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July 8, 2010

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

RE: Review of (Revised) Proposed Town of New Shoreham Project
Pursuant to RI General Laws §39-26.1-7, PUC Docket No. 4185

Dear Ms. Massaro:

Enclosed be find my public comment letter on the above referenced matter, along with 12 copies thereof.

I certify that the letter has been served to the current Service List by electronic transmission on this date.

Thank you.

SS// *Benjamin C. Riggs, Jr.*
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Enclosures

Cc: Service List (by electronic transmission)

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RE: Review of (Revised) Proposed Town of New Shoreham Project
Pursuant to RI General Laws §39-26.1-7, PUC Docket No. 4185

Dear Ms. Massaro:

I am writing to object to and comment on the revised Power Purchase Agreement (“PPA”) between National Grid and Deepwater Wind Block Island LLC to install windmills off Block Island (Town of New Shoreham).

In summary, I argue that:

1. Reconsideration of the prior PUC decision (docket # 4111) is prohibited by law;
2. There is no economic benefit over all, since the project proposal will have a negative affect on the citizens of Rhode Island, while far more viable alternatives to New Shoreham’s electrical needs have not even been considered;
3. The proposal is based on clearly false representations and assumptions; and
4. The PPA is not economically reasonable by any standard, will not help achieve any of the policy goals stated in §39-26.1-7, and will not contribute in any way to reducing the nations reliance on foreign oil.

Legal/Procedural Objection:

Consideration and approval is prohibited by the doctrine of *res judicata*: A matter that has been previously decided by a judicial or quasi-judicial agency in the manner prescribed by law and not appealed cannot be subsequently reheard or re-decided. This applies not only to the previous matter and arguments considered under PUC Docket No. 4111, but any and all related or alternative matters that could have been raised at that time. In the revised legislation, as well as revised National Grid Agreement and 7/1/2010 letter to the PUC from Deepwater’s counsel, Keough & Sweeney, Ltd., it is established and admitted that Docket No. 4185 arises out of and is related to Docket No. 4111. The application of *res judicata* here is set forth more comprehensively in case law relating to both issue and claim preclusion and the entire controversy doctrine and appears to have been adequately presented to the PUC by the Rhode Island Attorney General.

General Objections:

We are all in favor of a cleaner environment and reducing our dependence on foreign oil, and would like to be able to do something about it overall. And in the case of Block Island, it would certainly be nice to be able to improve the cost and reliability of electric power there. But this proposal to install windmills in the ocean just isn't an economically or technically viable solution, nor will it have a positive economic impact on the State. Further, the project would essentially result in increased costs, through increased utility rates, along with the assumption of other liabilities and cost of continued Federal subsidies, on all residents of the state that far exceed the cost of alternatives.

One alternative previously recommended is the installation of a shore power cable to the mainland. But according to the formula in 39-26.1-7, more than 99% of the cost would unfairly fall on non-Block Islanders. For those of us who don't enjoy having a home there, this is objectionable. However, for even less than the cost of that alternative, a new, state of the art generator could be purchased and installed on Block Island. The life cycle cost of this last option has apparently never been investigated.

I am not an expert in wind power per se, but do have the ability to analyze the merits of a project like this one. I have a background in aeronautical engineering (as a Naval aviator) as well as having had a second career as a General Manager and as a CEO of several significant manufacturing companies. Early in my career I was instrumental in marketing Reynolds Aluminum solar hot water systems. In the Naval Reserve, I served as the Commanding Officer of the unit attached to the contract administration office at Grumman Aerospace. I have also been responsible for arranging and funding a number of business mergers, acquisitions, and startup projects. My objections and comments below are based on this experience and expertise.

Objections to Power Purchase Agreement:

1. "Commercial Reasonableness" is not achieved, for a variety of reasons:
 - a) Regardless of the small size of the project, the cost is not small, or reasonable. This cost, to be paid by both the ratepayers directly as well as the taxpayers in the form of subsidies and possible guarantees and/or assumption of liabilities, has been shown by prior expert testimony before the PUC as being out of proportion to any conceivable benefits.
 - b) Performance requirements and guarantees are virtually non-existent. (See specific objections below.)
 - c) The sole source developer is a shell company with no demonstrated financial or operating credibility, and is not the one selected previously. And conspicuously absent is any contractual participation by the developer's parent company or affiliates. (See objections to §13.1 below.)
 - d) The PUC will be removed from having approval authority over potential purchase of a transmission cable from the developer by National Grid.
 - e) The PUC will also be removed from having approval authority over any future modifications to the Purchase Agreement. These could be unlimited

in scope, and essentially remove the PUC from its role in protecting Rhode Island ratepayers. (See specific objections to §18 below.)

2. “Policy Goals” are not going to be met, as follows:
 - a) If this is a “demonstration” project, then it is unclear what it intends to demonstrate. If it is supposed to show that Rhode Island will be a “leader” in wind power (as opposed to, say, Cape Wind in Massachusetts), there is no evidence this will happen. If it is supposed to show that future developers should locate at Quonset Point, this is even more unlikely. Cape Wind is known to be looking at New Bedford. And this developer, through its member affiliate, has an exclusive option, recently renewed, on Quonset that effectively allows it to bar competitors from using it, making it unattractive to Cape Wind, who has visited there and has a much larger project proposed. (See Development Agreement and Lease Option dated 1/2/2009, a prior exhibit in 4111.) The land and water access covered in the Lease Option clearly shuts out any viable alternate space for a competitor to Deepwater.
 - b) “Economic Development” will actually be negatively affected. As intervening manufacturers have indicated (Toray Plastics, Polytop Corporation), there will be a loss of competitiveness of the very businesses we should be helping. Increased utility costs will discourage other manufacturers from locating here. The excess costs of the project will also drain funds that could have been spent within the state on retail and other purchases that drive the economy. And the assumption that significant numbers of long-term jobs will be created at Quonset is both highly speculative and completely dependent on future events over which National Grid and Deepwater have little or no control. At this point in time, achieving the entire project’s benefits assumes that if Deepwater completes and operates this “demonstration” project successfully, it will be able to finance a larger project in Rhode Island Sound, and/or its competitors will want to locate here, and that, for the very first time, offshore windmills will be manufactured in the U.S., and that they will be manufactured here in Rhode Island. This far-reaching chain of speculation has not been supported in any credible way by anyone involved.
 - c) To count Federal grant money and subsidies as economic benefits is to suggest that we are going to create wealth by taking money out of one of our collective pockets and putting it in another.
 - d) The goal of “energy independence” will not be even slightly achieved. In general, wind power requires costly excess conventional generation to back it up, since fluctuating winds vary output by up to 70 per cent, while demand varies between day and night, winter and summer. Current land-based systems do not replace dirty coal power; they replace gas, nuclear, and hydroelectric, which are cleaner, because they are more flexible to operate. And a large transmission infrastructure, with power losses that go with it, is required.
 - e) Concerns about oil dependence and the Gulf of Mexico oil spill are not relevant here. Oil is not used by electric power plants. They run on coal,

natural gas, nuclear, and hydropower. According to former CIA Director James Woolsey (NPR interview of June 26th) oil is used exclusively for transportation, which amounts to around 70% of our overall consumption.

Specific Objections to certain Power Purchase Agreement provisions:

1. §6.1. The performance guarantee is unsatisfactory. The guarantee to be posted is limited to \$1.8 million for a project estimated to cost \$215 million to construct. A half-finished, abandoned project would certainly cost NGrid and our State far more than that. Offshore wind power is far more risky and costly than other sources, both to install and maintain. It is many times more expensive than land based systems. And in twenty years, if they last that long in the harsh ocean environment, there will be a substantial, unfunded cost to remove their rusty hulks and perhaps replace them. Already, Hawaii and California have large, abandoned land-based windmill farms. And Hawaii's South Point complex lasted less than ten years. As we know, offshore hasn't been tried yet in the U.S. The European experience has shown a variety of problems with unexpected costs and maintenance. (See www.windaction.org and other sources.) As a result of providing Federal loan guarantees along with State and Federal grants and tax incentives to wind energy operators, it is the financial risks, not the benefits, which will fall on us ratepayers/taxpayers. And the increased electric power costs will fall on us all as well. It should also be noted that the only wind farm experience demonstrated by the parties involved with Deepwater appear to be that of First Wind, whose public filings concerning its difficulties in renewing financing for its onshore wind farm operations suggest that it has not done very well to date in predicting and performing on wind farm projects.

2. §9.1-3. Termination rules are one-sided and potentially very costly to National Grid and the ratepayers. In particular, in case of termination by the Buyer, even for non-performance or default, NGrid is liable for the difference between market value (PV) and contract value remaining (CV), plus (P), which is all of the Seller's penalties and costs in reselling this over-priced and sporadic power to other utilities, for the remaining life of the contract. Further, there is a limitation of remedies wherein there is no guarantee of when or at what rate Deepwater will provide power. If operating problems, as opposed to lack of wind, cause large production variations, the cost of adjusting conventional output to accommodate this could be significant.

3. §10.1. "Force Majeur" is not defined. Deepwater may consider annual storm activity or problems caused by salt spray as falling within the definition.

4. §13.1. The Indemnification clause is hollow with respect to the Seller. Deepwater Wind Block Island LLC is a Limited Liability Corporation with no visible assets other than this project. It is a shell company. Further, §15 insures that there is no recourse by any party to Deepwater's parents or members (Deepwater Holdings, First Wind) or any affiliates. And §21 provides that there will be no duty or liabilities to third parties. Finally, it should be noted that the Joint Development Agreement of 1/2/2009 between the State and Deepwater, along with the just renewed option and lease agreements with Quonset, are with Deepwater Wind Rhode Island, not Deepwater Wind Block Island.

5. §14. Assignment of the Seller's rights and obligations under the Agreement must be agreed to by National grid, but not the PUC. And agreement by NGrid "cannot be unreasonably withheld or conditional...". Since the precedent for the standard for entering into an agreement with a shell company will have been set here, Deepwater will be free to pass off its obligations to another shell company (unless assigned without NGrid's consent) , or even a foreign one (so much for local job creation).

6. §18. The Waiver or Modification provision basically takes this entire Agreement, and any future ones, out of the hands of the PUC. NGrid can, at its "sole discretion", waive or modify any part of this Agreement that Deepwater assents to without PUC approval. Essentially, once this Agreement is approved, Buyer and Seller can completely rewrite the whole thing, any way they want, at their sole discretion, and there will be absolutely no review by anyone in behalf of the ratepayers and citizens of Rhode Island.

For the reasons stated above, I urge the commission to reject the revised contract offered by Deepwater Wind and National Grid. The matter has been previously decided, without appeal. Nonetheless, the revised Agreement does not satisfy the purpose of §39-26.1-7, as restated or otherwise. It also does not satisfy the commercial reasonableness requirements, it does not meet energy and economic policy goals, and it is clearly not in the public interest that the Public Utilities Commission was created to protect.

Thank you for your consideration.

SS// *Benjamin C. Riggs, Jr.*
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