

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

IN RE: REVIEW OF AMENDED POWER : DOCKET NO. 4185
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 :

**DEEPWATER WIND BLOCK ISLAND, LLC’S OBJECTION TO MOTION FOR
INTERVENTION AND WAIVER OF REPRESENTATION REQUIREMENT OF
OCEAN STATE POLICY RESEARCH INSTITUTE and THE FOUNDERS PROJECT**

I. INTRODUCTION

Now comes Deepwater Wind Block Island, LLC (“Deepwater Wind”) and hereby objects to the Motion for Intervention and Waiver of Representation Requirement of Ocean State Policy Research Institute and the Founder’s Project (“OSPRI”).

II. BACKGROUND

On June 30, 2010, The Narragansett Electric Company, d/b/a National Grid (hereinafter “NGrid”) filed a power purchase agreement entered into with Deepwater Wind (“PPA”) in accordance with Rhode Island General Laws §39-26.1-7, as amended by 2010 Senate Bill 2819 Sub A as amended, and 2010 House Bill 8083 Sub A as amended (“Statute”). The Statute directs NGrid and Deepwater Wind to obtain approval of the PPA from the Rhode Island Public Utilities Commission (“Commission”). As such, and according to the Statute, the Commission opened this docket to examine the PPA.

The Statute provides that the Commission shall review the PPA to determine whether:

- (i) The PPA contains terms and conditions that are commercially reasonable;
- (ii) The PPA contains provisions that provide for a decrease in pricing if savings can be achieved in the actual cost of the project pursuant to subsection 39-26.1-7(e);
- (iii) The PPA 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; and
- (iv) The PPA is likely to provide environmental benefits, including the reduction of carbon emissions.

The Statute also provides that the parties to Docket 4111 shall be allowed to become parties in Docket 4185.¹ In addition, the Commission may allow other interventions on an expedited basis “provided they comply with the commission standards for intervention.”

III. LEGAL STANDARD

Pursuant to Rule 1.13(b) of the Rhode Island Public Utilities Commission’s Rules of Practice and Procedure (“Commission Rules”), a party claiming a right to intervene, or an interest of such a nature that intervention is necessary or appropriate, may intervene in any proceeding before the Commission. Such interest may be:

- (1) a right conferred by statute;
- (2) an interest which may be directly affected and which is not adequately represented by existing parties and is to which movants may be bound by the Commission’s action in the proceeding;

¹ In Docket 4111, the Commission examined a prior PPA entered into between NGrid and Deepwater Wind under a previous version of the Statute, which has since been amended.

- (3) any other interest of such a nature that movants' participation may be in the public interest.

IV. ARGUMENT

A. Intervention

According to its motion, OSPRI seeks to intervene “on behalf of...An interest which may be directly affected which is not adequately represented by existing parties and as to which movants may be bound by the Commission’s actions in the proceeding.” OSPRI also seeks to intervene as “a representative of...Any other interest of such nature that movant’s participation may be in the public interest.”

It is Deepwater Wind’s position that OSPRI does not have a sufficient factual and legal basis to support its intervention request. OSPRI’s motion merely contains conclusory statements, which mirror the intervention language in Commission Rule 1.13(b). OSPRI failed to demonstrate how and why its interests are not adequately represented by existing parties, nor did it provide any concrete support for the proposition that its intervention is in the public interest. OSPRI failed to identify any specific interest that will be “directly affected and which is not adequately represented by existing parties.” Furthermore, OSPRI failed to show how it will be bound “by the Commission’s actions” in this proceeding. In fact, OSPRI’s motion clearly states that it does not propose to represent “any particularly identifiable consumers of National Grid’s electricity in Rhode Island.”

Furthermore, OSPRI does not argue that its participation is in the public interest. Rather, OSPRI maintains that it is seeking intervention as a “representative of” the public interest. However, there is no authority for OSPRI to act in this role. In fact, this role is

fulfilled by the Division of Public Utilities and Carriers (“Division”), which acts as the ratepayer advocate in proceedings before the Commission.

Pursuant to R.I.G.L. §39-1-1 et seq., the Rhode Island Legislature has conceived a system whereby the Division, in addition to its broad regulatory powers, appears on behalf of the public to present evidence and make arguments before the Commission. *Narragansett Electric Co. v. Harsch*, 368 A.2d 1194 (RI 1977). In most cases, the Rhode Island Attorney General serves as legal counsel to the Division in hearings, investigations, actions, and proceedings before the Commission. *Id.* However, R.I.G.L. §39-1-19 allows the Division to employ alternative legal counsel when the Attorney General intervenes on behalf of the citizens of the State of Rhode Island as customers of a public utility.

The Division has filed notice that it will participate as a party in the litigation of this Docket. In addition, Attorney General Patrick C. Lynch has taken the extraordinary step of filing a Motion To Intervene in this Docket.² The Attorney General’s memorandum supporting his Motion To Intervene states:

“The Attorney General submits that his involvement in this proceeding will be helpful in determining whether the approval of the PPA, in its entirety or in part, is consistent with the public interest. On behalf of the public, the Attorney General will evaluate the necessity and appropriateness of the request for approval of the PPA submitted by National Grid and Deepwater.

The Attorney General's participation in this matter will provide the PUC with input insofar as it relates to the issues impacting the public as rate-payers, including concerns about the PPA and the transmission cable now mandated by the new legislation. The Attorney General is an independent voice of the rate-paying public, whose rates will be directly affected by the PPA sought to be approved in this proceeding. As such, the ratepayers, as energy consumers in Rhode Island, are appropriately represented by the Attorney General.³

² Deepwater Wind will not oppose the Attorney General’s Motion To Intervene.

³ See Memorandum In Support Of Motion To Intervene Of Patrick C. Lynch Attorney General, pp. 3-4.

Thus, in taking full account of the public interest - the rate-payers' rates and fees, the economic considerations, and the environmental considerations - the Attorney General asserts that his intervention is necessary and appropriate under Rule 1.13 of the Rules of Practice and Procedure of the Commission.”⁴

As such, the citizens of the State of Rhode Island, as NGrid customers, are being represented in this case by both the Division and the Rhode Island Attorney General’s Office. Furthermore, the Attorney General has stated that the ratepayer’s interests will be protected through his intervention. Thus, OSPRI cannot credibly claim that its interests are not adequately protected.

In the event that OSPRI is not allowed to intervene as a corporate entity, it attempts to convert its motion to a pro se filing on behalf of Brian Bishop and Bill Felkner. However, Mr. Felkner and Mr. Bishop failed to set forth an adequate basis for their intervention as individuals. Furthermore, even if Mr. Felkner and Mr. Bishop did set forth a credible basis for their individual intervention, allowing individual customers to intervene as full parties in proceedings before the Commission, absent a compelling factual and legal basis, could set a problematic precedent. This is especially true where both the Division and the Attorney General are representing customers of the utility.

Each utility that appears before the Commission services thousands of customers – many of which have specific, individual, and conflicting self-interests. Thus, proceedings before the Commission could be reduced to a collection of individual customers arguing on behalf of their own specific interests. If each of these customers

⁴ See Memorandum In Support Of Motion To Intervene Of Patrick C. Lynch Attorney General, p. 5.

were allowed full intervener status, the regulatory process, which has statutory timeframes for completion, could grind to a halt.⁵

By contrast, if the Commission denies the intervention request, it will not be denying OSPRI, Mr. Felkner, Mr. Bishop, or any other individuals, a voice in this proceeding. Pursuant to Commission Rule 1.14, any person other than a party who objects to the approval of an application, petition, motion, or other matter which is, or will be, under consideration by the Commission may file a protest. In addition, members of the public are allowed to speak directly to the Commission at public hearings established in each Docket.⁶ Therefore, a balancing of interests is achieved. Individual customers have a voice in the process, but the process is not bogged down by an infinite number of parties.

B. Waiver of Representation of Counsel

OSPRI has requested a waiver of the requirement that each participant in a Commission proceeding, other than individuals who appear pro se, be represented by an attorney, who shall enter an appearance in writing with the Clerk. *See*, Commission Rule 1.4. In essence, OSPRI is requesting that the Commission allow the unauthorized practice of law. Quite simply, there is no basis for this request.

OSPRI is a domestic non-profit corporation registered with the State of Rhode Island Secretary of State's Office.⁷ In Rhode Island, it is well established that a corporation may only be represented by licensed legal counsel. *Plantations Legal Defense Services, Inc. v. Grande*, 403A.2d 1084 (R.I. 1979). This requirement cannot be waived by the Commission. Pursuant to Article II of the Rhode Island Supreme Court

⁵ In the instant Docket, the timeframe is even further compressed as the Statute mandates that a decision must be rendered within forty-five days from the date of the PPA filing, which was on June 30, 2010.

⁶ There are currently two public hearings scheduled for July 22, 2010 one on Block Island and one in Warwick.

⁷ *See* Exhibit 1.

Rules (Admission Of Attorneys And Others To Practice Law), only the Supreme Court can determine who may practice law in the State of Rhode Island. Thus, the Commission cannot grant relief from the applicable law and the Rhode Island Supreme Court Rules, and it is not empowered to grant the waiver requested by OSPRI.

V. CONCLUSION

For the reasons set forth hereinabove, Deepwater Wind Block Island, LLC hereby prays that the Commission deny the Motion to Intervene filed by the Ocean State Policy Research Institute and the Founder’s Project.

DEEPWATER WIND BLOCK ISLAND, LLC
By its attorney,



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EXHIBIT 1



**State of Rhode Island and Providence Plantations
Office of the Secretary of State**

Division Of Business Services
148 W. River Street
Providence RI 02904-2615
(401) 222-3040



OCEAN STATE POLICY RESEARCH INSTITUTE Summary Screen

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The exact name of the Domestic Non-Profit Corporation: OCEAN STATE POLICY RESEARCH INSTITUTE

Entity Type: Domestic Non-Profit Corporation

Identification Number: 000161249

Date of Incorporation in Rhode Island: 01/23/2007

Effective Date: 01/23/2007

The location of its principal office:

No. and Street: 434 BROOK STREET

City or Town: PROVIDENCE

State: RI

Zip: 02906

Country: USA

The mailing address or specified office:

No. and Street:

City or Town:

State:

Zip:

Country:

Agent Resigned: N

Address Maintained: Y

The name and address of the Registered Agent:

No. and Street: 434 BROOK STREET

City or Town: PROVIDENCE

State: RI

Zip: 02906

Name: WILLIAM J. FELKNER

The officers and all of the directors of the corporation:

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
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DIRECTOR	EDWARD MAZZE	52 HORIZON DRIVE SAUNDERSTOWN, RI 02874 USA

Purpose

RESEARCH AND EDUCATION ON RHODE ISLAND POLICY

TITLE: 7-6

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CERTIFICATION

I hereby certify that on July 8, 2010, a copy of the within was sent to all parties set forth on the attached Service List by electronic mail and copies were sent to Luly Massaro, Commission Clerk, by electronic mail and hand delivery.

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