

October 14, 2011

**VIA HAND DELIVERY & ELECTRONIC MAIL**

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

**RE: Docket 4268 - Tariff Advice Filing for Approval of Net Metering Provision and to Amend R.I.P.U.C. No. 2035, Qualifying Facilities Power Purchase Rate  
Responses to Federal Questions**

Dear Ms. Massaro:

Enclosed please find ten (10) copies of National Grid's<sup>1</sup> Memorandum of Law responding to federal-related questions issued at the Commission's procedural conference on September 8, 2011, concerning the above-captioned proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosures

cc: Docket 4268 Service List  
Steve Scialabba  
Jon Hagopian, Esq.

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: TARIFF ADVICE FILING  
REGARDING NET METERING  
PURSUANT TO R.I.G.L. § 39-26.2-1.

Docket No. 4268

**NATIONAL GRID'S MEMORANDUM OF LAW**  
**ADDRESSING COMMISSION QUESTIONS**

National Grid<sup>1</sup> submits this memorandum of law to address the two questions the Rhode Island Public Utilities Commission ("Commission") has posed to the parties in its procedural schedule in this matter. Those questions are as follows:

- (1) Is the defined "avoided cost" set forth in R.I. Gen. Laws § 39-26.2-2(4) consistent with standards set forth in PURPA and FERC law and regulations?
- (2) Whether, in a situation where an eligible net metering system is not physically connected to an end-user, the issuance of checks versus credits for the incremental portion of energy up to 100% of the net metering customer's own consumption creates a wholesale transaction under federal law?

**1. The Net Metering Act's establishment of an avoided cost rate is consistent with the standards set forth in PURPA and FERC law.**

Under the Rhode Island Net Metering Act, an eligible net metering generating system is one which is properly sized to annually produce electricity in an amount that is equal to or less than the on-site usage. R.I.G.L. §39-26.2-2 (2). Accordingly, consistent with PURPA's definition of net metering, the Act allows a net metering customer to offset

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid ("National Grid" or the "Company").

his on-site consumption with Renewable Net Metering Credits that reflect the Company's applicable full retail rate electric energy. See 16 U.S.C. §2621(d)(11).

The Act also allows for situations where during the applicable billing period an eligible net metering facility generates more electricity than is consumed at the net metering site. In that case, the customer is allowed Excess Renewable Metering Credits for that amount of generation above 100% and no greater than 125% of the net metering customer's consumption at the net metering site. However, because the amount of generation that exceeds the on-site consumption may constitute a net sale and thus be subject to the avoided cost rule under PURPA, the Act provides that the rate applicable to the Excess Renewable Metering Credits is to be "the electric distribution company's avoided cost rate." R.I.G.L. §39-26.2-2(4). The Act declares that avoided cost rate to be the distribution company's standard offer rate.<sup>2</sup>

PURPA entrusts states with "a wide degree of latitude" in implementing the rules adopted by FERC, including determining the avoided cost rate. California Public Utilities Commission, et al., 133 FERC ¶ 61,059, at P 10 (2010). While Section 210 (b) of PURPA imposes on electric utilities the obligation to offer to purchase electric energy from Qualifying Facilities ("QFs"), it also provides that rates under the obligatory purchase provisions must not exceed "the incremental cost to the electric utility of alternative

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<sup>2</sup> It is the Company's opinion that the language in this section is intended to apply to all generating facilities that meet the definition of a renewable facility as defined in R.I.G.L. § 39-26-5 regardless of whether or not the facility is eligible for net metering. Therefore, the Company has proposed revised Qualifying Facilities Purchase Power Rate, R.I.P.U.C. No. 2074, to indicate that renewable qualifying facilities ("QFs") will be paid the Standard Offer Service rate for excess generation.

electric energy.” 16 U.S.C. §824a-3(b). Section 210(d) of PURPA defines “incremental cost of alternative electric energy” as “the cost to the electric utility of the electric energy which, but for the purchase from [the QF], such utility would generate or purchase from another source.” 16 U.S.C. § 824a-3(d). FERC’s regulations, in turn, define state “avoided costs” as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.” 18 C.F.R. § 292.101(b)(6) (2010). Thus, both PURPA and FERC’s regulations implementing PURPA’s mandatory purchase provisions define avoided costs in terms of costs that the electric utility avoids by virtue of purchasing from the QF.

FERC has indicated that its regulations provide states with “guidelines on factors to be taken into account, ‘to the extent practicable.’” California Public Utilities Commission, et al., 134 FERC ¶ 61,044, at P 36 (2010).<sup>3</sup> Furthermore, FERC has explained that a state’s determinations relative to avoided costs include the consideration of many factors, which FERC is “reluctant to second-guess.” California Public Utilities Commission, et al., 133 FERC ¶ 61,059, at P 24 (2010). In California Public Utilities Commission, FERC noted that “states may have other ways of establishing avoided cost

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<sup>3</sup> Factors for consideration in determining avoided costs include: (1) the utility’s system cost data; (2) the terms of any contract including the duration of the obligation; (3) the availability of capacity or energy from a QF during the system daily and seasonal peak periods; (4) the relationship of the availability of energy or capacity from the QF to the ability of the electric utility to avoid costs; and (5) the costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the QF. California Public Utilities Commission, et al., 133 FERC ¶ 61,059, at p23 (2010)

rates that may be consistent with the Commission's PURPA regulations.” California Public Utilities Commission, et al., 134 FERC ¶ 61,044, at P 45 (2010).

In the Net Metering Act, Rhode Island has identified the rate charged for Standard Offer supply as the utility's applicable avoided cost rate. R.I.G.L. §39-26.2-2(4). Additionally, the Act specifically provides that the electric distribution company has the option to use excess energy received from net metering facilities to serve the standard offer load, in effect displacing Standard Offer service supply that it would otherwise obtain through the approved procurement plan. R.I.G.L. §39-26.2-2(4).<sup>4</sup> Thus, Rhode Island has determined that the Standard Offer service rate fairly and reasonably represents the electric utility's avoided cost and, as such, the declared avoided cost rate found in the Act is consistent with federal law and FERC regulations and decisions.

**2. The statutory allowance for the issuance of checks in lieu of renewable net metering credits does not create a wholesale transaction that is subject to federal law.**

The net metering process established by the Act comports with the statutory guidelines found in PURPA and is consistent with FERC decisions dealing with the netting process. PURPA defines “net metering service” as “service to an electric consumer under

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<sup>4</sup> The Company is required to procure commodity supply on behalf of Standard Offer Service (“SOS”) customers pursuant to a procurement plan reviewed and approved annually by the Commission under the provisions of R.I.G.L. §39-1-27.8. The Company has indicated that if the Commission approves the proposed Net Metering Provision (R.I.P.U.C. No. 2075) and proposed Qualifying Facilities Power Purchase tariff (R.I.P.U.C. No. 2074), the Company would likely file modifications to the SOS procurement plan for 2012 to allow the Company to utilize energy received from both net metered customers and other renewable qualifying facilities to serve SOS load. See Company's Response to Division Data Request 2-2.

which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.” 16 U.S.C. §2621(d)(11). The Rhode Island Act establishes just such a net metering process. Under the Act, an eligible net metering generating system is an on-site system that is properly sized to annually produce electricity in an amount that is equal to or less than the on-site usage. The Act allows a net metering customer to offset his on-site consumption with electric energy he generates, through Renewable Net Metering Credits that reflect the Company’s applicable full retail rate. See R.I.G.L. §39-26.2-2(12). The Act also provides that the electric distribution company may elect but is not required to issue checks in lieu of net metering credits. R.I.G.L. §39-26.2-3(a)(3)(ii).

FERC has stated that where net metering is used to offset a QF’s on-site consumption, there is no sale of power that would trigger FERC jurisdiction. Sun Edison LLC, 129 FERC ¶ 61,146 at P 18 (2009); MidAmerican Energy Co., 94 FERC ¶ 61,340 at 62,263 (2001). However, when there is a net sale by a QF over the course of the applicable billing period, the net sale is subject to federal jurisdiction and it must be at an avoided cost rate consistent with PURPA and FERC’s implementing regulations. MidAmerican Energy Co., 94 FERC ¶ 61,340 at 62,263 (2001).

The use of checks for ease of administering the application of credits to offset customer usage should not undermine or transform the underlying netting transaction that is occurring. The customer’s bill is being reduced by the amount of on-site generation that

occurs during the applicable billing period in keeping with FERC's stated policy that as long as there is no net sale, federal jurisdiction is not implicated. See Sun Edison LLC, 129 FERC ¶ 61,146 at P 18 (2009); MidAmerican Energy Co., 94 FERC ¶ 61,340 at 62,263 (2001).

The Company is not aware of any case law holding that a net metering process that utilizes checks for administrative convenience transforms the netting process into a wholesale transaction triggering federal jurisdiction. Should, however, the Commission direct that checks not be utilized, the Company would be able to administer the Renewable Net Metering Credits by applying those credits to accounts to offset on-site consumption without the use of checks.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC  
COMPANY**

By its attorney,



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Dated: October 14, 2011