

August 6, 2010

Via Electronic Mail and Hand Delivery

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

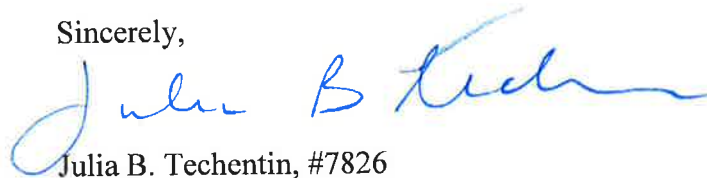
**Re: Docket 4185 - Review of Amended Power Purchase Agreement Between
Narragansett Electric Company d/b/a National Grid and Deepwater Wind
Block Island, LLC Pursuant to R.I. Gen. Laws § 39-26.1-7**

Dear Luly:

Enclosed please find an original and twelve (12) copies of Rhode Island Economic Development Corporation's Memorandum on The Economic Benefit Analysis Required by R.I. Gen. Laws 39-26.1-7.

Thank you for your attention to this filing

Sincerely,



Julia B. Techentin, #7826

Enclosures

cc: Service List in Docket 4185 via electronic mail

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF PROPOSED :
TOWN OF NEW SHOREHAM :
PROJECT PURSUANT TO : DOCKET NO. 4185
R.I. GEN. LAWS § 39-26.1-7 :

**Rhode Island Economic Development Commission's
Memorandum on The Economic Benefit Analysis Required by R.I. Gen. Laws 39-26.1-7**

The Rhode Island Economic Development Corporation (“RIEDC”) hereby responds to the question posed by the Commission on the proper interpretation of R.I. Gen. Laws §39-26.1-7(c)(iii), particularly with respect to whether the subsection requires the Commission to take into account the impact of above market costs as part of its analysis of whether the amended power purchase agreement (“Amended PPA”) is likely to produce economic development benefits.

Analysis

The Commission is directed to approve the Amended PPA upon a finding that the four required conditions articulated in § 39-26.1-7(c) have been met. The statute provides:

The commission shall review the amended power purchase agreement and shall approve it if: (i) The amended agreement contains terms and conditions that are commercially reasonable; ...and ... (iii) The amended agreement is likely to provide economic development benefits, including: facilitating new and existing business expansion and the creation of new renewable energy jobs; the further development of Quonset Business Park; and, increasing the training and preparedness of the Rhode Island workforce to support renewable energy projects...

To aid the Commission’s inquiry into the relevant economic development benefits, the RIEDC is directed to provide the Commission with an advisory opinion on these itemized economic development benefits which will be given “substantial deference” by the Commission. R.I. Gen. Laws §39-26.1-7(c)(iv).

When construing statutes, the Rhode Island Supreme Court, the final arbiter of statutory construction, has explained, “we adhere to the rule that we must ascertain the intent of the Legislature and effectuate that intent whenever it is within the legislative authority. We accomplish this task by examining the language, nature and object of the statute, and by giving to the words in the statute their plain and ordinary meaning.” *Lake v. Rhode Island*, 507 A.2d 1349, 1351 (R.I. 1986) (internal citations omitted). The Commission should do likewise and use these canons of construction to assist in its answer to this very important question.

There is no ambiguity in the statute, and giving the words of §39-26.1-7(c)(iii) their “plain and ordinary meaning” requires no interpretation or machinations. Indeed, while the term ‘economic development benefits’ appears in this subsection together with examples of such benefits, the word “cost” does not even appear in §39-26.1-7 (c)(iii). Any attempt to read the word “cost” into subsection §39-26.1-7(c)(iii) (hence requiring the RIEDC to provide an advisory opinion on the costs as well as economic development benefits) requires contortions and interpretations that fly in the face of the plain meaning of the words used and the clear intent of the carefully tailored statute. Instead, the Commission is unambiguously directed to approve the Amended PPA if it “is likely to provide economic development benefits.” There is plainly no requirement in this prong that RIEDC present an opinion, or that the Commission consider, the economic or other social costs of renewable energy in this section of the statute.

Furthermore, it is a matter of common knowledge that when the General Assembly requires agencies to conduct a finding or an analysis of relevant costs, it routinely directs the agency to do exactly that, using plain and unambiguous language. Indeed, such a “cost/benefit

analysis” can be found as a requirement for administrative review in several other state and federal statutes.¹

In fulfilling its obligations under the statute to provide the Commission with an advisory opinion on the economic development benefits of the demonstration project as required by §39-26.1-7(c)(iii), the RIEDC is mindful that the above market rates and other cost related terms of the Amended PPA will be examined with particularity by this Commission under the newly defined “commercially reasonable” standard in §39-26.1-7(c)(i). In that subsection of the statute, the Commission will examine the above market price called for in the Amended PPA in order to determine if the price is “commercially reasonable” for a project of similar size, location and technology.

Moreover, the absence of a requirement for the Commission to assess the above market costs as part of an economic development analysis is in stark contrast to the analysis of ratepayer impact that the Commission will undertake in connection with any utility-scale offshore wind farm under §39-26.1-8(b).² The different standards of review required by each statute, plainly

¹ Examples of statutes that require analysis of imposed costs as part of a cost/benefit type analysis include: R.I. Gen. Laws §46-15.2-5(d)(8)(e) (in connection with the evaluation of applications for financial assistance by water utilities “[t]he division shall perform an analysis of the proposed *costs and benefits* of the project . . .”); R.I. Gen. Laws §42-98-9(a)(5) (requiring the EFSB board to review “estimated *costs* to the community such as safety and public health issues, storm damage and power outages, *estimated costs to business and homeowners* due to power outages, the *estimated cost of energy* to be produced by the proposed facility . . .”); R.I. Gen. Laws §42-142-3(e) (“[t]he division shall be responsible for preparing *cost benefit analyses* of all tax expenditures.”); R.I. Gen. Laws §42-142-5 (“[t]he director of the department of revenue shall . . . compile . . . an annual unified economic development budget report which shall provide the following comprehensive information regarding the *costs and benefits* of all tax credits or other tax benefits conferred . . .”). In addition, the U.S. Congress has routinely imposed a cost-benefit type analysis requirement on federal agencies (and state agencies to the extent they have delegated authority) in connection with evaluation required in a number of federal programs; *see e.g.*, the Clean Air Act at §111(a)(1); the Clean Water Act at § 307; the Safe Drinking Water Act at §1412 (b)(4); the Resource Conservation and Recovery Act at § 3004(a); the Federal Food, Drug and Cosmetic Act at §408(b)(2)(B); the Federal Insecticide, Fungicide and Rodenticide Act at §§3(b)(5) and §2(bb); the Toxic Substances Control Act at §§4 and 6; and the Comprehensive Environmental Response, Compensation and Liability Act at §121.

² R.I. Gen. Laws § 39-26.1-8(b) sets forth very different and specific factors for the Commission to consider when examining utility-scale offshore wind projects:

The commission shall hold proceedings to review the proposal contained in the application. In reviewing the application, the commission shall determine

apparent upon comparison of the two statutes, cannot be ignored and in fact makes perfect sense in light of the very specialized stated purpose in the statute “to facilitate the construction of a small-scale offshore wind demonstration project off the coast of Block Island ... in order to position the state to take advantage of the economic development benefits of the emerging offshore wind industry...” R.I. Gen. Laws §39-26.1-7.

In furtherance of its stated goal to facilitate the construction of small-scale offshore wind demonstration project, the statute specifically authorized Narragansett Electric to enter into an amended power purchase agreement “on terms that are consistent with the power purchase agreement that was filed with the commission on December 9, 2009 in docket 4111...provided that the pricing terms of such agreement are amended as more fully described in subsection 39-26.1-7(e).” Subsection 39-26.1-7(e) includes the stipulation that the price contained in the signed power purchase agreement submitted in docket 4111 shall be the maximum price (subject to other specific terms relating to potential reductions and verification as set forth in the subsection.).

Therefore, subject only to the process and standards outlined in the statute, the above market energy costs found in the signed agreement submitted in docket 4111 were accepted by the General Assembly as the potential maximum price in the Amended PPA. The General Assembly clearly drafted the statute such that an above market price otherwise deemed “commercially reasonable” cannot be the very reason the Amended PPA fails to be approved simply because some might prefer to use these very same above market costs as an offset to any

whether the proposal is in the best interests of electric distribution customers in Rhode Island. In making this determination, the commission shall consider the following factors: (i) The economic impact and potential risks, if any, of the proposal on rates to be charged by the electric distribution company; (ii) The potential benefits of stabilizing long-term energy prices; (iii) Any other factor the commission determines necessary to be in the best interest of the rate payers.

economic benefits. Any such attempt to also use above market costs as an offset into the economic benefit analysis of §39-26.1-7 (c)(iii) would utterly frustrate the General Assembly's intent to facilitate a demonstration project to achieve the articulated goals associated with the development potential of the emerging renewable energy industry in Rhode Island.

Conclusion

Subsection 39-26.1-7 (c)(iii) clearly and unambiguously requires the Commission to examine whether the Amended PPA is likely to provide "economic development benefits" of the type listed therein. This section contains no hidden 'cost' component, and any attempt read a cost/benefit analysis into this section would operate to frustrate the clear purpose and intent of the statute. The General Assembly clearly mandated that cost related terms of the Amended PPA be scrutinized by the Commission under the narrowly tailored commercially reasonable standard pursuant to §39-26.1-7 (c)(i). Reading a cost/benefit analysis into §39-26.1-7 (c)(iii) violates the basic canons of statutory construction by necessarily ignoring the plain and unambiguous meaning of the language of the statute as well as the entire purpose and intent of the General Assembly in carefully revising this statute in pursuit of its goal of facilitating a small-scale offshore wind demonstration project.