

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

<b>IN RE: REVIEW OF AMENDED POWER</b>	<b>:</b>	<b>DOCKET NO. 4185</b>
<b>PURCHASE AGREEMENT BETWEEN</b>	<b>:</b>	
<b>NARRAGANSETT ELECTRIC COMPANY</b>	<b>:</b>	
<b>D/B/A NATIONAL GRID</b>	<b>:</b>	
<b>AND DEEPWATER WIND BLOCK ISLAND, LLC,</b>	<b>:</b>	
<b>PURSUANT TO R.I. GEN. LAWS § 39-26.1-7</b>	<b>:</b>	

**DEEPWATER WIND BLOCK ISLAND, LLC’S OBJECTION TO MOTION OF  
TRANSCANADA POWER MARKETING LTD. TO INTERVENE**

**I. INTRODUCTION**

Now comes Deepwater Wind Block Island, LLC (“Deepwater Wind”) and hereby objects to the Motion Of TransCanada Power Marketing Ltd. (“TCPM”) To Intervene.

**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.<sup>1</sup> 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;
- (3) any other interest of such a nature that movants’ participation may be in the public interest.

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<sup>1</sup> 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.

#### **IV. ARGUMENT**

TCPM has set forth two arguments in support of intervention. First, TCPM seeks to “adequately represent and protect its interest.” TCPM argues that:

“[it] is substantially and specifically affected by this proceeding, because Deepwater Wind Block Island, LLC and TCPM are competitors for the supply of renewable energy to electric distribution companies in Rhode Island and because Sections 39-26.1-1 et seq. provides for a limited number of long-term contract opportunities. If approved, the subject agreement will substantially and significantly affect the prospects of TCPM for entering into contracts pursuant to Sections 39-26.1-1 et seq.”

Thus, by TCPM’s own admission, it is seeking to protect its own individual competitive interest, which is beyond the scope of inquiry in Docket 4185.

Second, TCPM argues that:

“[its] participation in this proceeding will assist the Commission in determining whether the subject agreement is a cost-effective and commercially reasonable mechanism for producing renewable energy on a long-term basis, TCPM has knowledge and expertise in the area of renewable energy generation and can definitely attest to its own costs and ability to enter into long-term contracts. TCPM’s participation will also assist the Commission in developing a comprehensive record and otherwise resolving issues in this Docket.”

This offer to provide expert assistance is not a basis for intervention under Commission Rule 1.13(b).

TCPM’s intervention request should be denied in the same manner the Commission denied a nearly identical intervention request in Docket 3452 (In Re: Investigation Of The Adequacy Of The Pawtucket Water Supply Board’s Treatment Plant). In that Docket, the Commission examined issues surrounding a delay in the construction of the Pawtucket Water Supply Board’s new water treatment plant. At the beginning of the Docket, US Filter, one of the companies in contention to construct the new plant, filed a Motion to Intervene. In support of its motion, U.S. Filter provided four reasons it should be allowed to intervene:

1. That it was the superior bidder for the construction of the treatment plant;
2. That although the Commission's jurisdiction was limited to examining the delay in the construction of the treatment plant, it was inevitable that the Commission would address the merits of the leading bidder for the project;
3. That the interest of the rate payers in obtaining the benefits of the system proposed by U.S. Filter was not adequately represented by any of the other parties to the docket; and,
4. That U.S. Filter's expertise was needed to assist the Commission in discharging its duties.

In denying the motion, the Commission found that while U.S. Filter may be an "interested party" it was not a party in interest as contemplated by Rule 1.13(b). The Commission found that while U.S. Filter had an interest in the construction of the new treatment plant, its interest as a bidder on the project was not the subject of Docket 3452. As such, the Commission found that U.S. Filter's interest did not fit within the scope of the docket because its rights and obligations as a potential vendor would not be determined by the Commission. Furthermore, the Commission found that the Division Of Public Utilities And Carriers ("Division") was able to adequately represent the interests of the Pawtucket Water Supply Board's ratepayers. As a result, U.S. Filter was not a party in interest under the Commission's Rules of Practice and Procedure.

The same is true in the instant Docket. While TCPM may be interested in the outcome of Docket 4185, it is not a party in interest. The Statute does not direct the Commission to consider how approval of the PPA will affect TCPM or any other entity for that matter. Further, TCPM's interests as a potential supplier of renewable energy through other long-term contract opportunities in Rhode Island will not be determined by the Commission in this Docket.

Furthermore, TCPM's proclaimed "knowledge and expertise in the area of renewable energy generation" does not provide a basis for intervention. Certainly, TCPM does not seek to participate as an impartial observer. It is an acknowledged competitor of Deepwater Wind. In addition, TCPM's statement that it will "assist the Commission in developing a comprehensive record and otherwise resolving issues in this Docket" is merely conclusory and ignores the participation of other parties in this Docket – namely the Division and the Attorney General.

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 to represent it when the Attorney General intervenes on behalf of the State as a customer of a public utility, or 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.<sup>2</sup> 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.

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<sup>2</sup> Deepwater Wind will not oppose the Attorney General's Motion To Intervene.

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.<sup>3</sup>

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.”<sup>4</sup>

As both the Division and the Rhode Island Attorney General's Office will participate as parties in this Docket, TCPM cannot credibly claim that its participation is required to develop a comprehensive record or to resolve issues in this Docket.

## **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 TransCanada Power Marketing Ltd.

DEEPWATER WIND BLOCK ISLAND, LLC  
By its attorney,



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

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

### **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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