

March 5, 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
Joint Response of National Grid & Deepwater Wind to
Commission’s Joint Data Request 1-1**

Dear Ms. Massaro:

Enclosed please find ten (10) copies of the National Grid’s¹ and Deepwater Wind’s joint response to the Commission’s Joint Data Request 1-1 issued to National Grid and Deepwater Wind on February 24, 2010, in the above-captioned proceeding.

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

Very truly yours,



Jennifer Brooks Hutchinson

Enclosures

cc: Docket 4111 Service List
Leo Wold, Esq.

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

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 5, 2010
Date

**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4111 - Service List Updated 2/10/2010**

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Commission Joint Data Request 1-1

Request:

Please summarize the portions of the PPA that are relevant to the Commission's consideration of the issues in this docket included, but not limited to, the following:

- a. Definitions of Contract Year, Delivery, Delivery Point, Effective Date, PPA Regulatory Approval, Transmission Cable Condition Date, Transmission Cable Conditions, Transmission Cable Cost Arrangement, Transmission Cable Purchase Agreement, Transmission Cable Regulatory Approvals;
- b. Section 2, Effective Date, Conditions, Term;
- c. Section 3, Facility Development and Operation;
- d. Section 4, Delivery of Energy, Capacity and RECs;
- e. Section 8, Effectiveness of Agreement (explain each provision);
- f. Section 9, Breaches; Remedies;
- g. Section 10, Force Majeure;
- h. Section 19.4. Change in ISO-NE Rules or ISO-NE Practices

Please provide page and section references to support each element of the provisions summarized.

Response:

The following is a summary of the Power Purchase Agreement between The Narragansett Electric Company d/b/a National Grid ("Buyer") and Deepwater Wind Block Island, LLC ("Seller" and, together with Buyer, the "Parties"), dated as of December 9, 2009 (the "PPA"). Buyer and Seller agree that this summary is qualified by the PPA itself and the PPA, not this summary, contains the agreement of the Parties. In the event of any conflict between the PPA and this summary, the terms of the PPA shall govern, and this summary shall have no probative value as to the intent of the Parties or otherwise in any litigation or other proceeding involving the PPA, nor shall it be conclusive as to the issues that are appropriate for consideration by the Commission with respect to the PPA.

Commission Joint Data Request 1-1 (cont.)

Obligations of Parties; Effectiveness (1-1.b; 1-1.e)

Under the PPA, Seller agrees to sell, and Buyer agrees to purchase, Energy, Capacity and renewable energy credits and other attributes (collectively, “RECs”) (collectively, Energy, Capacity, and RECs are hereinafter referred to as the “Products”) from Seller’s off-shore wind generating facility described in Exhibit A to the PPA (the “Facility”).¹ The PPA becomes effective (i.e., the “Effective Date” under the PPA) upon receipt of the “PPA Regulatory Approval,”² which is defined as the Commission’s final approval of the PPA without material modification or conditions pursuant to R.I.G.L. § 39-26.1-7, including recovery by Buyer of its costs incurred under the PPA and remuneration equal to 2.75% of Buyer’s actual annual payments under the PPA, which approval must be final, not subject to appeal, and acceptable to Buyer in its sole discretion.³ The Term begins on the Agreement Date (i.e., December 9, 2009) and ends upon final settlement of all obligations under the PPA after the expiration of the Services Term (as defined below) or the earlier termination of the PPA. The PPA will terminate if Buyer has not received the PPA Regulatory Approval on or before the date falling one year after Buyer filed for the PPA Regulatory Approval (i.e., October 14, 2010).⁴ Seller’s obligation is to deliver the Products and, subject to Section 4.1(b) (delivery of Products to Buyer prior to Commercial Operation at “test” prices), Buyer’s obligation is to accept and pay Seller for such Products, in each case during the Services Term. The Services Term begins on Commercial Operation and continues for 20 years, unless the PPA is extended or earlier terminated in accordance with its terms.⁵

Commercial Operation will occur on the date that Seller has satisfied, or Buyer has waived, certain specified conditions relating to the completion and operation of the Facility and the Facility’s qualification as a Newly Developed Renewable Energy Resource under R.I.G.L. § 39-26.1-2(6).⁶ The deadline for Commercial Operation (i.e., the “Commercial Operation Date” under the PPA) is December 31, 2012.⁷ Seller has a one-time right to extend the Commercial Operation Date for up to five (5) years by providing at least sixty (60) days written notice to Buyer. This extension is in addition to certain permitted extensions of the Commercial Operation Date described below. If the Facility does not achieve Commercial Operation by the Commercial Operation Date, as extended, either Party may terminate the PPA by written notice within sixty (60) days after the Commercial Operation Date. Upon such termination, neither Party will have any further liability except for obligations arising under Section 6.1 (Seller’s Support), Section 12 (Confidentiality) and Section 13 (Indemnification).⁸

¹ § 5.1, p.18.

² § 2.1, p. 9; § 8.1, p. 24.

³ § 1, p.7.

⁴ § 8.3, p. 24.

⁵ § 2.2(b), p. 10; § 3.3(a), p. 11; § 4.1, p. 13.

⁶ § 3.3, pp.11-12.

⁷ § 1, p. 2.

⁸ § 3.1, p. 10.

Commission Joint Data Request 1-1 (cont.)

In addition, Seller will have the right, by written notice to Buyer, to terminate the PPA without penalty if, on or prior to December 31, 2010, certain federal incentive programs are not extended or Seller is unable to, or has determined that it will be unable to, secure tax equity financing and/or permits for the Facility.⁹

The Parties agree in the PPA that the terms and conditions of the PPA are specific to the transaction described in the PPA and shall not be used as precedent in any other transaction.¹⁰

Operation of Facility (1-1.c)

During the Services Term, Seller must, among other things: (i) construct, operate and maintain the Facility in accordance with “Good Utility Practice,” requirements of law and all ISO New England Inc. (“ISO-NE”) and NERC rules; (ii) maintain in full force and effect all material permits necessary to operate and maintain the Facility; (iii) maintain a physical interconnection with the Delivery Point (defined below); (iv) maintain its status as a Market Participant in ISO-NE (or have entered into an agreement with a Market Participant that will perform all of Seller’s ISO-NE-related obligations); and (v) maintain its market-based rate authority from FERC. Seller is also responsible for certifying the Facility with the Commission as a renewable energy resource pursuant to Section 6.0 of the Code of Rhode Island Rules 90-060-015 and maintaining such certification throughout the Services Term.¹¹

Delivery of Products; Price(1-1.a; 1-1.d)

Buyer pays Seller for the Products delivered under the PPA at a bundled price equal to \$235.75/MWh beginning in 2012, escalating on each Escalation Date as described below.¹² That payment is for all Energy, Capacity and RECs from the Facility. Beginning in the fourth Contract Year (which is the one year period that begins on Commercial Operation or on the anniversary of the first of the month following Commercial Operation¹³), each monthly payment due to Seller will be reduced by the amount that Seller is or would have been eligible to receive in the ISO-NE Forward Capacity Market (or any replacement market). In addition, Seller will provide Buyer with the Wind Outperformance Adjustment Credit if the aggregate capacity factor for the Facility exceeds 40%, which credit essentially splits the benefit of any improved capacity factor equally between Seller and Buyer.¹⁴ The price paid by Buyer will escalate by a factor of 3.5% on each Escalation Date (initially, January 1, 2013 and each January 1 thereafter, but such dates can be delayed because of an extension of the Commercial Operation Date, a Transmission Cable (described below) outage or a Force Majeure). In no event will there be more than twenty (20) Escalation Dates during the Term.¹⁵

⁹ § 8.4, p. 24.

¹⁰ § 2.3, p. 10.

¹¹ § 3.4, pp. 12-13.

¹² Exhibit E, Appendix X.

¹³ § 1, pp.2-3.

¹⁴ Exhibit E.

¹⁵ § 5.1(b), p. 18.

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Prior to Commercial Operation and so long as the Transmission Cable is in service, Seller may sell and deliver, and Buyer shall purchase and receive, all (but not less than all) of the Products for the ISO-NE Real Time Locational Marginal Price at the Delivery Point at the time of delivery for Energy and Capacity and the Test REC Price for RECs, where “Test REC Price” means the average of two broker quotes for the average sale price of renewable energy certificates in ISO-NE.¹⁶ Except for Rejected Purchases and Products generated prior to Commercial Operation, Buyer is entitled to all the Facility’s Energy, Capacity and RECs.¹⁷

Seller is responsible for scheduling Deliveries of Energy with ISO-NE. The term “Delivery” for purposes of the PPA means the transfer of Energy to Buyer in ISO-NE’s Day Ahead Energy Market or Real Time Energy Market in such a manner that Buyer may resell such Energy in the same market, as applicable.¹⁸ Seller is solely responsible for any obligations and liabilities (including all charges, penalties and financial assurance obligations) imposed by ISO-NE, except to the extent imposed as a result of Buyer actions or failure to act.¹⁹ All Energy must be delivered at the Delivery Point, which will be the low voltage side of an electric substation on Block Island that is mutually acceptable to Buyer and Seller.²⁰ Seller will be responsible for all delivery costs to the Delivery Point, and Buyer will be responsible for all costs from the Delivery Point.²¹

If Buyer fails to accept all or part of any of the Products and that failure is not excused under the terms of the PPA (a “Rejected Purchase”), then Buyer must pay to Seller, on the date payment would otherwise be due, an amount for such Rejected Purchase equal to the price under the contract less the price at which Seller resells the Products to another party and its transaction and administrative costs.²²

Seller will transfer to Buyer all of the right, title and interest in and to the RECs during the Services Term. Seller must maintain in effect throughout the Services Term a statement of qualification from the Commission that all Energy meets the requirements for eligibility pursuant to the Renewable Energy Standard in R.I.G.L. § 39-26-1. At Buyer’s request, Seller will seek qualification of the Energy under the renewable energy standard of New York or one or more New England states or any federal renewable energy standard. Prior to delivery of any Energy, (i) Seller will cause Buyer to be registered in the New England Power Pool Generation Information System (“GIS”) as the initial owner of all GIS Certificates associated with the RECs; or (ii) Seller and Buyer will effect an irrevocable forward transfer of the GIS Certificates associated with the RECs in the GIS.²³

¹⁶ § 1, p. 8.

¹⁷ § 4.1, p. 13.

¹⁸ § 1, p. 3.

¹⁹ § 4.2, p. 14.

²⁰ § 1, p. 3.

²¹ § 4.6, p. 15.

²² § 4.5, pp. 14-15.

²³ § 4.9, pp. 16-17.

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Buyer's purchase of Capacity under the PPA will be solely through financial settlement involving the payment of the price and adjustment for the ISO-NE Forward Capacity Market price described above. Buyer will not be responsible for any actions in the Forward Capacity Market. Seller will be responsible for qualifying the Facility for participation in future ISO-NE Forward Capacity Auctions, but the failure of ISO-NE to accept that qualification is not an Event of Default.²⁴

Transmission Cable Arrangements (1-1.a; 1-1.e)

Consistent with R.I.G.L. § 39-26.1-7, the PPA also contemplates the possibility that Buyer and Deepwater Wind Block Island Transmission, LLC ("Deepwater Transmission") may enter into a Transmission Cable Purchase Agreement under which Deepwater Transmission will construct and, subject to the satisfaction of the terms and conditions therein, Buyer will purchase a bidirectional transmission cable running between the Delivery Point on Block Island and a point on the Rhode Island mainland that is mutually acceptable to Buyer and Deepwater Transmission.²⁵ In order for that purchase to occur, certain Transmission Cable Conditions must be satisfied. Those conditions include (i) the negotiation, execution and delivery by Buyer and Deepwater Transmission of the Transmission Cable Purchase Agreement referred to above; (ii) the negotiation, execution and delivery of the Interconnection Agreement for the Facility; (iii) the finalization and, to the extent appropriate, the execution of an arrangement for Buyer or its affiliate to collect the cost of purchasing the Transmission Cable and to allocate those costs among the relevant parties that is acceptable to Buyer in its sole discretion (the "Transmission Cable Cost Arrangement"); and (iv) the receipt of the "Transmission Cable Regulatory Approvals," which include (A) approval of the Transmission Cable Purchase Agreement by the Commission, including the recovery of Buyer's costs, to the extent applicable; (B) approval of the Transmission Cable Cost Arrangement by FERC; (C) to the extent applicable, approval by FERC of the Transmission Cable Purchase Agreement; (D) to the extent applicable, approval by FERC of the Interconnection Agreement and (E) any other filing, approval or consent of any governmental entity that may be required or determined by Buyer to be desirable in connection with the Interconnection Agreement, the Transmission Cable, the Transmission Cable Purchase Agreement and the Transmission Cable Cost Arrangement, each of which shall be final, not subject to appeal, and acceptable to Buyer in its sole discretion.²⁶

Either Party may terminate the PPA if these Transmission Cable Conditions are not satisfied by December 31, 2010 or if a governmental entity with jurisdiction issues an order that is binding but inconsistent with the terms and conditions of the Transmission Cable Purchase Agreement, the Interconnection Agreement or the Transmission Cable Cost Arrangement (either the December 31, 2010 deadline or the date such an order is issued is referred to as the "Transmission Cable Condition Date"). However, Seller may request that Buyer renegotiate the PPA to reflect a change in the price to be paid for the Products in order to allow Seller to recover

²⁴ § 4.10, p. 17.

²⁵ § 1, pp. 8-9

²⁶ § 1, pp. 8-9; § 8.5, pp. 24-25.

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the amounts due to Deepwater Transmission for use of the Transmission Cable. If the Commission's approval of any amendment to the PPA is not issued and final within 12 months after the filing of an application for that approval, the PPA will terminate. If the Parties agree that an amendment to the Interconnection Agreement is also required as a result of the failure to satisfy the Transmission Cable Conditions and agreement on an amendment is not reached and approved by the FERC, if needed, the PPA will terminate. The PPA expressly states that neither Buyer nor any affiliate of Buyer will be obligated to own, operate or otherwise participate in the Transmission Cable.²⁷

Buyer will have no obligation to accept or pay for any Products generated at any time during an outage of the Transmission Cable. In the event of a Transmission Cable outage that lasts longer than fourteen (14) days and is not related to ordinary scheduled maintenance, Seller may elect to extend the Services Term day for day by the period of the outage. All such extensions elected under this section of the PPA, together with any extensions for Force Majeure (see Section 10 below), must not exceed thirty-six (36) months in the aggregate. Any election to extend the Services Term must be delivered in writing prior to the end of the outage.²⁸

Breaches; Remedies (1-1.f)

The occurrence of certain specified events, including breaches of the terms of the PPA or the bankruptcy or insolvency of a Party, constitute an event of default by a Party if not cured within the specified period ("Event of Default").²⁹ After an Event of Default, the non-defaulting Party may (i) terminate the PPA; (ii) withhold any payments due; (iii) suspend its performance under the PPA, and/or (iv) exercise any other remedies available under the PPA or at law, including obtaining an order requiring the defaulting Party to perform its obligations under the PPA.³⁰ If the non-defaulting Party terminates the PPA, it will be entitled, as its sole remedy, to a Termination Payment calculated in accordance with the provisions of the PPA.³¹

Force Majeure (1-1.g)

A Force Majeure is an unusual, unexpected and significant event outside the control of the Party seeking to have its performance excused as a result of that event. It excludes a number of factors, including any Transmission Cable outage (which is addressed exclusively in Section 4.4 of the PPA, described above). A Force Majeure can relieve a Party from its obligations under the PPA during its continuance, but the other Party will have a right to terminate the PPA if a Force Majeure event prevents full or partial performance for a period of thirty-six (36) months or more.³² Under certain circumstances, a Party may elect to extend the Services Term day for day by the period of a Force Majeure event, but any extensions of the Services Term for Force Majeure and/or Transmission Cable outages must not exceed thirty-six (36) months in the

²⁷ § 8.5, pp.24-25.

²⁸ § 4.4, p. 14.

²⁹ § 9.1, pp. 26-27; § 9.2, p. 27.

³⁰ § 9.3(a), p. 27.

³¹ § 9.3(b), pp. 27-28.

³² § 10.1, pp. 30-31.

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aggregate. Any extension under this Section will result in an adjustment of the Escalation Date and the beginning and end of the remaining Contract Years, as described above.³³

ISO-NE Rules (1-1.h)

If during the Term of the PPA, any ISO-NE rule or similar ISO-NE practice is terminated, modified or amended or is otherwise no longer applicable, and results in a material alteration of a material right or obligation of a Party under the PPA, the Parties agree to negotiate in good faith to amend or clarify the PPA to embody the Parties' original intent; provided that any such amendment will not alter the price paid for the Products or the purchase and sale obligations of the Parties under the PPA.³⁴

³³ § 10.3, pp. 31-32.

³⁴ § 19.4, pp.37-38.