

October 17, 2011

VIA HAND DELIVERY & ELECTRONIC MAIL

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

RE: Docket 4185 – Reply of The Narragansett Electric Company d/b/a National Grid to the Objection of Toray Plastics (America), Inc. to September 29, 2011 Letter Regarding Waiver of Section 8.3 of the Power Purchase Agreement dated as of June 30, 2010

Dear Ms. Massaro:

National Grid¹ is filing this Reply to the Objection of Toray Plastics (America), Inc. (“Toray”) to the Company’s request set forth in its September 29, 2011 letter regarding a certain Waiver between National Grid and Deepwater Wind Block Island, LLC (“Deepwater”) of Section 8.3 of the Power Purchase Agreement dated as of June 30, 2010 (the “PPA”). In support of its Objection, Toray argues that (i) the PPA and the waiver provision set forth in Section 8.3 automatically terminated on June 30, 2011; (ii) the Commission lacks the authority to act on the Company’s request; and (iii) the Commission should hold a hearing on this matter. The Company disagrees with Toray for the reasons set forth below.

First, the Waiver is a simple contract matter that is administrative in nature and intended to waive an immaterial provision of the PPA. Section 8.3 provides that the PPA would terminate if Commission approval of the PPA, including resolution of any appeals, was not received by June 30, 2011. As a matter of contract law, contracting parties always have the right to mutually waive termination provisions such as the provision in the PPA, which is common in this type of agreement. In this case, the Company and Deepwater agreed to a waiver of the termination effective June 30, 2011, and, subject to Commission approval, the PPA remains in full force and effect. Moreover, the Waiver is a reasonable way for the parties to waive this provision in order to avoid a technical termination of the PPA, a result that neither party intended nor desired.

Second, contrary to Toray’s assertions, this matter is appropriately before the Commission for review. The Commission has jurisdiction over the PPA pursuant to R.I.G.L. § 39-26.1-7. Toray’s argument that the statute limits the Commission’s authority solely to a review of the PPA that was submitted on June 30, 2010, and that the Commission’s duties and

¹ The Narragansett Electric Company d/b/a National Grid (herein referred to as “National Grid” or the “Company”).

responsibilities concluded when the Commission issued its majority decision ignores the fact that Section 18 of the PPA approved by the Commission expressly leaves to the Company's discretion whether or not any amendment or waiver of the provisions of the PPA requires the approval of, or a filing with, the Commission. Also, Title 39 of the Rhode Island General Laws bestows upon the Commission broad supervisory authority over the Company and the conduct of its business.² This naturally extends to any power purchases that the Company enters into pursuant to R.I.G.L. §39-26.1, as well as general prudency decisions. Since the Court's ruling on the PPA was received on July 1, 2011, the parties executed a Waiver and have filed it with the Commission requesting affirmation that the action taken by the Company to waive the termination provision was reasonable and prudent, and that the parties are authorized to proceed under the PPA. This action is crucial in order to assure that the project can be financed without any contractual or other legal questions pending that could delay the project. The fact that the Company filed the Waiver in Docket 4185, which is now closed, is irrelevant to the Commission's broad authority to review this matter, and does not prohibit the Commission from opening a new docket if deems it necessary or appropriate.

Lastly, Toray's request for a hearing is yet another attempt by Toray to re-argue its position regarding the cost of the PPA and to further delay the project from moving forward. The Commission and the Rhode Island Supreme Court have already rejected Toray's arguments. It is, therefore, not surprising that Toray would now object to the Waiver. However, this is a simple matter that can be decided in short order by a Commission vote at an open meeting without the need for a hearing.

The Company respectfully requests that the Commission reject the arguments set forth by Toray in their Objection and deny their request for a hearing.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7288.

Very truly yours,



Jennifer Brooks Hutchinson

cc: Docket 4185 Service List
Leo Wold, Esq.
Steve Scialabba, Division

² See e.g. R.I.G.L. §§ 39-1-1(c); 39-1-38.

Certificate of Service

I hereby certify that a copy of the cover letter and / or any materials accompanying this certificate has been electronically transmitted, sent via U.S. mail or hand-delivered to the individuals listed below.



Joanne M. Scanlon

October 17, 2011
Date

**National Grid – PUC Review of Proposed Town of New Shoreham Project
Docket No. 4185 – Service List Update 10/7/11**

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