

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF PROPOSED :  
TOWN OF NEW SHOREHAM :  
PROJECT PURSUANT TO : DOCKET NO. 4111  
R.I. GEN. LAWS § 39-26.1-7 :

ORDER APPROVING PROCEDURAL SCHEDULE

In June 2009, R.I. Gen. Laws § 39-26.1-7 became law and was amended on October 29, 2009.<sup>1</sup> The law required Narragansett Electric Company d/b/a National Grid (“NGrid”) to “solicit proposals for one newly developed renewable energy resources project of ten (10) megawatts or less that includes a proposal to enhance the electric reliability and environmental quality of New Shoreham.”<sup>2</sup> NGrid complied with the requirement and after receiving a bid from Deepwater Wind Block Island, LLC (“Deepwater”), proceeded to enter into negotiations with the goal of achieving a commercially reasonable contract.

The same law also states:

Should the distribution company and the selected party agree to a contract, the contract shall be filed with the [Public Utilities] commission no later than October 15, 2009 for commission approval. The [Public Utilities] commission shall review the contract and issue an order approving or disapproving the contract on or before January 31, 2010.<sup>3</sup>

On December 10, 2009, NGrid filed with the Commission a Purchase Power Agreement (“PPA”) between itself and Deepwater relating to the purchase by NGrid of output from a proposed wind project (“Project”) off the coast of Block Island.<sup>4</sup> NGrid

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<sup>1</sup> R.I.G.L. § 39-26.1-7 was amended on October 29, 2009 to clarify that Deepwater could include “up to eight (8) wind turbines with aggregate nameplate capacity of no more than thirty (30) megawatts.”

<sup>2</sup> R.I.G.L. § 39-26.1-7.

<sup>3</sup> R.I.G.L. § 39-26.1-7.

<sup>4</sup> On October 15, 2009, NGrid filed an unsigned form of PPA with the Commission recommending the Commission not approve it. A pre-hearing conference was conducted on October 30, 2009 and a schedule was set based on representations from NGrid and Deepwater that they believed they could reach an

and Deepwater also submitted supporting pre-filed testimony from various witnesses. The PPA is subject to Commission approval before the Effective Date of the PPA is triggered.<sup>5</sup>

On December 11, 2009, legal counsel to the Commission conducted a pre-hearing conference with the purpose of setting the procedural schedule in this matter. At the pre-hearing conference, she indicated that the Commissioners had expressed concern that the January 31, 2010 deadline provided insufficient time to allow the development of a complete record. Next, she explained that after reviewing the language of the statute, it was her opinion that the January 31, 2010 deadline did not apply because the condition precedent, namely, the filing of a PPA on or before October 15, 2009, was not met. Therefore, the Commission had directed her to set a schedule that provided sufficient opportunity to develop a complete record, even if the schedule extended beyond January 31, 2010.

Deepwater indicated that its position in the financial market and in the Project timeline would not be harmed if the Commission could render its decision by March 31, 2010. Thus, a schedule was set to accommodate a decision date of March 30, 2010 (the

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agreement and file a PPA with the Commission by November 13, 2009. On November 23, 2009, after NGrid filed a second unsigned PPA with the Commission, NGrid and Deepwater were allowed until December 9, 2009 to file Testimony regarding the unsigned PPA. On December 10, 2009, Deepwater filed its testimony regarding the PPA, which by that time was executed. On December 10, 2009, NGrid also filed its testimony regarding the executed PPA.

<sup>5</sup> See R.I.G.L. § 39-26.1-7. Additionally, PPA Regulatory Approval is defined on page 5 of the PPA as “the PUC’s approval of this Agreement without material modification or conditions pursuant to R.I.G.L. § 39-26.1-7, including the recovery by Buyer of its cost incurred under this Agreement and remuneration equal to 2.75 percent (2.75%) of Buyer’s actual annual payments under this Agreement, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.” Further, “the effectiveness of this Agreement, other than the Parties’ rights and obligations under Section 8.2, Section 8.3, Section 12 and Section 13, is conditioned upon and shall not become effective or binding until the receipt of the PPA Regulatory Approval...” (Section 8.1 of PPA). The PPA is set to terminate “[i]f Buyer has not received the PPA Regulatory Approval on or before the date falling one year after Buyer has filed for the PPA Regulatory Approval” (Section 8.3 of PPA).

“December 11, 2009 Procedural Schedule”) <sup>6</sup>. No party in attendance at the pre-hearing conference objected to the decision date. However, parties did express concern that extending the deadline could create an appealable issue that could delay the Project after the Commission rendered its decision in March 2010. Therefore, they requested that the Commission consider the statutory interpretation at its next Open Meeting and render an Order approving the December 11, 2009 Procedural Schedule. The December 11, 2009 Procedural Schedule included a December 18, 2009 deadline to object to the Procedural Schedule. No objections were received.

The Commission finds that the January 31, 2010 deadline set forth in R.I.G.L. § 39-26.1-7 by which the Commission was required to render a decision on the PPA was dependent upon the filing of an executed PPA on or before October 15, 2009. The October 15, 2009 date was a condition precedent to the decision date which was 75 days after the filing of the PPA. The Commission finds that because the condition precedent was not met, the January 31, 2010 deadline is inapplicable. Therefore, the Commission adopts the December 11, 2009 Procedural Schedule in this matter. No further written Commission Order will be required in order for legal counsel to amend the schedule within the March 31, 2010 deadline as long as there is no objection from the parties or the Commission to any proposed modification.

Finally, the Commission notes that under the original version of the law, the Commission was afforded seventy-five (75) days to review the PPA. The Commission had previously expressed concern with such a short time frame in which to review a PPA for projects using new technologies and resources under a new legal standard. Therefore, as a practical matter, it would be unreasonable for the Commission to be expected to

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<sup>6</sup> Attached hereto as Appendix A.

review the PPA presently before it in fifty-two (52) days. The Commission believes that the 105-day review already underway is the minimum that can reasonably be established if all interested parties are to be afforded due process in this new area of Commission regulation.

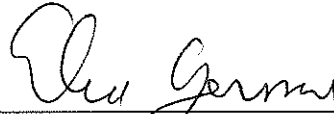
Accordingly, it is hereby

(19871) ORDERED:

1. The December 11, 2009 Procedural Schedule in this docket is hereby approved.

EFFECTIVE AT WARWICK, RHODE ISLAND ON DECEMBER 23, 2009  
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED  
DECEMBER 23, 2009.


PUBLIC UTILITIES COMMISSION



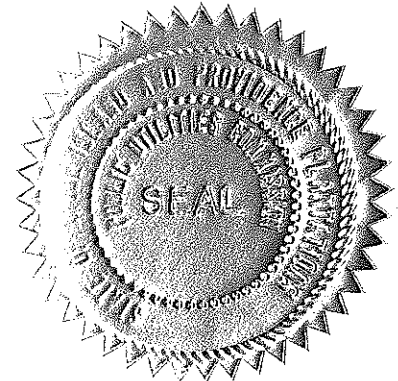
Elia Germani, Chairman



Mary E. Bray, Commissioner



Paul J. Roberti, Commissioner



**State of Rhode Island and Providence Plantations**

**Public Utilities Commission  
Memorandum**

**To:** Service List – Docket No. 4111

**From:** Cynthia G. Wilson-Frias, Senior Legal Counsel

**Re:** **Docket No. 4111 – Review of Proposed Town of New Shoreham Project Pursuant to R.I. Gen. Laws § 39-26.1-7- SECOND REVISED PROCEDURAL SCHEDULE**

**Date:** December 11, 2009

Thank you for your participation today. The following represents the second revised procedural schedule.

The parties agreed to a ten calendar day response period for discovery.

12/18/09      Objections to procedural schedule

12/22/09      Open Meeting to issue Order setting procedural schedule

1/19/10        Intervenors' Direct Testimony

2/2/10         Division's Direct Testimony

2/16/10        NGrid and Deepwater Rebuttal Testimony

3/2/10         Intervenors' and Division's Surrebuttal Testimony

3/9/10         9:30 AM – Hearings Commence – Hearing Room A

3/10/10-3/12/10    9:30 AM Hearings Continue

3/23/10        Briefs (50 page limit)

3/26/10        Reply Briefs (10 page limit)

3/30/10        Open Meeting      (tentatively 10 AM)

4/2/10         Written Order to be Issued

Public Comment Hearings

New Shoreham	1/5/10	11:30 AM - 1:30 AM	Town Hall Council Chambers
Narragansett	1/5/10	6:00 PM	Town Hall Council Chambers
Pawtucket	1/13/10	6:00 PM	City Hall Council Chambers
Warwick	1/20/10	6:00 PM	Commission Hearing Room A

cc: Commissioners/Staff  
Division