

# Schacht & McElroy

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November 7, 2011

Luly Massaro  
Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: Docket 4185 – Objection to Request by National Grid for Commission Approval of Waiver of Section 8.3 of the Amended Power Purchase Agreement between National Grid and Deepwater Wind

Dear Luly:

As you know, this office represents Toray Plastics (America), Inc.

On November 3, 2011, National Grid submitted a letter responding to the Commission's Record Request asking for the date on which the conditional Waiver was executed. The National Grid letter states that the conditional Waiver was executed on July 18, 2011.<sup>1</sup>

The letter also makes it clear that, as also stated explicitly in the conditional Waiver, the parties will only "move forward, subject to obtaining Commission approval of the Waiver . . . ." (emphasis added). In other words, as also stated by counsel for National Grid at oral argument, if the Commission does not approve the conditional Waiver, National Grid will not move forward with the project. This makes it clear that National Grid agrees that the PPA is terminated and no longer binding on National Grid.

If the PPA was still in effect, then (1) National Grid would not need the conditional Waiver, (2) National Grid would not need PUC approval of the Waiver, and (3) National Grid would not expose itself and its stockholders to a breach of contract suit from Deepwater Wind by not going forward with the project if the Commission does not approve the conditional Waiver.

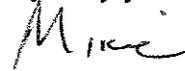
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<sup>1</sup> Assuming this is the correct date, why was the request for Commission approval of the Conditional Waiver not filed until September 29, 2011?

In other words, if National Grid feels that it can walk away from the PPA right now if the Commission does not approve the conditional Waiver, then National Grid must be certain that the PPA is not in effect and that National Grid currently has no obligation to go forward with the project under the PPA.

Accordingly, for the reasons stated in Toray's previous written objection, and at oral argument, Toray respectfully requests that the Commission take no action on National Grid's request for approval of the conditional Waiver because the Commission has no subject matter jurisdiction to act. In the alternative, if the Commission feels that it has jurisdiction to act, then Toray respectfully requests that the Commission reject National Grid's request for approval of the conditional Waiver.

Very truly yours,



Michael R. McElroy

MRMc:tmg  
cc: Service List