

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: RHODE ISLAND RESOURCE :
RECOVERY CORPORATION PETITION : DOCKET NO. 3565
FOR DECLARATORY JUDGMENT :

**PETITIONER, RHODE ISLAND RESOURCE RECOVERY CORPORATION'S REPLY
TO THE MEMORANDUM FILED BY
THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES**

In accord with the scheduling order dated September 20, 2007, Petitioner, Rhode Island Resource Recovery Corporation ("Resource Recovery") submits its reply to the memorandum filed by the Rhode Island Division of Public Utilities (the "Division").

Reply Argument

A. The Issues Posed by the Petition for Declaratory Judgment

In reply to the Division's memorandum, Resource Recovery submits that it is important to refocus on the issues posed by the Petition for Declaratory Judgment.

As outlined in its principal brief, Resource Recovery was charged by the Rhode Island General Assembly with developing an industrial park (the "Industrial Park") which was defined by the General Assembly as a "public purpose". See R.I. Gen. Laws § 23-19-9(a)(7).

In turn, Resource Recovery's authority to convey real property is not subject to traditional procurement laws. Thus, Resource Recovery has the ability to negotiate unique and creative initiatives with private partners in order to advance this public purpose.

In this instance, Resource Recovery conveyed 30 acres of real property to a private entity for the development of a major energy facility. See Exhibit B, Agreed Statement of Facts. Yet, Resource Recovery retained the right to 40 MW of the output of the major energy facility to power the Industrial Park. *Id.* at ¶ 10(c).

The electrical power at issue is to be transmitted within the Industrial Park via a direct interconnection with the major energy facility. This has been referenced by the parties herein as the “Direct Connect”. Thus, the first question to be answered pursuant to the Petition for Declaratory Judgment is whether electricity transmitted within the Industrial Park via this public-private initiative or collaborative is subject to distribution and/or stranded cost-type charges.

The second issue which has to be decided herein arises from the reality that end-users within the Industrial Park may well take advantage of the Direct Connect and still need backup or supplemental power to be distributed by Narragansett Electric. Accordingly, the question to be resolved is whether those end-users can take advantage of the requirement that backup and supplemental services be provided pursuant to R.I. Gen. Laws § 39-2-1.4.

B. The Agreement Negotiated by Resource Recovery Is a Form of Self-Generation

Resource Recovery agrees with the Division in that the Direct Connect structure would not result in Resource Recovery being deemed a “electric distribution company”, because Resource Recovery would not be distributing electricity to or for the public. However, Resource Recovery framed the issue somewhat differently. Resource Recovery submits that its initiative is a form of self-generation. Accordingly, as a form of self-generation, the Direct Connect structure is not subject to distribution or stranded cost recovery-type charges and must be given an opportunity to succeed pursuant to the policies adopted by the Rhode Island General Assembly in deregulating the electric generation industry and in enacting R.I. Gen. Laws § 39-2-1.4.¹

¹ The term “small power production” utilized in R.I. Gen. Laws § 39-2-1.4(a), is not dispositive as Resource Recovery’s initiative involves the generation of 40 MW of electricity for consumption within the Industrial Park.

It is beyond contention that self-generated electricity is not subject to distribution and/or stranded cost recovery-type charges. There are present examples within Rhode Island that underscore this conclusion. In turn, Narragansett Electric has offered testimony under oath on different occasions before the Commission which further buttresses this conclusion. *See* Resource Recovery's Brief at page 11.

Furthermore, it is not unusual in a self-generation scenario that an entity contracts with a third-party, wherein the third-party develops and operates an electric power plant for the benefit of its contractual partner. Nor, is it unusual that one party to said contract consumes a certain output from the plant and the balance is placed by the developer/operator into the grid.

In 1998, Resource Recovery negotiated an agreement whereby a third-party agreed to purchase a parcel within the Industrial Park for the development of an electrical power plant and in exchange, Resource Recovery reserved 40 MW of the output for the benefit of the Industrial Park.

Other states have defined this type of arrangement as a form of self-generation. For example, the State of New Jersey has defined a "self-generating unit" to mean "a facility located on the user's property, or on property purchased or leased from the user by the person owning the self-generation unit and such property is contiguous to the user's property, which generates electricity to be used only by that user on the user's property and is not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcates the user's or self-generation unit owner's otherwise contiguous property." *See* N.J.S.A. 54:32B-2.

As a matter of implementing the policy clearly adopted by the Rhode Island General Assembly in the aftermath of electricity deregulation, Resource Recovery's public-private

collaborative was specifically designed, negotiated and implemented to be a catalyst for the Industrial Park and must be deemed to be a form of self-generation. As argued in Resource Recovery's principal brief, this concept was embraced by the Rhode Island Energy Facility Siting Board. *See* Resource Recovery's Brief at pp. 7-8. Thus, the licensure issued by the Board should be deemed to be dispositive. *Id.*

Although the Division states in its memorandum that Resource Recovery's initiative cannot "be confused with distributed generation", the Division respectfully is wrong.

The use of a distributed generation facility to power an industrial park is precisely the type of plan that has been targeted as a potential use for distributed generation. *See Humboldt County California General Plan, 2025 Energy Element Background Technical Report, Draft-August 2005, Jim Zoellick, 53 (2005)* ("Larger distributed generation systems can serve multiple customers, such as an industrial park, a subdivision, or a commercial zone."); *Solar Implementation Plan Marin County, CA, The Marin County Community Development Agency, 2 (2003)* ("Larger distributed generation systems may serve multiple customers such as in an industrial park, a subdivision, or a commercial zone. Some of these technologies are commercially available today while others are expected to be commercial within the next 5 to 10 years."); *2003 Supplemental Report on Distributed Generation, Maine Public Utilities Commission, 4 (2003)* ("The Commission would recommend that the distributed generator be allowed to sell electricity at retail to third parties that are either adjacent to or in the proximity to the generator. This situation would allow for DG use in an industrial park or a shopping center."); *Critical Electric Power Issues in Pennsylvania: Transmission, Distributed Generation and Continuing Services When the Grid Fails, Carnegie Mellon Electricity Industry Center for*

the PA department of Environmental Protection, 5 (2005) (finding that distributed generation would be best used at shopping centers, hospitals, or industrial parks).

The size of the existing power plant, a detail erroneously focused on by the Division, has no impact on whether a project can be defined as a distributed generation project. It is perfectly acceptable to include a large facility in the definition of distributed energy, the key concept is not size but rather “that the energy user . . . produces electric power on or near the site where that power will be used.” *Distributed Power Generation Facilities Can be Part of the U.S. Energy Solution and Congress Can Help Make That Happen*, The CAEM Distributed Energy Task Force, 1 (2001); *The Role of the Federal Government in Distributed Energy*, Report of the Distributed Energy Task Force, Appendix B (2002) (“The *Task Force* did not adopt an upper limit on the size of distributed energy.”); *Stability of Power Systems with Large Amounts of Distributed Generation*, Valerijs Knazkins, Doctoral Thesis, Stockholm, Sweden, Table 8.1 (2004) (providing a table that details a large variety of distributed generation technologies that range in size from 2 KW to 400 MW).

Notwithstanding, the Division’s focus on the existing 500 MW power plant, Resource Recovery contracted to reserve 40 MW to be consumed within the Industrial Park. As the Division acknowledged, these facts remove Resource Recovery’s initiative from the definition of a “public utility”. As consistent therewith, the structure at issue is a creative form of self-generation/distributed generation which should be encouraged and not saddled with charges or tariff hurdles that prohibit actual implementation.

In summary, it is of critical importance that the Commission determine the Direct Connect structure to be a form of self-generation. This will provide flexibility and encourage creative end-users, who want to invest in facilities that generate and deliver electricity outside

what has been defined as “electrical distribution facilities” that are owned and controlled by the incumbent Electric Distribution Company and subject to various charges and fees.

Short of that, the Commission should be compelled by the reasons set forth in the Division’s memorandum that the direct connect structure would not be providing or delivering electricity to or for the benefit of the public and thus, said structure cannot be defined as electricity distribution pursuant R.I. Gen. Laws § 39-1-2(12).²

C. **Resource Recovery’s Initiative Must be Provided Backup and Supplemental Service**

The Division in its memorandum emphasizes existing backup and supplemental service tariffs. Resource Recovery will reply in that regard. However, Resource Recovery first urges the Commission to consider R.I. Gen. Laws § 39-2-1.4(b). Again, Resource Recovery’s initiative must be deemed to be a form of self-generation and if so, then the end-users within the Industrial Park must be provided the advantages established by the Rhode Island General Assembly in enacting R.I. Gen. Laws § 39-2-1.4(b).

The Division emphasizes the term “small power production”. As the Division recognizes, the industry has defined small power production as 80 MW and below. In this instance, the Commission cannot lose focus on the fact that Resource Recovery’s initiative is a form of self-generating 40 MW of power which would fall into the realm of small power production.

² Moreover, Resource Recovery does not retreat from arguing that the exception to the definition of public utility as set forth at R.I. Gen. Laws § 39-1-2(20)(i-ii), controls in this instance. The Division did an extremely thorough job of demonstrating that the exemption may have been created to facilitate a project at the University of Rhode Island. However, that does not mean that the exemption cannot be used in a similar situation to advance the exact same policy.

Suffice to say, that there would be no issue if Resource Recovery, itself, developed and operated a 40 MW plant within the Industrial Park. However, the taxpayers could not afford for Resource Recovery to develop and operate a 40 MW power plant within the Industrial Park. Accordingly, Resource Recovery entered into a public-private collaborative in which private investment was utilized to create the equivalent of a 40 MW power plant within the Industrial Park. Said initiative should not be prevented by the technical arguments advanced by National Grid and initially accepted by this Commission in rejecting the proposed settlement.

As for the existing tariffs, the Direct Connect structure would certainly qualify under the following language: “[w]here electricity received by the Customer from the Generation Units is not being delivered on Company-owned distribution facilities”. See P.I.P.U.C. Nos. 1172 and 1173

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within was served via e-mail and via first-class, postage prepaid mail upon the following on this 25th day of October, 2007:

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