



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Patrick C. Lynch, Attorney General

July 20, 2010

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

**Re: REVIEW OF AMENDED POWER PURCHASE AGREEMENT BETWEEN
NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID AND
DEEPWATER WIND BLOCK ISLAND, LLC PURSUANT TO R.I. GEN. LAWS § 39-
26.1-7-Docket No. 4185**

Dear Ms. Massaro,

Enclosed for filing with the Commission are an original and twelve (12) copies of the Responses of the Division of Public Utilities and Carriers to the Commission's First Set of Data Requests in the above matter.

Thank you for your attention to this matter.

Very truly yours,

Jon G. Hagopian
Special Assistant Attorney General

cc: Service List (e-mail only)

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

IN RE: REVIEW OF AMENDED POWER :
PURCHASE AGREEMENT BETWEEN :
NARRAGANSETT ELECTRIC COMPANY : DOCKET NO. 4185
D/B/A NATIONAL GRID AND DEEPWATER :
WIND BLOCK ISLAND, LLC PURSUANT :
TO R.I. GEN. LAWS § 39-26.1-7 :

RESPONSE OF THE DIVISION OF PUBLIC UTILITIES AND CARRIERS TO THE PUBLIC
UTILITIES COMMISSION FIRST SET OF DATA REQUESTS

Question:

- 1.1. Does the Division believe that it would be a difficult endeavor to complete the review of the project's cost within 30 days? Please explain.

Response:

- 1-1. Reviewing the certification of the project's costs will be a difficult endeavor, especially if this review does not commence until after the project is complete and the developer has prepared its certification. Under this scenario, the Verification Agent ("VA") will need to perform a review of project documentation and write a report within 30 days. This allows only a cursory review of the project's costs.

The Amended Purchased Power Agreement identifies ten separate categories of Costs that can be included in the facilities costs. The Verification Agent would have to review the Costs in each of those categories and verify the Costs are properly documented and properly assignable to the project, that is that the Seller actually incurred the Cost. It would be a difficult endeavor to review documentation supporting \$200-220 million of costs fitting the descriptions for the ten defined categories of Costs, resolve any discrepancies or apparent discrepancies, and issue a report within 30 days.

A better approach is one where the VA is retained shortly after construction has begun. At this time, Deepwater would provide the VA with a detailed description of the components of the cost estimates. Deepwater should then be required to provide quarterly detailed reports documenting construction expenditures. This approach will allow the VA to perform a reasonable assessment of the project's costs as they are incurred, and to prepare a final report within 30 days of the receipt of the developer's certification.

The Division would point out that when National Grid, in earlier negotiation with Deepwater, was offered a structured pricing proposal that would have placed the task of reviewing the project's construction cost as a means of setting the initial PPA rate, National Grid itself seemed very wary, even without the imposition of a 30 day time limit. The Company made the following representation in an October 15, 2009 letter to the Commission:

“ Finally, the Structured Pricing Proposal would place the Company in the position of having to examine the construction cost data, including invoices, construction contracts, accounting, and other supporting documentation to determine whether the actual construction costs were properly supported. Because Deepwater is not a regulated utility and there is no forum to truly examine the costs of the project in a manner that assures transparency and accuracy, the Company viewed this proposal as one fraught with complexity and the potential for litigation. In a project of this magnitude, the risk of not being able to tie down the true final construction cost is substantial, especially where the entity being scrutinized is not subject to a regulatory review in a fully transparent proceeding.”

National Grid also expressed the following concern on the matter within the same letter:

“This proposal also requires the Company to perform an audit of the final construction costs, but does not include any standard of prudence.”

The Division notes that National Grid confirmed in response to Div 1-1(a) that its amended executed PPA also has no prudence standard. These issues identified by National Grid were, at least in part, the bases for its rejection of the structured pricing proposal at the time. To the extent National Grid identified these issues as defects during earlier negotiations with Deepwater, these defects remain uncured in the amended PPA.

The Division queried National Grid on these stated concerns in discovery issued in this docket, specifically in Div 1-1(b), Div 1-1(c) and Div 1-1(d). Notably and interestingly, these concerns no longer exist on the part of National Grid, for the stated reason that the rejected structured pricing proposal was a two-way proposal through which the price could increase if construction costs were higher. According to National Grid's discovery responses, the price in the amended PPA can only decrease to reflect cost savings, therefore all of National Grid's prior concerns about the construction cost audit apparently vanished, despite the fact that the project cost verification audit is still necessary to establish the initial PPA price.

Another notable change that likely helped assuage National Grid's prior stated concerns regarding the process of auditing the construction cost is the fact that the task is no longer theirs to undertake, but has been assigned to the Division of Public Utilities and Carriers.

Prepared by: Richard S. Hahn & Division Staff

Question:

- 1-2. In light of Grid's response to Division Data Request 1-8 that there is no prudence standard outlined in the statute or the PPA, how are Rhode Island ratepayers protected from "gold-plating" of the project in the event that the developer could have reasonably reduced costs to, for example, \$155,403,513 but chose not to, and incurred total facility costs of, for example, \$210,403,512?

Response:

- 1-2. If there is no prudence standard contained in the statute or the PPA, then there is no protection afforded against "gold plating" or other undesirable or unnecessary spending during the construction of the Deepwater offshore wind project. Appendix X of the amended PPA places limits on the review of the TFC to be performed by the Verification Agent ("VA"). Appendix X states that "the Verification Agent may dispute a cost based solely upon one of the following reasons: (a) Seller did not incur the cost, (b) the Cost is not supported by documentation, or, (c) arithmetic or summation errors". As Appendix X is written, the VA could not dispute any component of the cost of the project due to gross negligence, imprudence, or unreasonableness.

Prepared by: Richard S. Hahn & Division Staff

Question:

- 1-3. Please provide any information known to the Division relating to large abandoned U.S. wind farms.

Response:

- 1-3. The Division is unclear as to what is meant by “abandoned US wind Farms”. If this term is defined as a large US wind farm that went into commercial operation, operated for some period of time, was prematurely shut down (i.e., before its expected useful live), and not dismantled or decommissioned, then the Division is not aware of any projects that meet that definition.

Prepared by: Richard S. Hahn & Division Staff

**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4185 – Service List Updated 7/16/10**

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CERTIFICATION OF SERVICE

I hereby certify that on the 20th day of July, 2010, that I transmitted an electronic copy of the within Data Responses to the attached service list and to Luly Massaro, Commission Clerk via electronic mail and regular mail.

Donna MacRae-Daigle