

November 9, 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 R.I. Gen. Laws § 39-26.1-7
Response to RIBCTC Motion to Intervene**

Dear Ms. Massaro:

Enclosed please find one original and nine (9) copies of National Grid's¹ response to the Motion to Intervene of the Rhode Island Building and Construction Trades Council ("RIBCTC") in the above-referenced proceeding.

Thank you for your attention to this transmittal. 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.
Steve Scialabba, Division

¹ The Narragansett Electric Company d/b/a National Grid (the "Company").

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 on the service list identified below.



Joanne M. Scanlon
National Grid

November 9, 2009
Date

**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4111 Service List Updated 10/29/09**

Name/Address	E-mail Distribution	Phone/FAX
Thomas R. Teehan, Esq. National Grid. 280 Melrose St. Providence, RI 02907	Thomas.teehan@us.ngrid.com	401-784-7667 401-784-4321
	Joanne.scanlon@us.ngrid.com	
Ronald T. Gerwatowski, Esq. National Grid 40 Sylvan Rd. Waltham, MA 02451	Ronald.gerwatowski@us.ngrid.com	
	Celia.o'brien@us.ngrid.com	
	Jennifer.brooks@us.ngrid.com	
Joseph A. Keough, Jr., Esq. Keough & Sweeney 100 Armistice Blvd. Pawtucket, RI 02860	jkeoughjr@keoughsweeney.com	401-724-0600
Michael McElroy, Esq. Schacht & McElroy PO Box 6721 Providence RI 02940-6721	McElroyMik@aol.com	401-351-4100 401-421-5696
Alan Mandl, Esq. Smith & Duggan LLP Lincoln North 55 Old Bedford Road Lincoln, MA 01773	amandl@smithduggan.com	617-228-4464 781-259-1112
Jerry Elmer, Esq. Conservation Law Foundation 55 Dorrance Street Providence, RI 02903	Jelmer@clf.org	401-351-1102 401-351-1130
Alan Shoer, Esq. Adler Pollock & Sheehan One Citizens Plaza, 8 th Floor Providence, RI 02903-1345	Ashoer@apslaw.com	401-274-7200 401-751-0604
Leo Wold, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	lwold@riag.ri.gov	401-222-2424 401-222-3016
	Steve.scialabba@ripuc.state.ri.us	
	Al.contente@ripuc.state.ri.us	

Jon Hagopian, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	jhagopian@riag.ri.gov	
Original & nine (9) copies w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick RI 02889	Dmacrae@riag.ri.gov	401-780-2017
	Mtobin@riag.ri.gov	401-941-1691
	Lmassaro@puc.state.ri.us	
	Cwilson@puc.state.ri.us	
	Nucci@puc.state.ri.us	
	Anault@puc.state.ri.us	
	Sccamara@puc.state.ri.us	
Matt Auten, Office of Lt. Governor	mauten@ltgov.state.ri.us	

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

IN RE: REVIEW OF PROPOSED TOWN OF)
NEW SHOREHAM PROJECT PURSUANT)
TO R.I. GEN. LAWS §39-26.1-7)
)
)
)
)

DOCKET NO. 4111

**RESPONSE OF NATIONAL GRID TO MOTION FOR INTERVENTION OF
THE RHODE ISLAND BUILDING AND CONSTRUCTION TRADES COUNCIL**

This memorandum is submitted by National Grid¹ in accordance with the Rhode Island Public Utilities Commission (the “Commission”) Rule 1.13 in response to the motion to intervene of the Rhode Island Building and Construction Trades Council (the “Trade Council”) in the above-captioned docket.

National Grid continues to support the goal of advancing renewable generation in the State and in the region. However, as the Company indicated in its October 15 filing, that support must be balanced against the cost impacts on customers. In that context, the Company believes it also must serve a role of assisting the Commission and the State in making the right renewable energy policy decisions that are in the best interest of customers. It is with this balancing of interests in mind that National Grid is filing this response to the motion to intervene of the Trade Council.

The Trade Council’s sole basis for intervention is that it has an interest in the creation of jobs for its construction workers in the renewable energy sector. While National Grid agrees that creating jobs is an important and laudable goal for the Rhode Island economy, the matter before

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

the Commission is to review the pricing and terms of a proposed contract that will require electric customers to make above-market payments for twenty years. The Commission's review is governed by legal standards that do not contemplate consideration of job creation in making its determination to approve or disapprove the contract. This makes sense because the Commission has the role of assuring that the terms of the agreement do not saddle electric customers with unreasonable and excessive payment obligations. This is exactly the same issue that National Grid has had to consider in determining the acceptability of the proposed agreement. While job creation would help the economy in the short term, that shorter term benefit cannot provide a basis for the acceptance of an agreement that is too high priced or otherwise commercially unreasonable and, thus, not in the best interest of electric customers over the long term. The issue before the Commission is not whether jobs will be created. But rather, it is whether the pricing and terms of any proposed agreement are reasonable. For these reasons and the reasons that will be explained further, National Grid respectfully requests the Commission deny the Trade Council's motion to intervene.

I. BACKGROUND

On October 15, 2009, the Company filed an unsigned copy of a power purchase agreement ("PPA") in accordance with Section 39-26.1-7(a) of the Rhode Island General Laws for the potential purchase of renewable power from Deepwater Wind Block Island, LLC ("Deepwater"), a wind power developer who is proposing to construct a project off the coast of Block Island. National Grid negotiated in good faith with Deepwater in an effort to achieve a commercially reasonable contract in accordance with the Company's obligation under the statute. However, at the time of the Company's initial filing of the PPA, the parties had not agreed on all of the terms of the PPA, including price. The Company discusses certain considerations of the Trade Council's motion for intervention below.

II. LEGAL STANDARD

To intervene in a proceeding under Commission Rule 1.13, a party must establish that its right to intervene is either conferred by statute or that the movant has met one of two other criteria for intervention status. Specifically, Commission Rule 1.13(b) states that a motion to intervene must demonstrate that one or more of the following three criteria is met:

- (1) A right conferred by statute.
- (2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission's action in the proceeding. (The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent).
- (3) Any other interest of such a nature that movant's participation may be in the public interest.

See, e.g., The Narragansett Electric Company d/b/a National Grid, Order No. 18794 (December 27, 2006). The Commission has reiterated that it will be cautious in granting intervenor status and will work to ensure that a movant actually meets one of the three criteria established in Commission Rule 1.13(b). Narragansett Electric Company, Docket No. 3739, Order No. 18794, at 17 (December 27, 2006) (citing, In re Hi-Speed Ferry, LLC, 746 A.2d 1240, 1245-1246 (R.I. 2000)). See also Block Island Ferry, Docket No. 3655, Order No. 18157 (February 18, 2005) (denying a motion for intervention in a Block Island Power rate case despite the fact that the group seeking intervenor status represented approximately 200 residents).

III. LEGAL ANALYSIS

The Trade Council has not met the requirements for intervention. The entire premise for the Trade Council's intervention rests on job creation. In this case, however, job creation is not

an element of the legal standard applicable to the Commission's decision to approve or disapprove the PPA.

In the Company's initial filing, National Grid stated its belief that, in determining whether to approve or disapprove the PPA, the Commission has the authority to exercise the powers it traditionally exercises over utility ratemaking matters. This authority involves the Commission balancing the costs and rate impacts of the proposed arrangement against the benefits to electric customers, as electric customers. To be clear, however, before the Commission considers those impacts there is still a threshold question of whether a commercially reasonable contract has been proposed to the Commission. *See* § 39-26.1-7(a) ("Negotiations shall proceed in good faith to achieve a commercially reasonable contract.") If a commercially reasonable contract is not present, the Commission would be required to disapprove the agreement. Only if the Commission reaches the conclusion in the first instance that the terms and pricing are commercially reasonable, does the Commission then weigh the costs and rate impacts against the benefits to electric customers.

In engaging in this analysis, the creation of construction jobs is not a relevant factor for the Commission to consider. Construction job creation, while important to the Rhode Island economy and a benefit to some citizens generally, is not a benefit to electric customers in their capacity as electric customers. For a benefit to be appropriately considered by the Commission, there needs to be a rational and direct link between the benefit alleged and its tangible consequences to electric-service, such as lower electric costs, efficiency, reliability improvements, or reduced reliance on fossil fuel, to name some examples. Although issues such as economic development may be considered in the context of a general ratemaking proceeding, such issues are within the Commission's jurisdiction in those cases *only* to the extent that the Commission's approval is required to implement a specific proposal directly involving those issues and affecting the cost of service to be recovered from customers in distribution rates. In contrast, the creation

of construction jobs is not in any way related to the cost or reliability of purchased electric supply, which is the legal issue before the Commission in this case.

Accordingly, the Trade Council has not demonstrated that it satisfies any of the Commission's criteria for intervention. The Trade Council states that "it has an interest in the proceeding, which is of such a nature that intervention is necessary and appropriate and is not otherwise adequately represented, and that its participation in this docket is in the public interest." (Trade Council Motion at 1). In support of this position, the Trade Council states that its members "have been involved in every major construction initiative – private or public – undertaken in and around the State of Rhode Island in the last seventy (70) years." *Id.* The Trade Council further maintains that it possesses a "strong and unique interest in supporting and facilitating the consummation of an agreement between Deepwater and National Grid to permit construction of an offshore wind power project for the Town of New Shoreham." *Id.* at 2. This "interest" to which the Trade Council cites on multiple occasions is "the creation of jobs in the renewable energy sector ... in the fabrication, construction, and maintenance and repair of renewable energy facilities." *Id.* at 2. To this end, the Trade Council further states that "the labor of workers represented by the Trade Council's member unions is essential to the construction of this project, while this project is in turn crucial to the creation of jobs and livelihood of those workers." *Id.* at 3. Although these statements may be true, these facts do not create standing for intervention in this case for the reasons discussed below.

First, the Trade Council has not cited to any statutory basis for its intervention and, in fact, there is no such statutory right conferred upon the Trade Council by Rhode Island law.

Second, the Trade Council has not stated an interest that may be directly affected by the Commission's decision to approve or disapprove the price and other terms of the PPA. In making a threshold determination of whether to approve or disapprove the PPA, the Commission would not consider the impact of the PPA on the creation of construction jobs. Although the

Commission's decision to approve or deny the agreement may have a consequence that indirectly affects the Trade Council and its members, it is not a "direct" interest as contemplated by the Commission's rules. In fact, virtually every ratemaking decision of the Commission has an economic consequence of one form or another, but that does not confer standing on every person affected by those indirect economic consequences.

The Trade Council also maintains that it is a "legitimate stakeholder" in the proceedings. Id. at 3. The fact that the Trade Council has an interest in employing workers represented by its member unions does not make it a stakeholder in this proceeding, in which the core issues center around the price and other terms of the PPA. The primary stakeholders in this proceeding are the electric customers of National Grid and Block Island Power, whose interests are paramount. Accordingly, the Commission's decision regarding the PPA will have no direct impact on the Trade Council or its members, except in a speculative, distant sense, which also means that the Trade Council will not be bound by such a decision. Therefore, the Trade Council's member unions are not directly affected by the outcome of this proceeding in the manner intended by the Commission's rules.

The Trade Council cites certain goals set forth in Section 39-26.1 of Rhode Island General Laws, specifically, "creating jobs in Rhode Island in the renewable energy sector and ... providing direct economic benefit to the state." It must be noted, however, that the "Purpose" section of Chapter 26.1 quoted by the Trade Council makes it clear that the purpose of the Chapter is to obtain commercially reasonable long-term contracts. Specifically, that section states:

The purposes of this chapter is to encourage and facilitate the creation of commercially reasonable long-term contracts . . . with the goals of stabilizing long-term energy prices, enhancing environmental quality, creating jobs in Rhode Island in the renewable energy sector, and facilitating the financing of renewable energy generation within the jurisdictional boundaries of the state or adjacent state or federal waters or providing direct economic benefits to the state."

While the purpose section enumerates various goals, this section does not provide the Commission with the authority to override the purpose by finding that a commercially unreasonable agreement meets those goals. As such, even if the Trade Council could show that the project will produce a multitude of jobs, it has absolutely no bearing on either (1) whether the terms of the PPA are commercially reasonable, or (2) whether the benefits to electric customers (as electric customers – not citizens of Rhode Island) outweigh the costs and rate impacts of the project. Job creation is not one of the factors to be considered by the Commission in exercising its authority under the statute.

Lastly, the Trade Council has not satisfied the third criteria set forth in Commission Rule 1.13(b), which requires that the movant demonstrate “any other interest of such a nature that movant’s participation may be in the public interest.” Although the Trade Council states that its participation in the proceedings is in the public interest, the Trade Council offers no support for the specific public interest its participation will serve. Even if the creation of jobs is in the public interest, it bears no relevance to whether the terms of the PPA should be approved. Moreover, the impact of allowing the Trade Council to participate as an advocate for job creation will undermine the administrative efficiency of the proceeding, which has nothing to do with the creation of construction jobs. This increase in administrative complexity does not benefit Rhode Island customers or the general public and only serves to further the private interests. Such private interests are not generally a proper basis for intervention.

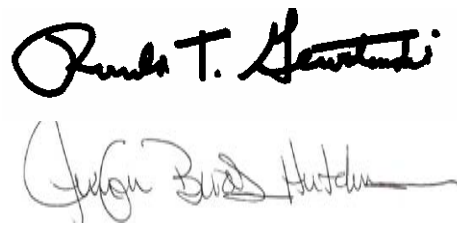
In short, the Trade Council has stated no interest that will be directly affected by the outcome of this proceeding. This proceeding is governed by a separate legal standard under which job creation is not a consideration. The stated interest is too remote and speculative to warrant intervenor status, especially in light of the Commission’s findings in previous cases that the Rhode Island Supreme Court requires cautious application of the criteria for intervention. See Narragansett Electric Company, Docket No. 3739, Order No. 18794, at 17.

Without question, passage of Chapter 26.1 of Title 39 was intended to advance renewable generation in Rhode Island. National Grid remains committed to that effort. But these proceedings need to be confined to the more precise issue at hand regarding the reasonableness of the pricing and terms of the proposed PPA. Accordingly, the Company respectfully requests that the Commission deny the Trade Council's request for intervenor status because the articulated interest in job creation is irrelevant as a matter of law.

Respectfully submitted,

NATIONAL GRID

By its attorneys,

The image shows two handwritten signatures in black ink. The top signature is 'Ronald T. Gerwatowski' and the bottom signature is 'Jennifer Brooks Hutchinson'. Both are written in a cursive, professional style.

Ronald T. Gerwatowski, Esq, #4502
Jennifer Brooks Hutchinson, Esq, #6176
National Grid
40 Sylvan Road
Waltham, MA 02451
(781) 907-1820