

August 6, 2010

VIA HAND DELIVERY & ELECTRONIC MAIL

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

Dear Ms. Massaro:

Enclosed please find an original and twelve (12) copies of National Grid's¹ Brief in the above-captioned proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Jennifer Brooks Hutchinson

Enclosure

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

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

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND PUBLIC UTILITIES COMMISSION

The Narragansett Electric Company)	
d/b/a National Grid)	R.I.P.U.C. 4185
Review of Town of New Shoreham Project)	
Pursuant to R.I. Gen. Laws § 39-26.1-7)	

BRIEF OF NATIONAL GRID

National Grid¹ submits this brief in response to two issues that were raised during the evidentiary hearings regarding the Amended the Power Purchase Agreement executed on June 30, 2010 (the “Amended PPA”) between National Grid and Deepwater Wind Block Island, LLC (“Deepwater”): (i) whether R.I. Gen. Laws R.I.G.L.39-26.1-7(c)(iii) requires that the Commission employ a “net economic benefits” test by taking into account the above-market costs and the rate effect on existing businesses; and (ii) whether the Amended PPA contains provisions that provide for a decrease in pricing if savings can be achieved in the actual cost of the project pursuant to R.I. Gen. Laws § 39-26.1-7(e).

I. R.I. GEN. LAWS § 39-26.1-7(c) REQUIRES A STRAIGHTFORWARD ECONOMIC BENEFITS TEST

One of the findings that the Commission must make as a condition for approval relates to the economic development benefits of the project. Plainly stated, the condition is met if the “amended agreement is likely to provide economic development benefits.” R.I. Gen. Laws §39-26.1-7(c)(iii). The statute does not require the Commission to perform a cost-benefit analysis.

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

Nor does the statute require the Commission to perform a “net economic benefits” test. Nor does the statute require the Commission to weigh the rate impacts on all customers against the economic development benefits. The statute only requires a finding that the benefits are present. Certainly, the benefits need to be material benefits, but the statute does not require that those benefits be netted against the above market costs of the price being paid under the agreement. To add this extra layer to the statutory test is to re-write the statute.

The economic benefits requirement actually enacted is completely consistent with the overall intention of the amended law, as set forth in the preamble. The General Assembly understood that the Commission rejected the agreement in the first proceeding in Docket No. 4111, based in part on the price. Yet, the General Assembly expressed its policy judgment that the project should nevertheless move forward, subject to some reasonable conditions. One was that the power purchase agreement meets the definition of commercial reasonableness, as newly defined. The second was that the pricing be amended to allow for a decrease if cost savings could be achieved. A third requirement was that the Commission find that there be a reduction in carbon emissions. Finally, the General Assembly required a finding that the project would likely provide economic development benefits.

The notion that the General Assembly intended to employ a standard whereby the project could not go forward unless the value of the economic development potential exceeded the value of the above market payments under the agreement is absurd. It renders the entire amended law nonsensical in light of the other provisions and clear intention of the law. The project, after all, was explicitly recognized as a small “demonstration project.” The idea that a small demonstration project, limited to only eight wind turbines, could meet a test that requires the economic development benefits to be netted against the effects of the prospective rate increase

makes absolutely no sense given the cost realities of which the General Assembly was fully aware.

When the legislature wished to assure that the rate impacts of above market payments are considered against economic impacts before an approval is granted, it knew how to do this. That was precisely the case for the utility-scale project set forth in Section 8 of the same chapter.

Specifically, Section 8(b) contains the following standard:

The commission shall hold proceedings to review the proposal contained in the application. In reviewing the application, the commission shall determine 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. R.I. Gen. Laws § 39-26.1-8(b).

This is a very clear instruction to the Commission to take into account the rate impacts against economic impacts. It is a standard that appears in the same chapter of title 39 as the Section of the law applicable in this case.

In contrast, when Section 7 was amended, the General Assembly only sought a finding from the Commission that economic development benefits were likely. There was no cost/benefit condition placed on this inquiry. For the Commission to now employ a test which mirrors the one contained in Section 8 is for the Commission to ignore the statute.

There are many occasions when the General Assembly has enacted law where it leaves the Commission a considerable amount of discretion to set policy and establish the parameters through which it should be implemented. But Section 7 of Chapter 26.1 is not one of them. The General Assembly required the parties to return to the Commission with a new contract. But, in doing so, the General Assembly set forth some very clear standards. It is not the role of the Commission in this case to create a higher bar for the approval of the power purchase agreement

than otherwise exists in the plain language of the amended Section 7. While the Commission had to employ a standard that was not separately and explicitly set forth in Section 7 in Docket No. 4111, the new amended Section 7 does not contain such an interpretative gap. The gap has been filled and the standard is now clear and unambiguous. The Commission should not re-write and expand the standard to establish a virtually insurmountable hurdle, as the opponents would prefer.

The opponents will argue that a net benefits test should be applied and find case law from other contexts in which courts have required agencies to apply a net benefits test, even when the statute does not otherwise specify it. But the statute in this case is quite unique. It is not establishing a standard that will be applicable to a multitude of future applications, the implications of which could create undesirable results. This statute pertains to one project and one agreement. There is a specific history that must be taken into account. To ignore the limited application of this law and employ reasoning that is suited to regulations that have wide scope and application is simply an excuse to ignore the will of the General Assembly in this case.

While some of the Company's customers who oppose the project may be understandably concerned about an agreement which is likely to result in a rate increase, this concern is not a consideration under the law. The opponents may not like the law. But the law must be implemented as written. The General Assembly has spoken with a policy judgment that this small demonstration project is important to the state of Rhode Island, even though they were aware that a rate increase is likely to accompany it. That policy judgment must be accepted, and the plain language of the amended law implemented.

II. THE AMENDED PPA COMPLIES WITH R.I. GEN. LAWS § 39-26.1-7(e) BY PROVIDING FOR A DECREASE IN PRICING IF THE ACTUAL COST OF THE PROJECT IS LESS THAN THE BASE AMOUNT OF \$205 MILLION.

Section 39-26.1-7(e) requires that the Amended PPA provide (i) for “terms that shall decrease the pricing if savings can be achieved in the actual cost of the project, with all realized savings allocated to the benefit of ratepayers” and (ii) that the initial fixed price from Docket No. 4111 is the maximum initial price, with any realized savings reducing such price. R.I. Gen. Laws § 39-26.1-7(e)(i), (ii). National Grid and Deepwater did just that in Appendix X to Exhibit E of the Amended PPA, which provides for a reduction in the bundled price if savings can be achieved in the total facility costs below the base amount of \$205 million. See also Exhibit 1 to the Testimony of Madison Milhous, Jr., Docket 4185.

An issue arose during the hearings regarding whether the actual cost of the project should be \$219 million or the \$205 million base amount as set forth in Appendix X. In his pre-filed testimony in this proceeding, the Division’s witness, Richard Hahn, referred to Deepwater’s response to Data Request DIV 1-12 and DIV 1-13 from Docket No. 4111, in which Deepwater stated that the expected capital cost of the project was \$219 Million (Direct Testimony of Richard S. Hahn at 6-7). Mr. Hahn opined that this response from Docket No. 4111 makes clear that the estimated cost of the project is \$219 Million and that in order to comply with R.I. Gen. Laws § 39-26.1-7(e)(i), any savings in the cost to construct the facility below \$219 Million should be allocated to customers in the form of a reduction in the 2012 unit price of \$235.70 per MWH (Hahn Direct Testimony at 8).

The legal question for the Commission, then, is whether Deepwater’s responses to Data Requests DIV 1-12 and DIV 1-13 in Docket No. 4111 are binding on the Commission as a

matter of law. The answer is plainly no. The Commission has wide discretion to give weight to the testimony offered by Mr. Milhous in this docket that the estimated project cost is \$205 million and not \$219 million.

Mr. Milhous provided credible testimony that the unit cost of \$235.75 per megawatt hour in Docket No. 4111 did not correspond to the \$219 million figure. Mr. Milhous understood the cost to be \$203.9 million at the time of the December 9, 2009 PPA and it was this cost amount that was attributable to the direct calculation of the unit price at that time. See Tr. at 58-60 (August 3, 2010). He explained the slight difference between that amount and the base amount of \$205.4 million in the Amended PPA as the difference in financing costs as a result of the loss of the DOE loan guaranty. See Tr. at 60 (August 3, 2010). The financial model provided to Mr. Milhous by Deepwater had always assumed the lower cost (adjusted slightly for the difference in financing costs) and was tied to the internal rate of return. See Tr. at 101-104 (August 3, 2010).

The weight of the evidence supports a finding that the \$205 million base amount as set forth in the Amended PPA is appropriate and reasonable in accordance with Section 39-26.1-7(e)(i), (ii).

The Narragansett Electric Company
d/b/a National Grid
By its attorneys



Ronald T. Gerwatowski
Jennifer Brooks Hutchinson

Date: August 6, 2010

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate were electronically submitted, hand delivered and/or mailed to the individuals listed below.



Joanne M. Scanlon

August 6, 2010
Date

**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4185 – Service List Updated 7/23/10**

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