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RHODE ISLAND & MASSACHUSETTS

August 10, 2010

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

Re: Docket No. 4185

Dear Ms. Massaro:

Enclosed please find an original and 12 copies of the following documents:

1. Deepwater Wind Block Island, LLC's Response to Record Requests 7, 9, 10, 11 and 12.

Please note that electronic copies of these documents have been provided to the Service List.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf

Enclosures

cc: Service List (via electronic mail)

STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

DOCKET No. 4185

Deepwater Wind Block Island, LLC

Response To Record Requests 7, 9, 10, 11 and 12

RR 7: Please explain what is included in capitalized costs for purposes of determining “Cost” under Appendix to the Amended PPA.

Response: Deepwater Wind references its responses to Record Request 10 and 11 included herein.

In addition, Cost is defined in the Amended PPA as follows:

“**Cost**” shall mean, in connection with the Facility (i) costs incurred in connection with development (including meteorology studies, geological and geophysical studies, preliminary design and engineering, permitting, transmission interconnection, and commercial and legal activities); (ii) costs incurred for Engineering, Procurement, and Construction (EPC) (including project management and inspection, detailed engineering and design, labor, supervision, tools, construction equipment, materials, components, supplies, transportation, services and subcontracts); (iii) costs incurred to re-perform defective work; (iv) costs to perform warranty work; (v) sales and use taxes on goods and equipment purchased in connection with the work; (vi) costs of insurance; (vii) Taxes or other fees; (viii) costs to interconnect; (ix) the costs of Financing (including closing costs, legal and advisory fees, and interest accumulated in connection with construction); and (x) any capitalized costs of the Facility as determined in accordance with U.S. GAAP and the Internal Revenue Code, including all regulations promulgated thereto.

Costs that are included in this definition must all have been incurred in connection with the Facility.

STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

DOCKET No. 4185

Deepwater Wind Block Island, LLC

Response To Record Requests 7, 9, 10, 11 and 12

RR 9: Please respond to points 5 and 6 raised in the July 8, 2010 public comment of Mr. Riggs in the section titled "Specific Objections to certain Power Purchase provisions."

Response: Item 5 of Mr. Riggs' letter seems to suggest that the assignment clause in the PPA is inadequate because an assignment of the PPA by Deepwater Wind require the consent of National Grid but not the PUC.

Section 14 of the PPA was revised to reflect the concerns expressed by the Commission in its Order in Docket 4111. As drafted, the provision requires Deepwater Wind to obtain National Grid's consent prior to any assignment, including an assignment for collateral purposes. Such consent may not be unreasonably withheld, conditioned or delayed. It is appropriate that National Grid be the party to provide such consent, as it is Deepwater Wind's counterparty to the agreement.

Item 6 of Mr. Riggs' letter expresses concerns with Section 18 of the PPA. As is the case with assignment, Mr. Riggs' concerns seem to mischaracterize the parties' rights and responsibilities under the PPA. This provision states, as is commercially reasonable and the standard in the industry, that amendments and waivers must be in writing to be effective. It is appropriate, from the perspective of Deepwater Wind, that it work with National Grid respecting any such amendment or waiver, as National Grid is Deepwater Wind's counterparty to the agreement.

Moreover, this section also provides National Grid with the discretion to determine whether any such amendment or waiver require the approval of the PUC. Accordingly, despite Mr. Riggs' assertion to the contrary, to accept that the parties might completely "rewrite the whole thing" without PUC approval means that you also have to accept that National Grid completely disavows the PUC's jurisdiction.

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Deepwater Wind Block Island, LLC

Response To Record Requests 7, 9, 10, 11 and 12

RR 10: Regarding Appendix X, Item 1. c. "Cost" - Is it the opinion of the contracting parties that the following costs are allowed to be included in the compilation of "Cost" in connection with the Facility, that will be included in the reported Total Facility Cost:

- a. Costs associated with Docket 4185 before the PUC, including attorneys and consultants costs, wages, benefits, and direct and indirect overhead associated with any of the principals and employees of the developer, and / or affiliate companies, parent companies, subsidiary companies or strategic partners of the developer, or investors in the project, and any other sundry and ancillary cost that may be incurred in the course of the docket not specifically noted in the question.
- b. Costs associated with Docket 4111 before the PUC, including attorneys and consultant costs, wages, benefits, and direct and indirect overhead associated with any of the principals and employees of the developer, and / or affiliate companies, parent companies, and subsidiary companies or strategic partners of the developer, or investors in the project, and any other sundry and ancillary cost that may be incurred in the course of the docket not specifically noted in the question.
- c. Costs associated with lobbying for legislative enactments. If the answer is affirmative, please identify what legislative sessions (years) would be included, and the types of costs associated with these activities the parties believe are to be included in the Total Facility Cost.
- d. Costs associated with the negotiation of the Joint Development Agreement (JDA). If the answer is affirmative, please identify the types of costs associated with this effort the parties believe are to be included in the Total Facility Cost.
- e. Costs associated with the original 2009 Town of New Shoreham bid response to National Grid.
- f. Costs associated with the negotiations that lead to the execution of the original Purchase Power Agreement that was filed with the PUC in December 2009.
- g. Costs associated with efforts associated with responding to the State of Rhode Island's April 2008 RFP for a utility scale wind project.

Response: All of the items listed above fall within the definition of "Cost" as defined in the PPA.

However, even though items "c," "d," and "g" above fall within the definition of "Cost" as defined in the PPA, Deepwater Wind has capitalized those items, as well as the \$3.2MM SAMP funding made pursuant to the Joint Development Agreement, in a different project account. Accordingly, they will not be included in the Total Facility Cost of the Block Island Wind Farm.

Prepared by: William Moore

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Deepwater Wind Block Island, LLC

Response To Record Requests 7, 9, 10, 11 and 12

RR 11: Reference is made to the definition of “Costs” in Exhibit E, Appendix A of the PPA. (1) How are costs to re-perform defective work treated under clause (iii) of the definition of Costs? (2) How are costs to perform warranty work treated under clause (iv) of the definition of “Costs”? (3) How are payments on insurance claims treated under the definition of “Costs”? Reference is also made to the verification procedures specified in Exhibit E, Appendix A of the PPA. (4) How will the verification process work if there are outstanding warranty claims, insurance claims or re-performance obligations outstanding at Commercial Operations?

Response: (1) The cost to re-perform defective work in the construction of the facility will be determined by the contractual allocation of responsibilities (including any insurance arrangements, performance bonds, sureties or similar arrangements) as agreed between Deepwater Wind and the parties contractually responsible for the construction of the facility.

For example, under a lump-sum turnkey contract, the contractor is typically required to perform the necessary work (including re-performance of defective work) until the scope of work is fully performed, unless there is an applicable exception under the contract. The re-performance of defective work would not increase the Total Facility Cost in that situation.

In contrast, if the contractual arrangement did not require the contractor to deliver a completed project on a turnkey basis (*e.g.*, if the contract is a time and materials contract or a cost-reimbursable contract), or if the contractor defaults under a lump-sum turnkey contract or if there is litigation or disputes with respect to any such agreements, then the financial impact of such re-performance on Total Facility Cost will depend on a combination of factors. These include the standard of performance negotiated and memorialized in the contract, the reason for the defect, any applicable limitation on damages, and the appropriate measure of damages, if any, under the applicable law of the contract. Further, even if the cost of work is not covered by the contract, there may or may not be recourse to insurance arrangements, depending on the coverage of purchased insurance policies. In either situation, only actual out-of-pocket expenses, net of payments for damages or insurance, would be included in the Total Facility Cost. However, no adjustments to Total Facility Cost would be made for payments that relate to lost profits, such as business interruption insurance, or liquidated damages for delayed completion.

(2) The treatment noted above is similar to the treatment of defective work – *i.e.*, costs will be borne by Deepwater Wind or other contracting parties as specified in the applicable contractual arrangements and related insurance arrangements. For example, if a repair to a piece of equipment is required prior to commercial

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operation (*e.g.* covered equipment fails in start-up testing and must be replaced), then to the extent that the repair is fully covered by the scope of the applicable equipment warranty, there is no adjustment to Total Facility Cost. However, it is possible that the scope of warranty coverage will not extend to all costs incurred in connection with the warranty repair. For example, an equipment warranty may cover the cost of parts and labor to replace a broken part, but it may not include vessel costs, other transportation costs, or it may be subject to a deductible or require Deepwater Wind to incur other incidental costs (*e.g.* the cost of an engineering expert to consult on whether redundancy can be built in to avoid future failures). As with defective work, only actual out-of-pocket expenses, net of payments for damages or insurance, would be included in the Total Facility Cost. However, no adjustments to Total Facility Cost would be made for payments that relate to lost profits, such as business interruption insurance, or liquidated damages for delayed completion.

(3) As noted above, to the extent that the cost to re-perform work or costs incurred in connection with warranty work are covered by insurance, then those costs would not be included in the Total Facility Cost. However, as noted above, insurance coverage may be subject to exclusions, deductibles or require Deepwater Wind to incur other costs, which would be included in the Total Facility Cost.

(4) Deepwater Wind is required to certify the Total Facility Cost “within 90 days of Commercial Operation, or as soon thereafter as is practical.” Accordingly, to the extent that it is not possible to certify the Total Facility Cost within 90 days of Commercial Operation because there is an outstanding warranty claim or insurance claim, the certification will be made as soon thereafter as is practical. To the extent that such claim is not significant or may take significant time to resolve, then Deepwater Wind may deliver a provisional certification, which will require further adjustment upon resolution of the claim. An example of the foregoing could include a contractual dispute with a contractor or insurer respecting responsibility for a repair. In such event, Deepwater Wind may make the business decision to incur the cost of the repair (which cost would be included in Total Facility Cost) and seek damages or compensation from a third party. To the extent that there was a recovery, then it would be appropriate to deduct the proceeds of that recovery from the Total Facility Cost and to do an after the fact reconciliation.

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Deepwater Wind Block Island, LLC

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RR 12: Reference is made to EXHIBIT A: D.P.U. 10-54 Term Sheet of the Attorney General of the Commonwealth of Massachusetts, The Massachusetts Department of Energy Resources, Cape Wind Associates, LLC and Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid.

Will the PPA price be adjusted if Deepwater Wind receives a federal loan guaranty?

A: As the Total Facility Cost includes the costs of financing (clause (ix) of the definition of Costs), if the federal loan guaranty reduces such costs, then the Total Facility Cost would be reduced. Furthermore, if the Block Island Wind Farm is the beneficiary of a federal loan guaranty, then the prospects for the facility are enhanced.

It is important to note several things with respect to the foregoing answer to properly place it in context.

First, as Mr. Stahle testified, even with a federal loan guaranty, Deepwater Wind's leveraged return is only "expected to be as high as approximately 17.8% after-tax assuming 80% post-ITC leverage" (Stahle, Direct Testimony, p 6, lines 15-16) and such "estimated leveraged after-tax return is at the lower end" (Stahle, Direct Testimony, p , lines 19-20) of the range that Mr. Stahle, in his expert opinion, would expect to see for a project like the Block Island Wind Farm.

Second, that the risk profile in the BIWF PPA differs from the risk profile in the Cape Wind purchased power agreement with respect to the federal loan guaranty and other federal incentives (the PTC and the ITC). The risk of receipt of a federal loan guaranty, ITC and PTC in the BIWF farm is on Deepwater Wind. To the extent that those incentives are not received there is no upward adjustment of the price. Similarly, to the extent that such incentives are received, then (other than as noted above with respect to the cost of Financing) the price is not decreased.

Deepwater Wind understands the Cape Wind purchased power agreement to reflect a different risk profile. In that contract, the price increases if the Cape Wind project does not receive the benefit of the ITC and the PTC.

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Moreover, this section also provides National Grid with the discretion to determine whether any such amendment or waiver require the approval of the PUC. Accordingly, despite Mr. Riggs' assertion to the contrary, to accept that the parties might completely "rewrite the whole thing" without PUC approval means that you also have to accept that National Grid completely disavows the PUC's jurisdiction.

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Prepared by: William Moore

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