

November 3, 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 – Waiver of Section 8.3 of the Amended Power Purchase Agreement Between The Narragansett Electric Company, d/b/a National Grid and Deepwater Wind Block Island, LLC**  
**Response to Record Request**

Dear Ms. Massaro:

National Grid<sup>1</sup> is submitting this letter in response to the Commission's request to the Company during the November 2, 2011 oral argument in the above-referenced proceeding. The Commission requested that National Grid provide the date on which the Waiver, which was the subject of the oral argument, was executed.

National Grid and Deepwater Wind Block Island, LLC signed the Waiver on July 18, 2011. The parties intended the written waiver to be effective, as between the parties, as of June 30, 2011 because the parties agreed and intended to move forward, subject to obtaining Commission approval of the Waiver, despite the non-occurrence of the condition to obtain the PPA Regulatory Approval by the date specified in the Amended Power Purchase Agreement. Under settled law, the non-occurrence of a condition does not terminate the underlying contract, even if the condition provides for an "automatic termination." See *Thompson v. McCann*, 762 A.2d 432, 438 (R.I. 2000); *Riggins v. City of Kansas City, Mo.*, 2011 Mo. App. LEXIS 1083, \*17-\*28 (Mo. App. Ct. Aug. 23, 2011); 8-40 Corbin on Contracts §§ 40.3, 40.10. If the contracting parties intend to move forward, as National Grid and Deepwater intend to do here, subject to Commission approval, the contract remains in full force and effect, and the condition is waived. *Thompson v. McCann*, 762 A.2d at 438; *Majestic Life Assurance Co. v. Tuttle*, 107 N.E.22, 26 (Ind. App. Ct. 1914); 8-40 Corbin on Contracts §§ 40.3, 40.10.

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Jennifer Brooks Hutchinson", with a long horizontal flourish extending to the right.

Jennifer Brooks Hutchinson

cc: Cynthia G. Wilson-Frias, Senior Legal Counsel  
Docket 4185 Service List

### 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

November 3, 2011  
Date

**National Grid – PUC Review of Proposed Town of New Shoreham Project  
Docket No. 4185 – Service List Update 11/2/11**

| <b>Name/Address</b>                                                                                                                   | <b>E-mail Distribution</b>                                                             | <b>Phone/FAX</b>             |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|------------------------------|
| Thomas R. Teehan, Esq.<br>National Grid.<br>280 Melrose St.<br>Providence, RI 02907                                                   | <a href="mailto:Thomas.teehan@us.ngrid.com">Thomas.teehan@us.ngrid.com</a>             | 401-784-7667<br>401-784-4321 |
|                                                                                                                                       | <a href="mailto:Joanne.scanlon@us.ngrid.com">Joanne.scanlon@us.ngrid.com</a>           |                              |
| Ronald T. Gerwatowski, Esq.<br>National Grid<br>40 Sylvan Rd.<br>Waltham, MA 02451                                                    | <a href="mailto:Ronald.gerwatowski@us.ngrid.com">Ronald.gerwatowski@us.ngrid.com</a>   | 781-907-1820                 |
|                                                                                                                                       | <a href="mailto:Celia.obrien@us.ngrid.com">Celia.obrien@us.ngrid.com</a>               | 781-907-2153                 |
|                                                                                                                                       | <a href="mailto:Jennifer.hutchinson@us.ngrid.com">Jennifer.hutchinson@us.ngrid.com</a> | 781-907-2121                 |
| Gerald J. Petros, Esq.<br>Hinkley, Allen & Snyder LLP<br>50 Kennedy Plaza, Suite 1500<br>Providence, RI 02903-2319<br>(National Grid) | <a href="mailto:gpetros@haslaw.com">gpetros@haslaw.com</a>                             | 401-274-2000<br>401-277-9600 |
|                                                                                                                                       | <a href="mailto:jmansolf@haslaw.com">jmansolf@haslaw.com</a>                           |                              |
| Joseph A. Keough, Jr., Esq.<br>Keough & Sweeney<br>100 Armistice Blvd.<br>Pawtucket, RI 02860<br>(Deepwater Wind)                     | <a href="mailto:jkeoughjr@keoughsweeney.com">jkeoughjr@keoughsweeney.com</a>           | 401-724-3600                 |
| Alan Mandl, Esq.<br>Law Office of Alan D. Mandl<br>90 Glezan Lane<br>Wayland, MA 01778<br>(Town of New Shoreham)                      | <a href="mailto:alan@admlawoffice.com">alan@admlawoffice.com</a>                       | 508-276-1365<br>508-276-0992 |
| Katherine A. Merolla, Esq.,<br>Merolla & Accetturo<br>469 Centerville Road Suite 206<br>Warwick, RI 02886<br>(Town of New Shoreham)   | <a href="mailto:KAMLAW2344@aol.com">KAMLAW2344@aol.com</a>                             | 401-739-2900<br>401-739-2906 |

|                                                                                                                                                      |                                                                                          |                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------|
| Jerry Elmer, Esq.<br>Conservation Law Foundation<br>55 Dorrance Street<br>Providence, RI 02903<br>(Conservation Law Foundation)                      | <a href="mailto:Jelmer@clf.org">Jelmer@clf.org</a>                                       | 401-351-1102<br>401-351-1130 |
| Richard A. Sinapi, Esq.<br>Sinapi Formisano & Company, Ltd.<br>100 Midway Place, Suite 1<br>Cranston, RI 02920-5707<br>(RIBCTC)                      | <a href="mailto:dicks@sfclaw.com">dicks@sfclaw.com</a>                                   | 401-944-9690<br>401-943-9040 |
| Alan Shoer, Esq.<br>Adler Pollock & Sheehan<br>One Citizens Plaza, 8 <sup>th</sup> Floor<br>Providence, RI 02903-1345<br>(EDC)                       | <a href="mailto:Ashoer@apslaw.com">Ashoer@apslaw.com</a>                                 | 401-274-7200<br>401-751-0604 |
| Leo Wold, Esq.<br>Dept. of Attorney General<br>150 South Main St.<br>Providence, RI 02903<br>(DPUC)                                                  | <a href="mailto:lwold@riag.ri.gov">lwold@riag.ri.gov</a>                                 | 401-222-2424<br>401-222-3016 |
|                                                                                                                                                      | <a href="mailto:Steve.scialabba@ripuc.state.ri.us">Steve.scialabba@ripuc.state.ri.us</a> |                              |
|                                                                                                                                                      | <a href="mailto:Al.contente@ripuc.state.ri.us">Al.contente@ripuc.state.ri.us</a>         |                              |
|                                                                                                                                                      | <a href="mailto:David.stearns@ripuc.state.ri.us">David.stearns@ripuc.state.ri.us</a>     |                              |
|                                                                                                                                                      | <a href="mailto:Tahern@ripuc.state.ri.us">Tahern@ripuc.state.ri.us</a>                   |                              |
|                                                                                                                                                      | <a href="mailto:John.spirito@ripuc.state.ri.us">John.spirito@ripuc.state.ri.us</a>       |                              |
| Jon Hagopian, Esq.<br>Dept. of Attorney General<br>150 South Main St.<br>Providence, RI 02903<br>(DPUC)                                              | <a href="mailto:jhagopian@riag.ri.gov">jhagopian@riag.ri.gov</a>                         |                              |
|                                                                                                                                                      | <a href="mailto:Dmacrae@riag.ri.gov">Dmacrae@riag.ri.gov</a>                             |                              |
|                                                                                                                                                      | <a href="mailto:mcorey@riag.ri.gov">mcorey@riag.ri.gov</a>                               |                              |
| Gregory S. Schultz, Esq.<br>Dept. of Attorney General                                                                                                | <a href="mailto:gschultz@riag.ri.gov">gschultz@riag.ri.gov</a>                           | 401-274-4400<br>x-2116       |
| Mary E. Kay, Esq.<br>Acting Executive Counsel<br>Department of Environmental<br>Management<br>235 Promenade Street<br>Providence, Rhode Island 02908 | <a href="mailto:mary.kay@dem.ri.gov">mary.kay@dem.ri.gov</a>                             | 401 222-6607<br>ext 2304     |
| Michael McElroy, Esq.<br>21 Dryden Lane<br>PO Box 6721<br>Providence, RI 02940-6721<br>(Toray Plastics & Polytop Corporation)                        | <a href="mailto:McElroyMik@aol.com">McElroyMik@aol.com</a>                               | 401-351-4100<br>401-421-5696 |
| John J. Kupa, Jr., Esq.<br>20 Oakdale Road<br>North Kingstown, RI 02852<br>(Ocean State Policy Research Institute)                                   | <a href="mailto:JohnKupaLaw@aol.com">JohnKupaLaw@aol.com</a>                             | 401-294-5566                 |
| Joseph J. McGair, Esq.<br>Petrarca & McGair, Inc.<br>797 Bald Hill Rd.<br>Warwick, RI 02886<br>(Citizen Intervenors)                                 | <a href="mailto:jjm@petrarcamcgair.com">jjm@petrarcamcgair.com</a>                       | 401-821-1330                 |

|                                                                                                                                                            |                                                                                  |                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|------------------------------|
| <b>Original &amp; twelve (12) copies w/:</b><br>Luly E. Massaro, Commission Clerk<br>Public Utilities Commission<br>89 Jefferson Blvd.<br>Warwick RI 02889 | <a href="mailto:Lmassaro@puc.state.ri.us">Lmassaro@puc.state.ri.us</a>           | 401-780-2017<br>401-941-1691 |
|                                                                                                                                                            | <a href="mailto:Cwilson@puc.state.ri.us">Cwilson@puc.state.ri.us</a>             |                              |
|                                                                                                                                                            | <a href="mailto:Nucci@puc.state.ri.us">Nucci@puc.state.ri.us</a>                 |                              |
|                                                                                                                                                            | <a href="mailto:Anault@puc.state.ri.us">Anault@puc.state.ri.us</a>               |                              |
|                                                                                                                                                            | <a href="mailto:Sccamara@puc.state.ri.us">Sccamara@puc.state.ri.us</a>           |                              |
|                                                                                                                                                            | <a href="mailto:Adalessandro@puc.state.ri.us">Adalessandro@puc.state.ri.us</a>   |                              |
|                                                                                                                                                            | <a href="mailto:Dshah@puc.state.ri.us">Dshah@puc.state.ri.us</a>                 |                              |
| Thomas Kogut, DPU                                                                                                                                          | <a href="mailto:tkogut@ripuc.state.ri.us">tkogut@ripuc.state.ri.us</a>           |                              |
| Richard Hahn<br>Mary Neal<br>Lacapra Associates<br>1 Washington Mall, 9th floor<br>Boston, MA 02108                                                        | <a href="mailto:rhahn@lacapra.com">rhahn@lacapra.com</a>                         |                              |
|                                                                                                                                                            | <a href="mailto:mneal@lacapra.com">mneal@lacapra.com</a>                         |                              |
| David Schwartz, Deepwater Wind                                                                                                                             | <a href="mailto:dschwartz@dwwind.com">dschwartz@dwwind.com</a>                   |                              |
| David Nickerson from Mystic River<br>Energy Group, LLC                                                                                                     | <a href="mailto:dave@nickersons.org">dave@nickersons.org</a>                     |                              |
| Richard LaCapra, LaCapra Associates                                                                                                                        | <a href="mailto:Rlacapra@lacapra.com">Rlacapra@lacapra.com</a>                   | 212-675-8123                 |
| William P. Short, III                                                                                                                                      | <a href="mailto:w.shortiii@verizon.net">w.shortiii@verizon.net</a>               | 917-206-0001                 |
| Julian Dash, RIEDC                                                                                                                                         | <a href="mailto:jdash@riedc.com">jdash@riedc.com</a>                             |                              |
| Rep. Laurence Ehrhardt                                                                                                                                     | <a href="mailto:rep-ehrhadt@rilin.state.ri.us">rep-ehrhadt@rilin.state.ri.us</a> |                              |
| Dr. Albert Cassaza                                                                                                                                         | <a href="mailto:casazaa@gmail.com">casazaa@gmail.com</a>                         |                              |
| Cliff McGinnes                                                                                                                                             | <a href="mailto:ifrtruck35@mac.com">ifrtruck35@mac.com</a>                       |                              |
| Marie DeCastro                                                                                                                                             | <a href="mailto:mdecastro@rilin.state.ri.us">mdecastro@rilin.state.ri.us</a>     |                              |
| Bob Grace                                                                                                                                                  | <a href="mailto:bgrace@seadvantage.com">bgrace@seadvantage.com</a>               |                              |
| Representative Eileen Naughton                                                                                                                             | <a href="mailto:rep.naughton@gmail.com">rep.naughton@gmail.com</a>               |                              |
| Brian Bishop (OSPRI)                                                                                                                                       | <a href="mailto:riwiseuse@cox.net">riwiseuse@cox.net</a>                         |                              |
| Michael & Maggie Delia                                                                                                                                     | <a href="mailto:maggie@biaero.com">maggie@biaero.com</a>                         |                              |
|                                                                                                                                                            | <a href="mailto:mikdelia@biaero.com">mikdelia@biaero.com</a>                     |                              |
| Mike Beauregard                                                                                                                                            | <a href="mailto:mbeauregard@huroncapital.com">mbeauregard@huroncapital.com</a>   |                              |
| Rosemarie Ives<br>Jonathan Ives                                                                                                                            | <a href="mailto:ivesredmond@aol.com">ivesredmond@aol.com</a>                     |                              |
|                                                                                                                                                            | <a href="mailto:jives98836@aol.com">jives98836@aol.com</a>                       |                              |
| Nancy Dodge, Town Manager<br>Town of New Shoreham                                                                                                          | <a href="mailto:townmanager@new-shoreham.com">townmanager@new-shoreham.com</a>   | 401-466-3219                 |
|                                                                                                                                                            | <a href="mailto:kpson@aol.com">kpson@aol.com</a>                                 |                              |
| Benjamin Riggs                                                                                                                                             | <a href="mailto:rmcriggs@earthlink.net">rmcriggs@earthlink.net</a>               |                              |
| Tina Jackson, Pres. American Alliance of<br>Fishermen in their Communities                                                                                 | <a href="mailto:liteangel3367@yahoo.com">liteangel3367@yahoo.com</a>             |                              |
| Shigeru Osada                                                                                                                                              | <a href="mailto:shigeru.osada@toraytpa.com">shigeru.osada@toraytpa.com</a>       |                              |
| Tom D'Amato                                                                                                                                                | <a href="mailto:tdamato@polytop.com">tdamato@polytop.com</a>                     |                              |
| Kevin Rowles                                                                                                                                               | <a href="mailto:krowles@polytop.com">krowles@polytop.com</a>                     |                              |

|                                           |                                                                                  |  |
|-------------------------------------------|----------------------------------------------------------------------------------|--|
| Julia Techentin                           | <a href="mailto:jbtechentin@apslaw.com">jbtechentin@apslaw.com</a>               |  |
| Paul Patterson<br>Glenrock Associates LLC | <a href="mailto:paulpatterson@glenrockllc.com">paulpatterson@glenrockllc.com</a> |  |