



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Patrick C. Lynch, Attorney General

July 6, 2010

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

**Re: 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-Docket No. 4185**

Dear Ms. Massaro,

Enclosed for filing with the Commission are an original and twelve (12) copies of the Division of Public Utilities and Carriers First Set of Data Requests directed to National Grid in the above matter.

Thank you for your attention to this matter.

Very truly yours,

Jon G. Hagopian
Special Assistant Attorney General

cc: Service List (e-mail only)

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1-1. Section 39-26.1-7(e)(i) of the General Laws (Cap and lower price), states that if savings can be achieved in the actual cost of the project, all realized savings will be allocated to the benefit of ratepayers. Section 39-27.1-7(e)(iii) states that the purchase power agreement (PPA) "shall require that the costs of the project shall be certified by the developer. An independent third-party acceptable to the division of public utilities and carriers shall within thirty (30) days of the certification by the developer, verify the accuracy of such costs at the completion of the construction of the project."... "Upon receipt of such third-party verification, the division shall notify the Narragansett Electric Company of the final costs. The public utilities commission shall reduce the expense to ratepayers consistent with a verified reduction in the project costs."

On October 15, 2009, National Grid submitted a letter to the Public Utilities Commission explaining in detail the reasons why it had not entered into a PPA with Deepwater as of that date. One of Deepwater's alternative pricing proposals that was rejected by National Grid was identified as a "Structured Pricing Proposal" which was described as a "complex proposal" in which payments "would not be finalized until after all construction costs are known."

The Structured Pricing Proposal was described by National Grid as follows; *"This proposal allows for a reduction in the annual payment stream if the final construction cost ends up below a target construction cost."* National Grid then criticized the Structured Pricing Proposal thusly, *"This proposal also requires the Company to perform an audit of the final construction costs, but does not include any standard of prudence."* The Company further stated, *"The Company was not confident that, under the Structured Pricing Proposal, significant enough construction savings could be achieved to materially lower the cost of the project to customers."*

National Grid concluded its 10/15/09 discussion on the Structured Pricing Proposal with the following statement:

"Finally, the Structured Pricing Proposal would place the Company in the position of having to examine the construction cost data, including invoices, construction contracts, accounting, and other supporting documentation to determine whether the actual construction costs were properly supported. Because Deepwater is not a regulated utility and there is no forum to truly examine the costs of the project in a manner that assures transparency and accuracy, the Company viewed this proposal as one fraught with complexity and the potential for litigation. In a project of this magnitude, the risk of not being able to tie down the true final construction cost is substantial, especially where the entity being scrutinized is not subject to a regulatory review in a fully transparent proceeding."

The following set of questions, that is 1-1a through 1-1d, is based upon the foregoing discussion. Please be aware that the Division understands that the Structured Pricing Proposal

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discussed in the 10/15/09 letter was one in which the payments to the developer, in addition to decreasing if construction costs came in under budget, would have increased if the construction costs exceeded the target.

1-1a) As discussed above, National Grid criticized Deepwater's Structured Pricing Proposal as lacking a "standard of prudence". Is there a standard of prudence, either explicit or implicit, included in the PPA's Verification and Reconciliation provision? If so, please describe in detail the standard of prudence that will guide the Verification Agent's review?

1-1b) National Grid stated in its 10/15/09 letter that *"the Company was not confident that, under the Structured Pricing Proposal, significant enough construction savings could be achieved to materially lower the cost of the project to customers."* Is National Grid still of the opinion that significant enough construction savings cannot be achieved to materially lower the cost of the project to customers? If that opinion is no longer held, please explain in detail what has caused that opinion to change, and provide the facts and information in National Grid's possession that caused that opinion to change.

1-1c) Regarding National Grid's statement to the PUC, .. *"Because Deepwater is not a regulated utility and there is no forum to truly examine the costs of the project in a manner that assures transparency and accuracy, the Company viewed this proposal as one fraught with complexity and the potential for litigation."* : Does National Grid believe these comments on the Structured Pricing Proposal are applicable to the PPA's revised Appendix X including the Verification and Reconciliation provision? If not, please explain why not in light of National Grid's 10/15/09 assertions and apparent similarities in the Appendix X proposal and the Structured Pricing Proposal as National Grid described it.

1-1d) Regarding National Grid's statement to the PUC,.. *"In a project of this magnitude, the risk of not being able to tie down the true final construction cost is substantial, especially where the entity being scrutinized is not subject to a regulatory review in a fully transparent proceeding."*: Does National Grid believe these comments on the Structured Pricing Proposal are applicable to the PPA's revised Appendix X including the Verification and Reconciliation provision? If not, please explain why not in light of National Grid's 10/15/09 assertions and apparent similarities in the Appendix X proposal and the Structured Pricing Proposal as National Grid described it.

2) In response to Division 1-13 in Docket 4111, Deepwater made the following representation: "Deepwater's current cost estimate of the capital cost is \$219,311,142 for installing eight turbines." Why then does the price reduction only begin if "Cost" as defined in the PPA falls below \$205,403,512, rather than the \$219,311,142 referenced in the data response?

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3) How did National Grid determine that the \$205,403,512 cost threshold, as defined in the PPA Exhibit E, was the appropriate threshold at which point savings would be allocated to the benefit of ratepayers?

4) What degree of confidence does National Grid have that the total of the “Costs” as defined in the PPA will be less than the threshold benchmark of \$205,403,512?

5). In Exhibit E, Appendix X.2. Verification and Reconciliation, limitations are placed on the potential areas of dispute between the Verification Agent and Deepwater. The limited areas of potential dispute are listed as:

- a) Seller did not incur the Cost;
- b) The Cost is not supported by documentation, and
- c) Arithmetic or summation errors.

Please provide the specific basis in the statute that places these restrictions on the “independent third party” (Verification agent).

6) What type of skills set and areas of expertise does National Grid believe a “Verification Agent” should possess in order to be able to “confirm the Seller’s certification” “within thirty (30) days” of Deepwater’s certification? (quotations from PPA)

7) Does National Grid believe the Verification Agent would, in essence, be required to perform an audit of the final construction costs within the 30 day period in order to ensure that the ratepayer protections contemplated by the statute be achieved?

8) Is it National Grid’s understanding of the PPA that only costs determined to be reasonable and prudent can be included in the “Total Facility Cost”?

9) Does National Grid believe it would be a difficult endeavor to complete the review of the Project’s costs within the 30 day period if the review does not commence until after the project is completed?

10) At the March 10, 2010 hearing in Docket 4111, Mr. Moore described an “open book” procedure as a “well-established procedure that’s used in the construction business. What you do is sit down with the buyer of the facility and go through your projected costs, you take—you solicit budgetary quotes from a variety of suppliers, from third parties who will provide the equipment and provide the construction services, go through that process with the buyer, the utility in this case, and basically, pencil in a target price and a target rate of return...” Does this describe the process that Deepwater and National Grid went through to arrive at the “Base amount” of \$205,403,512? (Transcript 3/10/10, page19, lines 20-24 to page 20 line 1-15)

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11) National Grid's June 30, 2010 letter accompanying the revised PPA states that the new law "requires the price to be reduced to the extent that the project costs are lower than originally estimated." The letter confirms that the starting price remains the same as in the originally filed PPA in Docket 4111, that is 23.57 cents in 2012 and 24.4 cents in 2013. What is the basis of National Grid's understanding that the originally estimated project cost, which provided the foundation for the 24.4 cent price (2013) in Docket 4111, was the Base Amount of \$205,403,512?

CERTIFICATION OF SERVICE

I hereby certify that on the 6th day of July, 2010, that I transmitted an electronic copy of the within Intervention Notice to the attached service list and to Luly Massaro, Commission Clerk via electronic mail and regular mail.



**National Grid – Review of Proposed Town of New Shoreham Project
Docket No. 4111 – Service List Updated 7/6/10**

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