

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

IN 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

**MOTION FOR INTERVENTION AND WAIVER OF REPRESENTATION
REQUIREMENT OF OCEAN STATE POLICY RESEARCH INSTITUTE and
THE FOUNDERS PROJECT**

Now comes Ocean State Policy Research Institute and its Founders Project (“OSPRI” hereinafter) to move hereby to intervene in the above captioned docket pursuant to Commission Rules of Practice and Procedure (“Rule[s]” hereinafter) 1.13 and seek waiver of Rule 1.4’s requirement that these parties be represented by an attorney pursuant to Rule 1.10 (b).

Grounds for Intervention

We make this motion fully cognizant of the Commission’s recent attention to enforcing other than an untethered standard for intervention in consequence of the agreement of the RI Supreme Court with the Commission that several interventions subjected to scrutiny in *In re: Island High Speed Ferry LLC*, 746 A.2d 1240, 1245-1246, were “questionable”.

In context, the skepticism of the interventions in that case appeared to pertain more to the motive for and dependability of the testimony on behalf of the “questionable” parties, and less to the initial accuracy of the threshold determination that these parties met one of the three criteria in Rule 1.13 (b).

Nonetheless, the attention and care devoted by the Commission, and hence by the parties, to the bases for their intervention may nonetheless serve as a reasonable guidepost for the effectiveness of their actual participation, and serve the purpose of reducing duplication of effort and redundancy in the docket.

As a free market exponent supported by donations from businesses, individuals and foundations, OSPRI does not propose to represent any particularly identifiable consumers of National Grid’s electricity in Rhode Island, although the two individuals responsible for the composition of these submissions are such consumers. Rather OSPRI represents the public choice economics interest of the consumer cohort.

While the general array of forces in regulatory undertakings is for government to monitor for market failure, or to set appropriate market conditions for monopoly participants, the purpose of OSPRI's participation is to monitor for government failure, esp. that which frustrates competitive markets.

The change in perspective of the major parties to this docket, i.e. National Grid, Deepwater and the Division of Public Utilities ("Division" hereinafter), indicates more of a partnership around the proposed PPA where the lack of serious adverse interests is less likely to gain skeptical input on behalf of the consumer that characterized Docket # 4111.

Of course this does not take place in a vacuum and results, in part, from the newly enacted legislation. National Grid's submission of a contract substantially similar to that reviewed in Docket #4111 with a complete abandonment of their skepticism of that agreement as suitable for consumers gives rise to these concerns. And both the Division and the Attorney General, while theoretically able to represent consumer interest, have inherent conflicts as governmental institutions. The Division is run by the administration that has made the adoption of this contract its very *Raison D'etre*. The Attorney General has charted a decidedly different course but as the agency of government charged with defending its enactments, the concepts of government failure as a concept of public choice economics is foreign to their typical approaches. Further the Attorney General is responsible to defend the law under which this proceeding takes place and central to OSPRI's participation is also the analysis of its Founders Project that this law violates dormant commerce clause jurisprudence.

Thus, while it is plausible that the Attorney General, given his singular skepticism amongst elected officials on this project, might seek wider economic testimony on behalf of the consumer encompassing a portion of that OSPRI intends to adduce in the area of deadweight loss analysis and price effects to clarify the extent to which the contract fulfills the economic development and jobs tenet of the legislation (RIGL 39-26.1-7 (c) (iii)), this process is short, and the resources of the Attorney General's department for such representation are finite. And it would besmirch the Attorney General to think that his defense of the statute would be less than whole hearted.

Thus, and in conclusion on arguments for intervention, OSPRI seeks to intervene both on behalf of:

"An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission's action in the proceeding." Rule 113 (b) (2)

and as representative of:

"Any other interest of such nature that movant's participation may be in the public interest." Rule 113 (b) (3)

Grounds for Waiver of Representation Requirement of Rule 1.4

As counsel for the Commission has transmitted in a preliminary sense to the service list for this docket, and we trust to the Commission, she has some concern that this is a request for a waiver of statute or Supreme Court rules and not a Commission rule.

This may be due to inartful drafting of my early memo informing the service list of our general approach.

We are requesting a waiver of a Rule 1.4 adopted by the Commission that an appearance be entered on our behalf, not a waiver of the character of person or professional who may enter an appearance.

The grounds on which we seek the waiver are the particular suitability of our own economic work and our reach into the realm of economic academics to bring to the Commission aid in breaking the new ground required by this statute, that it analyze broader economic development effects of its decision on this contract.

One can only imagine that this pattern is to be repeated in other contracts. And unless at some future date as a result of legislative enlightenment or court action, competition is restored to the renewables generation market for Rhode Island, this expertise will be much needed if the commission is not intended to be simply a rubber stamp for the Governor's Director of Economic Development (and in the environmental context for the Director of Environmental Management).

Not anticipating this turn of events, OSPRI has not been able in the brief period available to raise funds for such representation or obtain a commitment for pro bono assistance. It is conceivable that this circumstance could change during the pendency of these proceedings but we wish to make no reliable assertion in that regard.

Rather OSPRI has available to it the attentions of the Director of the Founders Project, Brian Bishop, who has regularly filed Amicus briefs on his own behalf and that of Rhode Island Wiseuse in the state courts as well as participated in the drafting of a brief for the US Supreme Court, as well as engaging various quasi-judicial regulatory and administrative processes during his public policy career.

From this wealth of experience, we do not lack a concern ourselves that setting the wrong precedent here could be tantamount to irregular proceedings that violate, in spirit if not in fact, the disregard that the Rules express for contumacious behavior, see, *e.g.*, Rule 1.4 (b) (2).

That is the furthest from our purpose here and we do not expect to be afforded relief from a level of professionalism in conduct or detail as in any way implicit in the waiver we seek. This is the furthest from an attempt to convert the evidentiary hearings to an extension of the comment session. But we are critically aware that rebuttal and

cross-examination are the way for both our own testimony and that of others to be tested, which explains our motive for intervening rather than commenting.

In conclusion, we are serious and regular participants in the public policy discourse and have no wish to make anything but the most respectful entry to these proceedings, and trust that under the circumstances and clarification of the nature of the waiver we seek that the Commission will find the grounds and context appropriate despite the fact that we invite them to apply a rigorous concern to this area.

Should the Commission decide that this waiver, despite its earnest urging and defense here, is outside the bounds of its reasonable discretion, we move alternatively for this motion to intervene to be converted to a pro se motion of Brian Bishop on the same grounds stated in the previous section.

Ocean State Policy Research Institute

The Founders Project

Bill Felkner

Brian Bishop