth above. See Milhous Pre-filed Testimony at 7; Nickerson Pre-filed Testimony at 6, 44; Tr. at 239 (March 10, 2010).

separate and distinct from Section 39-26.1-8 governing the utility-scale offshore wind project and Section 39-26.1-3 governing the annual solicitation process for newly developed renewable energy resources. This eight-turbine wind demonstration project is being developed consistent with the intent of Section 39-26.1-7, and therefore, the price and other terms of the PPA should not be considered a precedent for other renewable energy projects that may be developed pursuant to other sections of the statute. See Milhous Pre-filed Testimony at 6. For these reasons, in approving the PPA, National Grid respectfully requests that the Commission do so with the express caveats that (1) the PPA is distinguishable from other projects that National Grid may consider in the future in order to meet its statutory obligations, and (2) that the terms and conditions of the PPA do not create precedent for future potential renewable energy projects.

II. National Grid’s Request For Proposals Was Carried Out in Accordance with Rhode Island General Laws § 39-26.1-7

The Request for Proposals issued by National Grid was appropriate and consistent with the statutory requirements. The language in Section 39-26.1-7(a) requires that National Grid solicit proposals for “one newly developed renewable energy resources project of ten (10) megawatts or less.” In addition, the statute requires that the proposal “enhance the electric reliability and environmental quality of the Town of New Shoreham.” The term “newly developed renewable energy resources” is defined as “electrical generation units that use exclusively an eligible renewable energy resource....” R.I.G.L. § 39-26.1-2(6). Section 39-26-5 sets forth those resources that constitute an “eligible renewable energy resource.”

While the statute includes other types of renewable energy resources in addition to wind power (such as solar and hydro), it was improbable that any other eligible renewable energy resource would satisfy the statutory requirement to enhance the electric reliability of

the Town of New Shoreham. At the time National Grid issued its RFP in July 2009, it was already public knowledge that Deepwater had been selected as the successful developer to construct a wind project off the shores of Rhode Island. See Tr. at 155-56 (March 9, 2010). As a result, Section 39-26.1-7, which also calls for a transmission cable connecting Block Island to the mainland, was purposefully designed with this particular Block Island project in mind. Furthermore, the legislature's passage of an amendment to Section 39-26.1-7 in October 2009 that included language specifically for a project "that includes up to (but not exceeding) eight (8) wind turbines" was in direct response to these ongoing proceedings. This amendment is an indisputable reflection of the legislature's agreement that Deepwater's proposed Block Island project was exactly the type of project that the legislature had intended. Certainly, at the time of passage of this key amendment, the legislature and the Governor were aware of this well-publicized proceeding. Thus, the amendment can be reasonably interpreted as an endorsement of the process utilized by National Grid. For all of these reasons, the RFP was structured appropriately and the fact that no other developers submitted proposals should have no bearing on the Commission's decision in this case.

III. The Commission Is Not Required to Make a Determination Regarding the Transmission Cable in These Proceedings

The Commission can approve the PPA, subject to the condition that it also receives a filing setting forth transmission cable arrangements that it must approve in future proceedings. National Grid acknowledges the Commission's consternation with approving the PPA absent an executed Transmission Cable Agreement. See Tr. at 208-10 (March 9, 2010). However, the Company does not believe that the two components need to be linked for purposes of the present proceedings. Such a determination is not supported by the plain

language of the statute. Section 39-26.1-7 does not require that the Commission rule on the PPA and the cable arrangements at the same time.

Section 7(a) applies solely to the approval of the contract. This section states that [t]he [C]ommission shall review the contract and issue an order approving or disapproving the contract on or before January 31, 2010.” R.I.G.L. § 39-26.1-7(a) (emphasis added). This deadline was extended by statutory amendment for the sole purpose of facilitating these proceedings, and further extended by order (to which no party objected). There is no similar deadline for reviewing and issuing an order approving or disapproving of the cable arrangements. In fact, Section 7(b) provides specifically for a transmission cable between the Town of New Shoreham and the mainland, which the utility may propose to own or operate, “subject to [C]ommission approval.” R.I.G.L. § 39-26.1-7(b). This section further states that the utility may decline to own or otherwise participate in the transmission cable project, “even if the [C]ommission approves such arrangements.” This language is a clear indication by the legislature that the transmission cable arrangements, once finalized by the parties, could be approved separate and apart from the PPA proceedings.

The Commission also raised a concern with the ultimate cost of the project to National Grid’s customers where the cable cost is unknown. See Tr. at 210 (March 9, 2009). This is an understandable concern. However, assuming the Commission approves the PPA, the project cannot move forward until the Commission has reviewed and approved the Transmission Cable Agreement. See Id. at 209. Approval of the PPA does not bind the Commission to approve any proposed transmission cable arrangements, including associated costs. The Commission will have an opportunity to review the cable arrangements and the

ultimate cost to customers in separate proceedings. Approval of the PPA simply enables the parties to proceed to the next step in the process.

IV. Conclusion

The Rhode Island legislature passed Chapter 26.1 of Title 39 with the intention of advancing renewable energy generation, and in particular, offshore wind generation in Rhode Island. This small-scale demonstration project offers a unique opportunity to demonstrate the feasibility of wind power with minimal risk and without establishing precedent for future larger-scale renewable energy projects. For the reasons set forth above, the Company respectfully requests that the Commission approve the PPA.

The Narragansett Electric Company d/b/a
National Grid
By its attorneys,



Ronald T. Gerwatowski (RI Bar #4502)
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Date: March 23, 2010