

**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 IDENTIFICATION OF REBUTTAL WITNESS
OUT OF TIME FOR OCEAN STATE POLICY RESEARCH
INSTITUTE AND TRANSMISSION OF CV FOR KEN MALLOY**

I. INTRODUCTION

Now comes Deepwater Wind Block Island, LLC (“Deepwater Wind”) and hereby objects to the Motion For Identification Of Rebuttal Witness Out Of Time For Ocean State Policy Research Institute And Transmission Of CV For Ken Malloy.

II. BACKGROUND

On June 30, 2010, The Narragansett Electric Company, d/b/a National Grid (hereinafter “NGrid”) filed a power purchase agreement (“PPA”) entered into with Deepwater Wind in accordance with Rhode Island’s amended Long-Term Contracting Standard (“Amended LTC Statute”). See, R.I.G.L. § §39-26.1-7, as amended by 2010 Senate Bill 2819 Sub A as amended, and 2010 House Bill 8083 Sub A as amended. The Amended LTC 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 Amended LTC Statute, the Commission opened Docket 4185 to examine the PPA.

The Amended LTC Statute establishes a strict timeframe for Commission review of the PPA. Evidentiary hearings must commence within thirty (30) days after the filing of the PPA, and the Commission must accept or reject the PPA no later than forty-five (45) days from the filing of the PPA. No delays or extensions are allowed. Thus, the Commission must proceed in accordance with the statutorily mandated time-frame in completing its review of the PPA.

On June 24, 2010, the Commission issued a Notice of Filing, Intervention Deadline, Preliminary Procedural Schedule, Administrative Notice and Standards for Filing. In its Notice, the Commission established a preliminary procedural schedule for Docket 4185. On July 9, 2010, a Scheduling Conference was held during which these deadlines were confirmed and additional deadlines added. Among the relevant deadlines in this Docket are the following:

July 6, 2010	Notices of Intervention by parties to Docket No. 4111.
July 6, 2010	Motions to Intervene for new parties.
July 8, 2010	Objections or stipulations by former Docket No. 4111 parties to Motions to Intervene.
July 9, 2010	Open Meeting to rule on Motions to Intervene and any objections to Administrative Notice.
July 15, 2010	Filing of Direct Testimony by parties to Docket No. 4111.
July 16, 2010	New Parties shall identify their respective witnesses, provide CVs, and provide a short statement of the scope and subject of the witness' testimony, referring to the portion of the law to which the testimony applies.
July 20, 2010	Filing of Direct Testimony by new parties and EDC; Filing of Advisory Opinions by EDC and DEM.
July 26-28, 2010	Evidentiary Hearings for the purposes of taking Rebuttal Testimony at Commission's offices.
August 2-4, 2010	Evidentiary Hearings for purposes of conducting Cross-Examination of witnesses.

On July 6, 2010, the Ocean State Policy Research Institute (“OSPRI”) filed a Motion to Intervene. This Motion was granted subject to OSPRI obtaining legal counsel no later than July 12, 2010.¹ ON July 15, 2010, Deepwater Wind, National Grid and the Division of Public Utilities And Carriers filed direct testimony. On July 16, 2010, OSPRI identified Mark B. Lively, as a witness who would testify on its behalf regarding economic development issues. On July 19, 2010, OSPRI filed its motion to identify a second witness out-of-time.

II. ARGUMENT

At the outset, it should be noted that Deepwater Wind does not object to the late *notice* of Ken Malloy’s participation in this Docket. Had OSPRI filed written direct testimony from Mr. Malloy on July 20, 2010, Deepwater Wind would not have objected on the grounds that he was not identified until July 19, 2010. However, Deepwater Wind does object as it appears OSPRI intends to circumvent its obligation to provide written direct testimony from Mr. Malloy.

OSPRI’s motion identified Mr. Malloy as a witness who will “be available for rebuttal testimony.” OSPRI provided no other information regarding the scope of Mr. Malloy’s testimony. OSPRI only revealed that “The scope of Mr. Malloy’s testimony will be determined by the direct testimony of others.” However, Mr. Malloy did not file written testimony of *any* kind. As such, Deepwater Wind objects.

In typical proceedings before the Commission, the applicant for relief files direct testimony. Thereafter, intervening and opposing parties file direct testimony as well.

¹ Attorney John J. Kupa, Esquire entered his appearance on July 12, 2010.

The applicant then files rebuttal testimony, and opposing parties and interveners respond with surrebuttal testimony.

In the instant case, the statute has slightly changed, but not eradicated, this process. The parties to Docket 4111 filed direct testimony on July 15, 2010. The new intervening parties (“New Intervenors”) had an opportunity to review this direct testimony, and they were under an obligation to provide their own direct testimony on July 20, 2010, which can be reviewed by Deepwater Wind. Thereafter, rebuttal and surrebuttal testimony, which would typically be submitted in writing, will be presented through live testimony during the hearings on July 26, 27 and 28.

At the July 9, 2010 Scheduling Conference, one possible deviation from this process was discussed. Since the Docket 4111 parties filed first on July 15, 2010, the New Intervenors had the opportunity to review and respond to this direct testimony. Thus, the New Intervenors were aware of all the issues raised by the Docket 4111 parties when their direct testimony was filed. However, the opposite is not true. The possibility exists that the new intervening parties will raise issues for the first time in their direct testimony. This could necessitate the proffering of new rebuttal witnesses by the Docket 4111 parties to address these limited issues.

This narrow exception does not apply to OSPRI, which had the opportunity to review the direct testimony of the Docket 4111 parties. Any issues raised by the Docket 4111 parties could have been addressed by OSPRI in its direct testimony. OSPRI wants to escape this obligation, but it has offered no valid reason in support of its request, other than “Mr. Malloy only recently became available.” This is not a substantive basis to grant the requested relief.

If OSPRI is allowed to circumvent its obligation to file direct testimony by Ken Malloy, Deepwater Wind will be prejudiced. Mr. Malloy will have the opportunity to review all of the written testimony in this case and then provide live testimony during rebuttal on *any* issue, not just issues raised for the first time in the new intervenors' direct testimony.

This issue is similar to that which was addressed by the Commission in Docket 3947 (In Re: Pawtucket Water Supply Board General Rate Filing). In that case, one of the intervening parties caused substantial delays through its failure to follow the Commission's Rules of Practice and Procedure. This included the failure to file written testimony. The Commission found that "Any procedural delay of a party has the potential to cause a substantive delay in the case and the potential to cause harm to the parties. Unfortunately, this case is indicative of what can occur when a party does not comply with the Commission's rules. Therefore in the future, full intervention will only be allowed to a movant if that movant makes an affirmative showing that it will be filing pre-filed testimony."²

The same should hold true in the instant case. OSPRI should not be allowed to participate in this case by offering a witness for the first time on rebuttal who will be allowed to testify on any and all issue raised in this Docket.

V. CONCLUSION

For the reasons set forth herein, Deepwater Wind Block Island, LLC hereby prays that the Commission deny the Motion For Identification Of Rebuttal Witness Out Of Time For Ocean State Policy Research Institute And Transmission Of CV For Ken Malloy.

² See Commission Order, No. 17574, p. 57.

DEEPWATER WIND BLOCK ISLAND, LLC
By its attorney,

A handwritten signature in black ink, appearing to read "J. Keough", is positioned above a horizontal line.

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CERTIFICATION

I hereby certify that on July 21, 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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