

October 27, 2009

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
Responses to Commission Data Requests – Set 1**

Dear Ms. Massaro:

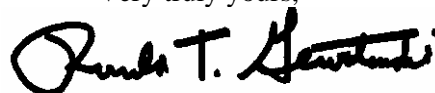
Enclosed on behalf of The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”), are the Company’s responses to the Commission’s first set of data requests in the above-captioned docket.

Data request 1-1 asked for an identification of unresolved issues, along with the opinion of the Company as to which were arbitrable. National Grid acknowledges that Rhode Island General Laws Section 39-26.1-7 provides the Commission with the discretion to order the Company and Deepwater Wind Block Island, LLC (“Deepwater”) to arbitrate, on an expedited basis, the parties’ dispute arising from their inability to reach agreement on a commercially reasonable contract. However, for the reasons given in the response and summarized below, National Grid does not believe arbitration is appropriate at this time.

In the responses, National Grid has identified ten issues that have not been resolved. Of the ten issues, National Grid believes that six of them are not arbitrable. However, National Grid also believes that the remaining four, though arbitrable (if they were the only issues standing in the way of an agreement) are of such nature that they are readily resolvable through negotiations if the Commission were to determine pricing terms that are reasonable and in the best interest of customers. For that reason, the Company believes that the Commission should hold hearings to make a determination on pricing terms. If the Commission finds the pricing unacceptable, such a ruling would render moot all other issues because the Commission will have disapproved the agreement. On the other hand, if the Commission finds pricing that is acceptable, the parties should first be directed to negotiate any remaining issues that are deemed arbitrable. Only if agreement cannot be reached at that stage should arbitration be considered.

In sum, the threshold issue in this docket is whether the pricing terms are reasonable and acceptable for customers, as determined by the Commission. Only after the Commission has made a determination on the pricing issues, should arbitration be considered, if not rendered moot by the Commission’s pricing decision.

Very truly yours,



Ronald T. Gerwatowski

cc: Docket 4111 Service List
Leo Wold, Esq.
Steve Scialabba, Division

Certificate of Service

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



October 27, 2009

Joanne M. Scanlon

Date

**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4111 - Service List Updated 10/26/09**

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Commission Data Request 1-1

Request:

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 Block Island, LLC (“Deepwater Wind”) as National Grid understands the issue. On the same schedule, please indicate whether or not National Grid believes the issue is arbitrable and why or why not.

Response:

Below is a list of ten issues on which National Grid and Deepwater Wind were unable to reach closure. Those areas are numbered 1 through 10 below. Of the ten issues, National Grid believes that six of them are not arbitrable. However, National Grid also believes that the remaining four, though arbitrable if they were the only issues standing in the way of an agreement, are of such nature that they are readily resolvable through negotiations if the Commission were to determine pricing terms that are reasonable and in the best interest of customers. For that reason, the Company believes that the Commission should hold hearings to make a determination on pricing terms. If the Commission finds the pricing unacceptable, it renders moot all other issues. If, on the other hand, the Commission finds pricing that is acceptable, the parties should first be directed to negotiate any remaining issues that are deemed arbitrable. Only if agreement cannot be obtained in such case on such issues should arbitration be ordered.

PPA Section(s)	Issue	Arbitrable or Not Arbitrable
#1 Ex. E	For the reasons explained in National Grid’s filing letter, the parties were unable to agree on the pricing structure.	Not Arbitrable
#2 Ex. A, Ex. E	R.I.G.L. §39-26.1-7(a) caps the size of the Facility at 10 MW. Using the methodology in R.I.G.L. § 39-26.1-2(7), assuming a 3.6 MW nameplate rating for each turbine, and the 40 percent capacity factor assumed by Deepwater Wind in its proposal, only a Facility with six or fewer wind turbines will comply with that statutory cap.	Not Arbitrable

Commission 1-1 (cont.)

PPA Section(s)	Issue	Arbitrable or Not Arbitrable
#3 4.4	Deepwater Wind has proposed that it would receive payment for its power even if the undersea transmission cable is out-of-service for a reason other than a Force Majeure event, regardless of whether National Grid, Deepwater Wind’s affiliate or an unaffiliated third party owns that transmission cable, as described in footnote 3. National Grid’s proposal is consistent with how other generators are treated in ISO New England, and National Grid believes that treating Deepwater Wind differently could be a violation of Federal Energy Regulatory Commission’s open transmission access requirements.	Not Arbitrable
#4 8.1	<p>Section 8.1 includes a provision that makes the effectiveness of the agreement conditioned upon PUC approval. In footnote 6, Deepwater is proposing an additional condition that would make the agreement conditioned upon receipt of the approvals necessary for National Grid to own the cable. Thus, if those conditions are not met, the agreement never becomes effective. National Grid is concerned because R.I.G.L. §39-26.1-7 required the developer to provide a transmission cable solution to Block Island, and only gave National Grid the option to own the cable. By inserting the condition as proposed in footnote 6, the developer is essentially avoiding the condition to offer a transmission cable solution, placing sole reliance on National Grid transmission cable ownership to move forward with the project. National Grid believes this is inconsistent with the requirements of the statute.</p> <p>Note: Footnote 6 contains a typographical error in clause (c). National Grid believes that the words should read “(c) delivery by Buyer to Seller of notice . . .”</p>	Not Arbitrable

Commission 1-1 (cont.)

PPA Section(s)	Issue	Arbitrable or Not Arbitrable
#5 8.2	Consistent with the requirements of R.I.G.L. §39-26.1-7(a), National Grid had included a commitment to file the PPA with the Commission by the deadline in the statute. In footnote 7, Deepwater Wind proposed language that would have prevented National Grid from seeking a reconsideration of the Commission’s order if National Grid later believed that there was a problem with the Commission’s order approving the agreement or another unexpected issue arose. That was the legal effect of the requirement sought by Deepwater to have National Grid commit to not take “any action or make any PUC filing inconsistent with, or seek to modify, rescind, amend or have withdrawn, the terms” of the Commission’s approval (if and when given) without Deepwater Wind’s consent.	Not Arbitrable
#6 8.5	Under R.I.G.L. § 39-26.1-7(b), National Grid “has the option to decline to own, operate or otherwise participate in the transmission cable project, even if the commission approves such arrangements.” Consistent with that language, National Grid proposed that either Party may, but is not required to, terminate the PPA if the conditions precedent to National Grid’s ownership of the undersea transmission cable are not satisfied, and that nothing in the PPA would obligate National Grid to own, operate or otherwise participate in the undersea transmission cable project, even if those conditions are satisfied. Deepwater Wind’s proposal, in footnotes 8 through 11, attempts to require National Grid to own the undersea transmission cable if certain conditions in the PPA are satisfied, thereby attempting to force National Grid to make a commitment now with respect to the transmission cable that is inconsistent with the statute.	Not Arbitrable

Commission 1-1 (cont.)

PPA Section(s)	Issue	Arbitrable or Not Arbitrable
#7 10.1(c)	National Grid proposes Force Majeure provisions that (i) permit either Party to terminate the PPA if a Force Majeure event prevents the other Party’s performance for 18 months or more and (ii) the Services Term could be extended by up to six months, on a day-for-day basis, for time lost to Force Majeure events. In footnote 12, Deepwater proposes to extend both periods to 36 months.	National Grid believes that the parties would be able to resolve this issue with further discussions if the Commission is otherwise satisfied with the pricing terms of the agreement, making arbitration of this issue unnecessary.
#8 1, 3.4(d)	National Grid proposes to include an affirmative covenant that Deepwater Wind will comply with the terms of the Interconnection Agreement. Deepwater Wind proposed not to include such a specific covenant in the PPA but rather to provide for termination of the PPA if the parties to the Interconnection Agreement terminate that Agreement, as set out in footnote 2. In addition, in the definition of “Interconnecting Transmission Provider,” National Grid proposes to specify that New England Power Company or its successors or assigns will perform that role (which is consistent with National Grid’s understanding), while Deepwater Wind has proposed a more generic definition in footnote 1.	National Grid believes that the parties would be able to resolve this issue with further discussions if the Commission is otherwise satisfied with the pricing terms of the agreement, making arbitration of this issue unnecessary.

Commission 1-1 (cont.)

PPA Section(s)	Issue	Arbitrable or Not Arbitrable
#9 13.2	National Grid proposes that Deepwater Wind indemnify it for environmental liability related to the PPA not arising out of National Grid’s gross negligence or willful misconduct. Deepwater Wind proposes in footnote 13 to change that carve-out to National Grid’s negligence or willful misconduct.	National Grid believes that the parties would be able to resolve this issue with further discussions if the Commission is otherwise satisfied with the pricing terms of the agreement, making arbitration of this issue unnecessary.
#10 Ex. D	National Grid proposes to require replacement cost insurance for goods under the care of Deepwater Wind. Deepwater Wind proposes in footnote 15 to limit its obligation in this regard to instances in which those goods are not covered by National Grid’s insurance.	National Grid believes that the parties would be able to resolve this issue with further discussions if the Commission is otherwise satisfied with the pricing terms of the agreement, making arbitration of this issue unnecessary.

Some of the issues in the above schedule are more significant than others, and National Grid views the issues related to pricing, the size of the Facility and National Grid’s obligations relating to the undersea transmission cable to be the most significant. In addition, it should be noted that Deepwater Wind did not review the version of the PPA filed by National Grid before it was filed, and Deepwater Wind may therefore have a differing view of the disputed issues.

Commission Data Request 1-2

Request:

Please provide a list of each National Grid employee, consultant or attorney, whether in-house or outside the Company who participated in negotiations of the unsigned PPA on behalf of National Grid. Please provide the identity of the law firm with which any outside attorney is associated and the consulting firm of any outside consultant utilized.

Response:

National Grid Employees:

Daniel Glenning, Manager, Substation Project Management
Madison N. Milhous, Jr., Director, Wholesale Market Relations
Barry Moyer, Category Manager Substations US, Global Procurement
Celia B. O'Brien, Assistant General Counsel
Brooke E. Skulley, Senior Counsel I

Outside Attorney:

Paul N. Belval, Partner, Day Pitney LLP