

**In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Wednesday, November 12, 2014 at 6:00 p.m. in Conference Room A, Administration Building, One Capitol Hill, Providence, RI.**

Members Present

Anne Maxwell Livingston, Chair  
Paul Lemont, Vice Chair  
Ronald Gagnon, RIDEM  
Don Gomez  
Joy Montanaro  
Mike Hudner  
Tony Affigne  
Raymond Coia

Staff Present

Jeff Willis, Deputy Director  
  
Brian Goldman Legal Counsel

Members Excused:

Jerry Sahagian  
Paul Beaudette

**1. CALL TO ORDER**

Chair Livingston called the meeting to order at 6:00 p.m.

**2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

Vice Chair Lemont motioned, seconded by Mr. Coia, for the approval of the minutes of the previous meeting. Motion carried on a unanimous voice vote.

**3. SUBCOMMITTEE REPORTS**

None

**4. STAFF REPORTS**

Mr. Goldman updated the Council on the following litigation:

The case was about Shields vs. CRMC and Deepwater Wind in which Mr. Shields filed an appeal of the CRMC final decision of approving the project. Deepwater Wind filed a motion to dismiss for lack of standing because Mr. Shield was alleging that he should have been able to talk about cost and economic impacts. The matter was thoroughly briefed and today Judge Silverstein issues a bench decision granting the motion to dismiss and found that Mr. Shields did not have the requisite standing to bring appeal.

Mr. Willis informed the members on the following:

Mr. Fugate is in Portsmouth, New Hampshire at a Regional Planning Body meeting that his is a co-chair of and is part of the Northeast Ocean Council.

Another Matunuck enforcement matter that was to be scheduled for November 25<sup>th</sup>, has asked for a continuance which is being granted with the proviso that the applicant put in an application for experimental erosion control measures by December 31, 2014. Mr. Willis stated that if the application is not received by that date, they will be rescheduled to appear before the Council for January 27<sup>th</sup>.

Chair Livingston informed the Council that the Robert Krause application had been continued as well and invited Mr. Goldman and Mr. Carlotto to talk about Deepwater land lease, license and escrow agreement.

**5. In Re: Deepwater Wind Block Island, LLC – CRMC File No. 2012-09-065 -- Discussion and/or acceptance of submerged land lease, license and escrow agreement.**

Mr. Goldman distributed an updated version of the provisions of the lease discussed in a previous meeting while giving a brief background on what he and Mr. Carlotto were recommending. Mr. Goldman explained that stipulation 11 requires financial assurances to secure payment and performance of construction, operation and decommissioning of the pilot project off of Block Island. Mr. Goldman stated that with the Council's authorization he engaged Sheckman, Halperin & Savage to assist him in the preparation and negotiation and review all of the financial security lease and license agreements to facilitate the process and also to bring some expertise, particularly regarding the insolvency and bankruptcy and commercial transaction. Mr. Goldman stated that he had been working with Tom Carlotto, Esq. as well as others at the firm. Mr. Goldman stated that Deepwater agreed to pay the legal fees to Sheckman, Halperin and Savage.

Mr. Goldman stated that during the negotiations, Executive Sessions had been held to brief the members on where they were in the negotiations and to receive input on some of the terms of the negotiations relating to submerged land lease and also to get parameters and directions. Mr. Goldman stated that they had taken the Council's directions and parameters back to Deepwater and as a result have put together three documents for Council review. Mr. Goldman stated that he and Mr. Carlotto were recommending approval and acceptance.

Mr. Goldman went over the documents with the Council

1. Submerged lands lease

- The term of the lease is November 12, 2014 until the 25<sup>th</sup> anniversary of the commercial operations date. The term can be extended by agreement.
- The leased area of the turbines will encompass submerged lands occupied by the 5 turbines themselves which includes a 200-foot parameter around the turbines (Addendum A)
- A rental payment of \$150,000 per year, or the BOERMRE formula, whichever is greater.
- Section 7 of lease details events of defaults which Mr. Goldman explained.
- Section 11 of the lease is the financial assurance and irrevocable letter of credit and decommissioning fund. Mr. Goldman stated that the CVA had verified the \$7.5 million amount. Mr. Carlotto confirmed that the \$7.5 million will be reviewed prior to construction and then every three years beyond that and will be adjusted. After 5 years a decommissioning fund is started with the escrow agreement and the decommissioning fund reduces the irrevocable letter of credit. Mr. Carlotto confirmed that the \$7.5 million fund can only go up.
- Section 21 specifies that the lease agreement will be governed by Rhode Island Law and any disputes will be litigated in the Rhode Island Courts.

## 2. License Agreement

- Two cables (two documents)
  - The BITS cable, which will connect Block Island to the mainland
  - Inter Array cable will connect the wind farms to Block Island and for which a license and an assent was drafted
- The actual licensed area will be the width of the cable and 50 feet on either side of the cable.
- The BITS license is for 99 years which will go the National Grid – only for the portion in RI waters.
- The Inter Array cable term is the same as the submerged land lease of 25 years from the construction operation date.
- Insurance -- Mr. Carlotto stated that National Grid wished to self insure the BITS cable
- Mr. Carlotto explained that the cables would never be removed; they would be abandoned in place.

### Questions by the Council:

Vice Chair Lemont asked about the possibility of another competitive company wants to hook up cables. Mr. Carlotto explained that the provisions in the license specifically say in the cable areas that a new party would have to enter into a cable crossing agreement.

Mr. Gagnon inquired about the escrow agreement. Mr. Goldman stated that the escrow agreement was addendum F to the lease.

Mr. Hudner stated that he was in favor of approving the lease and licenses, and even though he feels that it is somewhat beyond the Council's expertise, he feels that the Council has not a good job in reviewing all the documents.

Mr. Affigne asked the other attorney's on the Council how they felt about the documents. Vice Chair Lemont agreed with Mr. Carlotto because the issues they face are not ones they face every day. Vice Chair Lemont stated that CRMC had much to be proud of in the reviewing of the documents and that Mr. Goldman and Mr. Carlotto provided a very good finished product.

Mr. Coia stated that he felt comfortable and did support it based on the Council interaction with Counselors involved, Mr. Goldman and Mr. Carlotto.

Mr. Affigne stated that he felt the Council with the help of Mr. Goldman and Mr. Carlotto had done a remarkable amount of due diligence and that there is no reason not to proceed.

Vice Chair Lemont motioned for approval as recommended by Counsel. Mr. Affigne seconded. Mr. Goldman clarified the motion by saying that the motion is to approve the three agreements and authorize the chair to enter into those, sign those agreements with substantial compliance of what was presented.

Motion carried on a unanimous voice vote.

Mr. Goldman personally thanked Mr. Carlotto and the lawyers at Sheckman, Halperin, and Savage in their assistance.

**8. ADJOURN**

Vice Chair Lemont motioned for adjournment, seconded by Mr. Hudner. Motion carried on a unanimous voice vote and the meeting adjourned at 6:44 p.m.

Respectfully submitted,  
Lisa A. Turner, Recording Secretary