STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID'S TARIFF ADVICE FILING TO AMEND R.I.P.U.C. NO. 2006 QUALIFYING FACILITIES PURCHASE RATE	: : :	DOCKET NO. 3999

REPORT AND ORDER

I. Background

In July 2008, the General Assembly amended R.I. Gen. Laws §§ 39-26-2 and 39-26-6 (g)-(k) as the law related to net metering and renewable generation credits resulting from net metering by eligible renewable energy resources. The amendments increased the aggregate amount of net metering allowed,[1] increased the maximum allowable distributed generation capacity for eligible net metering systems,[2] and allowed net-metering credits to be carried forward for a period of twelve (12) months at which time any remaining credits would be deposited into a new renewable energy low income fund to be created by the Public Utilities Commission ("Commission").[3] The amendments also changed the calculation of the renewable generation credit and allowed non-profit affordable housing, municipalities, and Narragansett Bay Commission ("NBC") to apply credits to more than one account.[4] Additionally, the amendments included additional costs that could be passed on to all customers which were incurred by the electric distribution company to comply with the law and allowed these costs to be "embedded in the distribution component of the rates reflected on customers bills" rather than as a surcharge as previously required.[5]

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[1] R.I. Gen. Laws § 39-26-6 (g)(2).
[2] R.I. Gen. Laws § 39-26-6 (g)(1).
[3] R.I. Gen. Laws §§ 39-26-6 (g)(3)-(4) and 39-26-6 (j).
[4] R.I. Gen. Laws §§ 39-26-2 (22) and 39-26-6 (h).
[5] R.I. Gen. Laws § 39-26-6 (h).

The amendments to the law included a new definition of net metering as "the process of measuring the difference between electricity delivered by an electric distribution company and electricity generated by a solar-net-metering facility or wind-net-metering facility, and fed back to the distribution company."[6] Therefore, the net metering provisions of this Chapter only apply to solar and wind projects.[7]

The renewable generation credit is defined as a "credit equal to the excess kWhs by the time of use billing period (if applicable) multiplied by the sum of the distribution company's (i) standard offer service kWh charge for the rate class applicable to the net metering customer; (ii) distribution kWh charge; (iii) transmission kWh charge; and (iv) transition charge." Nonbypassable charges such as demand side management and renewable energy charges would not be credited.[8]

The maximum allowable distributed generation capacity for eligible net-metering systems was increased from 1 megawatt (MW) to 1.65 MW, "except that for eligible net-metered renewable energy systems developed but not owned by cities and towns, located on city or town owned land, and providing power solely to the city or town that the project is located in, increase said maximum to 2.25 megawatts; and; except that for eligible net-metered renewable energy systems owned by cities and towns of Rhode

[6] R.I. Gen. Laws § 39-26-2 (17).
[7] Net metering is also defined in R. I. Gen. Laws § 42-140.2-2 as "billing or charging an end-use customer only for the electricity supply or services which is the net amount of electricity actually delivered to the client by the supplier or service company, less any amount of electricity generated by or on behalf of the end-use customer and either used on the end-use customer's property or put on to the electric distribution grid within the same transmission interconnect area in which the end-use customers [*sic*] is located." Therefore, although this Chapter and related amendments to NGrid's QF Tariff are applicable to renewable resources, under Rhode Island law, net-metering is not only limited to renewable resources.
[8] R.I. Gen. Laws § 39-26-6 (h).

Island and the Narragansett Bay Commission, increase said maximum to 3.5 megawatts."[9]

A new section of the law stated that:

> If the electricity generated by the renewable generation facility during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall be billed for zero kilowatt-hour usage and the excess renewable generation credits shall be credited to the customer's account for the following billing period. Any Rhode Island city or town, educational institution, farm or the Narragansett Bay Commission may elect to apply any such credits earned to another account owned by it. Non-profit affordable housing may elect to apply any such credits earned to other accounts within the eligible affordable housing developments.[10]

II. Pre-Hearing Travel

As a result of the above-referenced changes to the law, on October 29, 2008, Narragansett Electric Company, d/b/a National Grid ("NGrid" or "Company") filed a Tariff Advice with the Commission amending the Company's Qualifying Facilities Power Purchase Rate, R.I.P.U.C. No. 2006 ("QF Tariff"). NGrid's changes primarily reflected the language set forth in the statute, including that which relates to the application of net-metering credits by municipalities, educational institutions, farms, and NBC to another account owned by it. However, NGrid did not directly reflect the language of R.I. Gen. Laws § 39-26-6(g)(3) relating to the application of net-metering credits by non-profit affordable housing which NGrid limited to a maximum of five (5) other accounts.[11] The first account to which the credits would be applied would be the account related to the project, itself. NGrid also specified how "the selection of the appropriate retail rate [would] be determined" by the Company. According to the

[9] R.I. Gen. Laws § 39-26-6 (g)(1).
[10] R.I. Gen. Laws § 36-26-6 (g)(3).
[11] NGrid Exhibit 1, Proposed QF Tariff R.I.P.U.C. No. 2010, III.B.1., Sheet 6.

proposed tariff advice, the retail rate would be determined by the size of the qualifying facility (renewable generating project) and related customer load.[12]

On November 18, 2008, a pre-hearing conference was conducted by Commission staff at the Commission's offices. Representatives of NGrid, the Division of Public Utilities and Carriers ("Division"), the Town of Portsmouth ("Portsmouth), the Town of Barrington ("Barrington"), People's Power & Light ("PP&L"), and Church Community Housing Corporation ("CCHC") attended. Participants discussed their initial thoughts regarding NGrid's proposed QF Tariff and how they related to the law. The participants agreed that a Technical Session where all could participate would be preferable to a formal hearing in order to avoid the costs associated with hiring legal counsel to represent the various interests. The Technical Session was scheduled for December 17, 2008.

On November 19, 2008, the Commission issued data requests to NGrid and the Division requesting information that included issues raised by the participants to the November 18, 2008 pre-hearing conference. On December 1, 2008, the Commission caused a Notice of Technical Session to be published in the Providence Journal. On December 3, 2008, the Division filed its responses to the Commission's Data Requests. On December 4, 2008, NGrid filed its responses to the Commission's Data Requests. Subsequently, the Commission received Comments from PP&L, Portsmouth, CCHC, and Allco Renewable Energy Group Limited, LLC ("Allco").

A. Discovery

In addition to some questions regarding uncontested changes to the QF Tariff, the Commission specifically inquired about the application of excess net-metering credits to other accounts. NGrid agreed to allow municipalities, educational institutions, farms or

[12] NGrid Exhibit 1, Proposed QF Tariff R.I.P.U.C. 1010, IV.1-4., Sheet 8.

NBC to apply credits to up to a maximum of five (5) other accounts. With regard to non-profit affordable housing, the Company stated that it would "prefer any credits generated would be issued to the entity that owns the net-metering facility who would then allocate them as they see fit according to the arrangements made between it and other customers." If that is not allowable, NGrid indicated that it proposed to limit the number of additional accounts to five (5) in an attempt to limit the administrative costs associated with the manual process of applying credits from one account to another. Because NGrid believes these costs would be recoverable through the distribution rates, it indicated that the proposal was an attempt to mitigate the impact on other customers.[13]

The Commission also asked NGrid to discuss the calculation of the net-metering credit where more than one account is credited and each account has a different distribution rate. The Company indicated that under its proposed QF Tariff, each net metered project would be associated with a primary account for purposes of calculating renewable generation credits. This primary account would be the billing account of the facility that is served by the generator unless the net metered facility is not behind the meter, in which case, the primary account would be the station service account of the net metered facility. The retail delivery rate of the primary account will determine the distribution charges used in the calculation of the credit.[14]

B. Participants' Comments

On December 11, 2008, the Commission received comments from PP&L relative to six points. First, PP&L stated that it believed the intent of R.I. Gen. Laws § 39-26-6(3) was to allow municipalities to apply net metering credits to an unlimited number of

[13] *See* NGrid Exhibit 2, NGrid's Responses to Commission Data Requests 1-3, 1-4, and 1-6.
[14] *See* NGrid Exhibit 2, NGrid's Responses to Commission Data Request 1-5.

accounts. Second, PP&L indicated that inequities could arise in non-profit affordable housing developments if credits are not applied in a way such that all low-income households in the development would share in the output of the facility. Third, PP&L proposed allowing NGrid to distribute the net-metering credits in the form of checks rather than bill credits. Fourth, referring to R.I. Gen. Laws § 39-26-6(g)(1), defining the size of eligible net-metered energy systems, PP&L maintained that, contrary to the initial position of the Division, where there is partial ownership by a municipality and a third-party, net metering credits should not be split among a third-party owner and municipality, but rather, the municipality should receive the credits while the third-party would receive tax credits. Fifth, PP&L proposed the Commission make a determination regarding the application of the funds from the renewable energy low income fund rather than a proposal made by the Commission to require NGrid to maintain the funds in a separate, interest-bearing, fully-reconciling account for which NGrid would periodically make recommendations as to the application of the funds. Sixth, PP&L requested the Commission address the issue of how the recovery of costs associated with NGrid's compliance with R.I. Gen. Laws § 39-26-6(g) in this docket.[15]

On December 12, 2008, Portsmouth filed comments which mirrored PP&L's positions regarding the number of accounts to which net-metering credits should be applied, the proposal to allow checks to be issued in lieu of bill credits, and how the recovery of costs should be addressed.[16] Allco filed comments mirroring PP&L's positions regarding the application of credits to more than one account and the allocation

[15] Public Exhibit 2, Comments of People's Power & Light (12/10/08), pp. 1-2.
[16] Public Exhibit 3, Comments of the Town of Portsmouth Economic Development Committee (12/11/08).

of net-metering credits in cases of joint ownership of a project between municipalities and third-parties.[17]

On December 11, 2008, CCHC filed comments requesting that the language of R.I. Gen. Laws § 39-26-2 (19) that allows non-profit affordable housing to be eligible for net metering where "the net metering allowed will benefit low income residential electric customers only" to be revised to "allow the net metering to benefit the affordable housing development...[without] restricting the benefits to low income residential customers only." The purpose of the request was to allow the affordable housing development to take advantage of the credits to reduce the overall cost of the development rather than applying it directly to the residential customers.[18]

III. Technical Session

On December 17, 2008, pursuant to public notice, the Commission conducted a Technical Session on the record at the Commission's offices, 89 Jefferson Boulevard, Warwick, Rhode Island for the purposes of examining NGrid's proposed Tariff filing with oral input from interested parties. Participants included representatives from NGrid, the Division, PP&L, Portsmouth, Barrington, RI Wind Alliance, RI Housing, CCHC, and Allco.

The following appearances were entered:

FOR NATIONAL GRID:	Thomas Teehan, Esq.
FOR DIVISION:	William Lueker, Esq. Special Assistant Attorney General
FOR COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

[17] Public Exhibit 5, Comments of Allco Renewable Energy Group Limited, LLC (12/12/08), pp. 1-2.
[18] Public Exhibit 4, Comments of Church Community Housing Corporation (12/11/08).

NGrid provided information through legal counsel, Thomas Teehan, Esq., Timothy Roughan, Director of Distributed Generation and Jeanne Lloyd, Manager of Rates with the aid of a Power Point presentation.[19] Mr. Teehan summarized the 2008 changes to the law, including the increases in the size of eligible net-metering systems and the aggregate amount of net metering allowed to a maximum of two percent of peak load which would represent 35 MW. Mr. Roughan explained that with the larger projects contemplated by the statute, the Company will install bi-directional meters to measure the import and export values which will then net through the entire billing period rather than once at the end of the month. For some customers who are installing wind turbines capable of providing more load than the customer already has, there would be upgrade costs associated with the new meter or for facilities that could handle that larger load.[20]

Mr. Teehan noted that the statute allows municipalities, educational institutions, farms or NBC to apply credits to another account and nonprofit affordable housing to apply credits to other accounts.[21] Mr. Roughan explained the mechanics of net-metering including the fact that credits can be automatically applied to a primary account, but any transfers between accounts will require manual billing and application of credits. Ms. Lloyd noted that in addition to the administrative costs associated with manual billing, for each bill processed by a person, there is an added risk of human error not found in an automated system.[22] Mr. Roughan noted that a town or city can transfer the credits to another of its accounts, while Mr. Teehan noted that the law requires the credits to be

[19] NGrid Exhibit 3.
[20] *Id.* at 11-12.
[21] Tr. 12/17/28, pp. 5-6.
[22] *Id.* at 9-11, 33-34.

transferred to accounts within the eligible affordable housing development.[23] NGrid would not modify its billing system until the costs to modify approach the cost of manual billing.[24]

Mr. Roughan also indicated that because of the administrative difficulties, NGrid agreed with the proposal of other participants to issue a check each month for the credits to the entity and "let them sort out who gets it."[25] Mr. Teehan believed that the proposal to provide a check would be consistent with the statutory language. However, in response to a question from the Commission regarding the second intent of the statute, which is to create a low income fund with excess credits that may remain at the end of a twelve month period, Mr. Roughan noted that issuance of checks each month may require a true-up at the end where the Company actually bills the customer (municipality, farm, educational institution, affordable housing development or NBC) for any excess credits for which a check had already been issued.[26] Ms. Lloyd and Mr. Roughan opined that the customers eligible for applying the net metering credits to other accounts would structure their transfers to avoid excess credits remaining at the end of the twelve month period.[27]

On behalf of the Division, Mr. Lueker recognized the administrative concerns NGrid had regarding transferring credits, but was not convinced the proposed solution to issue checks was consistent with the statutory language. He indicated that the purpose of the credits is to reduce electric bills, whereas a check could be used for other costs which

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[23] *Id.* at 24-25.
[24] *Id.* at 9-11. Ms. Lloyd noted that under the pre-2008 statutory language, the credits totaled approximately $31,000 and would be lower under the 2008 amendments for the same kWhs. However, the pre-2008 language did not allow for recovery of administrative costs. *Id.* at 7.
[25] *Id.* at 24.
[26] *Id.* at 25-27.
[27] *Id.* at 27-28.

were not contemplated by the statute.[28] Representatives of the cities and towns indicated that they would favor checks which provide them with the most flexibility.[29] Ms. Lutz from PP&L indicated that housing authorities have their own rate for the common areas and the credit might be generated under that rate. She favored checks rather than credits to simplify the issuance of net metering credits, but understood the legal concerns. She stated that it should be clear that credits issued in the form of checks have to benefit the residents rather than the affordable housing generator. She opined that if a check was issued to a housing development that pays the residents' utilities, the intent of the law would be fulfilled. However, if credits would be applied to the tenants' bills, there would have to be assurances that the crediting of accounts is done in an equitable manner to all tenants.[30]

Mr. Belden, on behalf of Church Community Housing, indicated that "typically the utilities for those residents are paid for them through the development, and so that flow-through of the credits from the renewable energy generating facility to those individual tenants is unlikely...."[31] Ms. Mueller of Rhode Island Housing echoed Mr. Belden's comments, noting that while many of the affordable housing developers have individual meters, in order to make the crediting work under the law, the developments would most likely pay the utilities through one account.[32] Mr. Roughan did caution that there are provisions in the law that prohibit master metering. However, Mr. Lueker

[28] *Id.* at 28-29.
[29] *Id.* at 38.
[30] *Id.* at 52-54.
[31] *Id.* at 55.
[32] *Id.* at 56.

pointed out that even though each unit may be individually metered, the housing authority could still pay the utility bill.[33]

The next issue of concern to the representatives of the municipality included the calculation of the credit. Mr. Meyer, involved with Bristol Wind Power, noted that Bristol's electric accounts are billed at different rates and inquired as to what rate would be used to calculate the credit.[34] Mr. Roughan explained that currently, a customer's rate class is determined by the size of the utility equipment required to meet the customer's load. He explained that it makes no difference to the company which way the electrons are moving, because the equipment has to be sized to meet the load flowing in either direction. Therefore, the credit would be calculated based on the size of the renewable project and the associated electric facilities. For example, he stated, a one and a half MW wind turbine would be serviced at the G-32 distribution rate, and the credit would be calculated at that same rate, regardless of the rate of the account to which the credit would be applied.[35] He indicated that it does not matter to the Company if the load is positive, such as usage by Wal-Mart, or negative, such as with a wind turbine, because "[t]he rate is designed to capture the ongoing cost of the system installed to serve that customer."[36]

Finally, the Company and the Division addressed the legislative language regarding the size of net metering systems eligible under this law and how the various sizes are impacted by ownership of the projects. Mr. Teehan explained that it was the Company's interpretation of the law that the largest size project, 3.5 MW should only be

[33] *Id.* at 56-57.
[34] *Id.* at 40.
[35] *Id.* at 41.
[36] *Id.* at 42.

allowed if it is owned by a municipality or NBC in the entirety. If there is shared ownership between a municipality and a third party, the limit should be 2.25 MW under the law.[37] Mr. Lueker noted that the Division had originally put forth a position of shared allocation of credits, but had reconsidered and adopted the Company's position on the record because it was a more straightforward interpretation.[38]

IV. Open Meeting and Commission Findings

At its open meeting on December 23, 2008, the Commission reviewed the record and determined that while the statute uses the word account, the Commission would accept the Company's proposal to apply net metering credits to municipalities, up to a maximum of five. With regard to housing developments, the Commission rejected the limit of five accounts noting that the statute allows for housing developments to apply credits to other accounts. The Commission also rejected the proposal for NGrid to issue checks in lieu of credits to the entity that owns the net metering facility, finding that a credit as used in the statute is not the equivalent of a check.

The Supreme Court of Rhode Island has held that:

> When interpreting a statute, [the Court's] ultimate goal is to give effect to the Legislature's attention. In doing so, this Court applied the well-established rule of construction that, when words in a statute are unambiguous, they must be given their plain, ordinary and usually accepted meaning. Further, [the Court] presume[s] that the Legislature intended to attach a significant meaning to every word, sentence, or provision of a statute."[39]

Therefore, when interpreting Title 39 of the Rhode Island General Laws, the Commisison must review the plain language of the statute and all of its provisions together in order to determine the intent of the General Assembly.

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[37] *Id.* at 43-45.
[38] *Id.* at 46-47, 50.
[39] *Champlin's Realty Associates, L.P. v. Tillson*, 823 A.2d 1162, 1165 (R.I. 2003) (citations omitted).

R.I. Gen. Laws §§ 39-26-6(g)(3)-(4) state:

> (3) If the electricity generated by the renewable generation facility during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall be billed for zero kilowatt-hour usage and the excess renewable generation credits shall be credited to the customer's account for the following billing period. Any Rhode Island city or town, educational institution, farm, or the Narragansett Bay Commission may elect to apply any such credits earned to *another account owned by it*. Non-profit affordable housing may elect to apply any such credits earned to *other accounts* within the eligible affordable housing development. (emphasis added)
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> (4) If the customer's kilowatt-hour usage exceeds the electricity generated by the renewable generation facility during the billing period, the customer shall be billed for the net kilowatt-hour usage at the applicable rate. Any excess credits *may be carried forward month to month for twelve (12) month periods* as established by the commission. At the end of the applicable twelve (12) month period, *if there are unused excess credits on the net metering customer accounts, such credits shall be transferred to the renewable energy low income fund* set forth in subsection 39-26-6(j). (emphasis added)

Reviewing the plain language of the statute, the General Assembly used different language regarding the application of net-metering credits to more than one account in two consecutive sentences. In the first, the General Assembly allowed municipalities, educational institutions, farms and NBC to apply their credits to another account in the singular. In the following sentence, the General Assembly allowed eligible affordable housing developments to apply credits to other accounts in the plural. Applying the Court's logic, the Commission has to assume the Legislature intended to apply different rules to eligible low income housing developments than to the other entities listed in the prior sentence. Accordingly, the Commission reads the statute as intending to allow municipalities, educational institutions, farms and NBC the opportunity to apply excess credits to one other account while affording eligible low income housing developments to apply excess credits to an unlimited number of accounts. The municipalities argued that this reading is contrary to the intent of the Legislature which meant for the municipalities

to take advantage of 100 percent of their net-metering credits to reduce the municipalities' electric costs in order to encourage their investment in renewable energy supply. However, while this may have been the intent, the plain language of the statute is to the contrary.

Furthermore, the Commission is not convinced that this was the intent of the Legislature given the provisions that require any unused excess credits on the net metering customer accounts to be transferred to the renewable energy low income fund set forth in subsection 39-26-6(j). It appears that a second intent of the Legislature was to create a fund to reduce the electric costs to low income customers. Therefore, it is logical to allow eligible low income housing authorities the opportunity to ensure that 100 percent of the credits are applied to benefit the low income customers in the first instance rather than providing them with a secondary benefit from a fund to which they first had to contribute.

Likewise, it also makes sense that in order to fund the low income account, municipalities would be expected to contribute excess unused credits at the end of a twelve month period. The participants noted that other entities who cannot apply credits to other accounts would be contributing to the fund. While this is true, the Commission has to read all provisions of the statute in harmony to glean the intent of the overall statute, and the two intents of the statute appear to be creating financial incentives to, among others, municipalities to invest in renewable energy supply while also creating a fund to reduce the electric costs to low income customers. The municipalities' reading of the statute would impede the success of the second intent. However, NGrid provided a compromise which would allow municipalities, et al., to apply credits to up to five other

accounts. The municipalities objected on the basis that it would leave approximately 25% of the credits unused, which is less than if the municipalities were only allowed to apply the excess credits to one other account, thus providing a greater financial incentive for investment in renewable generation. Therefore, this compromise appears to satisfy both intents of the statute and was therefore accepted by the Commission.

With regard to the proposal that NGrid issue checks to municipalities, NBC, farms, educations institutes and low income housing rather than crediting the accounts, the Commission recognizes that this would address the concerns of the Company regarding administrative costs and human error associated with manual crediting of accounts. The plain language of the statute uses the word "credit." Reading just the word "credit" without the context of the remaining sentences in the provisions, the Commission might be able to find that a check would be a form of a credit. However, the remaining language in subsection 3 states that the credits shall be "credited to the customer's account for the following billing period." Subsection 4 allows the credits to be "carried forward month to month for twelve (12) month periods" and at the end of the twelve month period, unused excess credits are to be deposited into the low income fund. Checks would not be credited to an account, the credits could not be carried forward, and rather than having unused credits to deposit into the low income fund, there might be a negative balance for which the Company would have to bill the customer. Therefore, the issuance of a check does not seem to be consistent with the intent of the statutory language.

The Commission reviewed the record and the proposals regarding the appropriate rate to apply for purposes of calculating the net-metering credit under the statute which states:

> "Renewable generation credit" means credit equal to the excess kWhs by the time of use billing period (if applicable) multiplied by the sum of the distributions company's (i) standard offer service kWh charge for the rate class applicable to the net metering customer; (ii) distribution kWh charge; (iii) transmission kWh charge; and (iv) transition kWh charge. This does not include any charges relating to conservation and load management, demand side management, and renewable energy.[40]

The parties and the Commission recognize that there are different distribution and transmission rates for different classes of customers set through a cost of service study and that in the future, there could be different Standard Offer Service rates for different classes of customers. Therefore, in order to ensure that an approved Tariff provides consistency and fairness to all ratepayers who will ultimately be financially responsible for the net-metering credit, the Commission has to determine which rate applies.

After reviewing the record and listening to the concerns of the participants at the Technical Session, the Commission accepts the proposal by NGrid to calculate the rate based on the size of the renewable energy unit installed. Not only does this provide certainty and consistency under the Tariff, but also comports with the way rate classes are chosen based on customer usage because the rates are based on a cost of service and the size of the facilities which need to be built to manage the load of the renewable energy source is not dependent upon the direction of electricity flow. Therefore, this is a reasonable methodology of calculating the credit because the Company's costs associated with the renewable generator match the cost associated with the net-metering credit.

[40] R.I. Gen. Laws § 39-26-2(22).

The Commission found that the maximum size of an eligible net metered energy system under R.I.G.L. 39-26-6(g)(1) where a municipality does not own 100% of the project is 2.25 MW. This interpretation is the clearest and provides the most consistent outcome among projects, thus providing certainty to developers when determining the financial benefits of constructing a renewable energy project for purposes of evaluating the value of net-metering credits in the analysis under this statute.

The Commission required NGrid to establish the Renewable Energy Low Income Fund by creating an interest bearing account similar to other reconciliation accounts with annual reporting to the Commission containing a reconciliation and proposal for the distribution to low income rate class. Finally, the Commission allowed NGrid to carry over $31,000 of lost revenues from 2008 into a future reconciliation filing and deferred ruling on the methodology that will be used in the future to determine the costs subject to recovery under R.I. Gen. Laws § 39-26-6(h) until such time as NGrid makes a filing to recover those costs.

V. Motion to Reopen under Commission Rule 1.26

On January 6, 2009, NGrid filed its compliance tariff to show changes to the originally filed amendment to the Company's QF Tariff, which reflect the Commission's December 23, 2008 Open Meeting decision.[41] On February 3, 2009, the Town of Portsmouth and CCHC each filed Motions to Reopen the Proceeding under Commission Rule of Practice and Procedure 1.26(a).[42] On February 5, 2009, the Town of Bristol made a filing to join the Town of Portsmouth's Motion to Reopen.

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[41] The Narragansett Electric Company Qualifying Facilities Power Purchase Rate R.I.P.U.C. No. 2010-A.

[42] Rule 1.26(a)(1) states, "Except as provided in Rule 1.26(a)(3), at any time after the conclusion of a hearing in a proceeding, but before the issuance of the written order, any party to the proceeding may, for good cause shown, move to reopen the proceedings for the purpose of taking additional evidence. Copies of such motion

Portsmouth argued that good cause existed to reopen the record for further evidence. It alleged that at the time of the Technical Session, it had not had the opportunity to incorporate the impact of limiting the net metering credit to five accounts into its planning model. As a result of reviewing the impact of only applying the net metering credits to its largest five accounts, Portsmouth determined that 23 percent of its current annual energy use would not be subject to crediting, thus reducing the financial viability of the Portsmouth renewable energy project. Portsmouth argued that most towns have a minimum of three high use public facilities, four to six high use school facilities, and street lighting, all of which represent approximately ninety percent of the towns' total electricity usage. Therefore, Portsmouth argued that the Commission should reopen the proceedings to increase the number of municipal energy accounts eligible for the credit from a maximum of five to a minimum of ten.[43] The Town of Bristol supported this position.[44]

CCHC objected to the Commission's decision approving NGrid's proposed methodology for calculating the net-metering credit on the basis that the credit would not be calculated to match the rate that would be charged to the residential accounts in the housing development. CCHC believed that this would be inconsistent with the intent of the statute. CCHC maintained that the methodology would not encourage investment in renewable energy supply because there would be a financial disincentive.[45]

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shall be served upon all participants or their attorneys of record, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and shall in all other respects conform to the applicable requirements of Rule 1.5 through 1.7, inclusive."

[43] Town of Portsmouth's Motion to Reopen.

[44] Town of Bristol's Motion to Reopen.

[45] Church Community Housing Corporation's Motion to Reopen.

On February 12, 2009, NGrid filed its Opposition to the Motions to Reopen, objecting to the Motions on the basis that the issues raised by the movants were addressed at the Technical Session and were ruled upon by the Commission at the December 23, 2008 open meeting. The Company argued that "sufficient procedural grounds such as material changes in law or fact have not been set forth and do not exist in order to warrant reopening of a Commission docket."[46] The Company noted that under Rule 1.26(a) requiring good cause to be shown to support reopening a docket has been defined by the Commission as requiring a party to set forth material changes in fact that occurred since the conclusion of the hearing.[47] The Company argued that the parties had not sustained this burden because the issues raised in the Motions were specifically addressed at the Technical Session and the decision was based on the facts presented. Further, the Company argued that there had been no new facts presented that warrant re-opening the record.[48]

VI. Open Meeting

At its open meeting conducted on February 19, 2009, the Commission considered the Motions and the Opposition. The Commission reviewed its Rule 1.26(a) and determined that the motions did not adequately "set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing...." Therefore, the Commission, finding that the movants had not met their burden, denied the Motions to Reopen.

Accordingly, it is hereby

[46] NGrid's Opposition to Motions to Re-Open, p. 1.
[47] *Id.* at 4 (citations omitted).
[48] *Id.* at 4-5.

(19590) ORDERED:

1. National Grid's Qualifying Facilities Power Purchase Rate, R.I.P.U.C. No. 2010 is hereby denied.

2. National Grid's Qualifying Facilities Power Purchase Rate, R.I.P.U.C. No. 2010-A, filed on January 6, 2009 is hereby approved.

3. The Motions to Reopen Proceedings filed by the Town of Portsmouth, Town of Bristol and Community Church Housing Corporation are hereby denied.

EFFECTIVE AT WARWICK, RHODE ISLAND, ON JANUARY 1, 2009 PURSUANT TO AN OPEN MEETING DECISIONS ON DECEMBER 23, 2008 AND FEBRUARY 19, 2009. WRITTEN ORDER ISSUED MARCH 11, 2009.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner

Mary E. Bray, Commissioner