STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISISON

IN RE: NATIONAL GRID TARIFF ADVICE	:	
TO AMEND R.I.P.U.C. NO. 2035	:	DOCKET NO. 4268
QUALIFYING PURCHASE POWER RATE	:	

REPORT AND ORDER

I. National Grid's Tariff Filing

On June 29, 2011, Public Law Chapter 147 was enacted resulting in changes to the State of Rhode Island's net metering law.[1] The net metering portion of the Public Law was recently codified at R.I. Gen. Laws § 39-26.4-1 et seq. ("Net Metering Law").[2] On July 25, 2011, The Narragansett Electric Company d/b/a National Grid ("National Grid" or "Company") filed with the Public Utilities Commission ("Commission") revisions to its Qualifying Facilities Power Purchase Rate ("QF Rate") and also filed a new Net Metering Tariff in order to implement the changes set forth in the Net Metering Law.[3] In its cover letter, the Company indicated that it had removed the net metering provisions formerly included in the QF Rate and had submitted a completely separate tariff for net metered facilities.

According to National Grid, the following are the significant provisions contained in the Net Metering Tariff:

(1) Eligible Net Metering Systems must be reasonably designed and sized to annually produce electricity in an amount that is equal to or less than the renewable self-generator's usage at the eligible Net Metering System Site.

(2) Introduction of Renewable Net Metering Credits that can be used to offset up to 100 percent of the usage at the Eligible Net Metering System Site and the introduction of Excess Renewable Net Metering Credits, based on avoided costs defined to be the Company's Standard Offer Service Rate, that will apply to that portion of the renewable self-generator's production of electricity beyond one hundred percent and

[1] 2011 R.I. Pub. Laws 147.
[2] R.I. Gen. Laws § 39-26.4-1 et seq.
[3] National Grid Exhibit 1 (Tariff Filing).

no greater than one hundred twenty-five percent of the renewable self-generator's own consumption at the net metering site.

(3) In the case of Net Metering Systems owned by or operated on behalf of a municipality or a multi-municipal collaborative through a net metering financing arrangement, eligibility of the accounts of a municipality or multi-municipal collaborative to be eligible for net metering.

(4) Establishment of a maximum allowable nameplate capacity of five megawatts for eligible net metering systems and a provision that the aggregate amount of net metering in Rhode Island shall not exceed three percent of peak load.

(5) Billing plans through which net metering credits may be applied to offset a net metering customer's usage and for payment of excess renewable net metering credits.

(6) Allowance for the Company's recovery of prudent and reasonable costs to achieve compliance with the statute's requirements and of the amount of the distribution component of net metering credits provided to accounts associated with eligible net metering systems.[4]

Also, one of the revisions to the QF Rate changed the rate paid to renewable energy resources not eligible for net metering under the new Net Metering Tariff. The Company proposed paying a rate equal to the Standard Offer Service rate for the applicable retail delivery rate for each kilowatt-hour generated in excess of the facility requirements.[5] Non-renewable energy resources would receive the hourly clearing price at the ISO-NE for the hours in which the qualifying facility generated electricity in excess of its requirements.[6]

II. Questions Presented for Briefing/Comments

On September 8, 2011, Commission Staff conducted a pre-hearing conference during which, several issues related to the statute and the proposed Net Metering Tariff were raised by the attendees and Commission Staff and were scheduled for briefing by the parties. The parties to the Docket are National Grid, the Division of Public Utilities and Carriers ("Division"), Conservation Law Foundation ("CLF"), Washington County Regional Planning Council

[4] National Grid Exhibit 1 (Cover Letter to Tariff Filing) at 2.
[5] National Grid Exhibit 1 (Tariff R.I.P.U.C. No. 2035, Part III.1).
[6] National Grid Exhibit 1 (Tariff R.I.P.U.C. 2034, Part III.2).

("WCRPC") and CME Energy, LLC ("CME"). In addition, People's Power & Light ("PP&L") was a very active participant through the public comment process.

A. Is the defined "avoided cost" set forth in R.I. Gen. Laws § 39-26.4-2(4) consistent with standards set forth in PURPA and FERC law and regulations?[7]

With one exception, each of the parties that filed a response to this question suggested that the answer is yes. Only WCRPC challenged the use of the Standard Offer Service rate as the avoided cost for all renewable QFs, arguing instead that there is a conflict between the Net Metering Law and a separate law regarding distributed generation long term contracts which was passed at the same time as the Net Metering Law. According to WCRPC, "the Net Metering Law requires that the net metering generator must sell its excess energy to the utility at avoided cost as defined at R.I. Gen. Laws § 39-26.4-2(4). However, the new distributed generation long term contracts law allows a net metering generator to elect to enter a distributed generation long term contract for its excess energy at the ceiling prices established under that program."[8] WCRPC suggested that rather than using the stated avoided cost set forth in the Net Metering Law for all renewable net metered facilities, the avoided cost rate for wind and solar projects should be the ceiling price set for distributed generation projects.[9] WCRPC stated, "[i]t is important for Rhode Island to acknowledge and accept these carefully conceived ceiling prices as the 'avoided cost' for the specific generation sources addressed and to consistently use that 'avoided cost' pricing for those renewable energy sources.'"[10] To do otherwise, according to WCRPC, would create a lack of clarity regarding the definition of avoided cost.[11]

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[7] PURPA is the Public Utility Regulatory Policy Act and FERC is the Federal Energy Regulatory Commission. In addition, where necessary, statutory references have been updated to reflect the final statutory cites assigned upon codification.
[8] WCRPC Response to Federal Questions Raised at 1 (citing R.I. Gen. Laws §§ 39-26.2-5, 39-26.2-6(g)).
[9] WCRPC Response to Federal Questions Raised at 3.
[10] *Id.*
[11] *Id.*

National Grid, the Division and CLF each answered the question in the affirmative with the Division stating that PURPA allows states the limited authority to set wholesale rates for sales of generation by Qualified Facilities as long as the rate does not exceed the utility's avoided cost and these avoided cost rates set by states may be different based on the source of generation.[12] CLF echoed this, stating, "FERC has expressly held that state law can define the avoided cost, and the state can set different avoided cost rates for different technologies."[13] National Grid added that "PURPA entrusts states with 'a wide degree of latitude' in implementing the rules adopted by FERC, including determining the avoided cost rate."[14]

B. 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.

With the exception of CLF, all of the parties responded that the issuance of checks in this situation does not create a wholesale transaction under federal law, but instead, allows for administrative ease in administering the application of credits to offset customer usage. CLF did not argue that this provision clearly creates a wholesale transaction, but maintains the federal law is simply unclear on this issue. CLF agreed that the issuance of a check could be viewed as a mere accommodation to National Grid and "that treating the receipt of a check differently from the receipt of a bill credit is exalting form over substance." On the other hand, CLF stated that if a self-generator receives a check in exchange for electricity, this transaction constitutes a sale of power. Furthermore, this power is then resold by the utility to an end-use customer. This would create a wholesale sale of power for resale and trigger federal jurisdiction.[15]

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[12] Division's Memorandum Relating to Issues Posed by the Public Utilities Commission at 7-9 (citations omitted).
[13] CLF's Unitary Memorandum of Law at 7 (emphasis omitted, citations omitted).
[14] National Grid's Memorandum of Law Addressing Commission Questions at 2 (citations omitted).
[15] CLF's Unitary Memorandum of Law at 8-9.

National Grid argued that regardless of the form of "payment," be it a bill credit or check, the transaction is one of netting electricity produced against electricity used by the net metering customer. National Grid stated that [t]he 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."[16] The Division approached its analysis in the same manner, arguing that federal jurisdiction is not implicated if the transaction is one of netting.[17] WCRPC agreed with the analysis by each of these parties stating that "Rhode Island now clearly defines net metering as generation of energy scaled to meet the generator's own needs for energy consumption...."[18] Therefore, according to WCRPC, "[g]iven the clear definition of net metering under Rhode Island law, FERC will not exercise its jurisdiction over Rhode Island's net metering customers."[19] The issuance of checks, according to WCRPC does not change the nature of the transaction between the utility and the net metering customer.[20]

C. Referencing proposed R.I.P.U.C. No. 2075, Sheet 4, under Terms and Conditions, is there a conflict between paragraphs three (3) and four (4) regarding checks and credits. If so, how could the paragraphs be reconciled consistent with state law?

Only CLF expressed concern with these provisions. The issue here is that the law (and National Grid's tariff) states the following:

> If the electricity generated by an eligible net metering system during a billing period is equal to or less than the net metering customer's usage during the billing period for electric distribution company customer accounts at the eligible net metering system site,

[16] National Grid's Memorandum of Law Addressing Commission Questions at 5-6 (citations omitted). National Grid stated that if the Commission directed checks not be utilized, National Grid could still administer the Net Metering Tariff. *Id.* at 6.
[17] Division's Memorandum Relating to Issues Posed by Public Utilities Commission at 9-10.
[18] WCRPC Response to Federal Questions Raised at 5.
[19] *Id.*
[20] *Id.* at 5-6.

the customer **shall** receive renewable net metering **credits** which **shall be applied to offset** the net metering customer's usage on accounts at the eligible net metering system site.[21]

If the electricity generated by an eligible net metering system during a billing period is greater than the net metering customer's usage on accounts at the eligible net metering system site during the billing period, the customer shall be paid by excess renewable net metering credits for the excess electricity generated beyond the net metering customer's usage at the eligible net metering system site up to an additional 25% of the renewable self-generator's consumption during the billing period; unless the electric distribution company and net metering customer have agreed to a billing plan pursuant to subdivision (3).[22]

In R.I. Gen. Laws § 39-26.4-3(a)(3)(ii), there is a sentence that states: "The electric distribution company also may elect (but is not required) to issue checks to any net metering customer in lieu of billing credits or carry forward credits or charges to the next billing period."[23]

CLF maintains that the provisions are in conflict and, applying the plain meaning of the provisions and applying statutory construction so as not to read any word as meaningless or superfluous, and further, to ensure strict compliance with federal law, the Commission should interpret the provisions in harmony as follows: require National Grid to apply renewable net metering credits as bill credits and to allow (but not require) National Grid to make excess renewable net metering credits by check.[24]

The Division, conversely, did not believe there was a conflict in these provisions. According to the Division, the statutory language allowing the Company to issue a check to customers does not appear to be limited. In fact, the Division maintained that the if a customer would be entitled to a credit under either paragraph, the Company is allowed to issue a check

[21] R.I.P.U.C. No. 2075, Part II.4; R.I. Gen. Laws § 39-26.4-3(a)(4) (emphasis added).
[22] R.I.P.U.C. No. 2075, Part II.5; R.I. Gen. Laws § 39-26.4-3(a)(5).
[23] R.I. Gen. Laws § 39-26.4-3(a)(3)(ii).
[24] CLF's Unitary Memorandum of Law at 12-13.

under either scenario. The Division believed that no FERC cases prohibit such an election under the circumstances presented.[25]

III. Technical Record Session

On November 10, 2011, the Commission conducted a Technical Record Session at its offices at 89 Jefferson Boulevard, Warwick, Rhode Island for the purpose of examining National Grid's proposed Tariff filing with oral input from interested parties. Participants included representatives from National Grid, the Division, PP&L, CLF, WCRPC, and CME Energy and OCI Solar.

The following appearances were entered:

FOR NATIONAL GRID:	Thomas Teehan, Esq.
FOR CLF:	Jerry Elmer, Esq.
FOR WCRPC:	Seth Handy, Esq.
FOR CME Energy:	Alan Shoer, Esq.
FOR DIVISION:	Jon Hagopian, Esq. Special Assistant Attorney General
FOR COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

National Grid presented Timothy Roughan, Director, Regulatory Strategy, Jeanne Lloyd, Manager of Pricing, and Margaret Janzen, Director, Wholesale Electric Supply. The Division presented Stephen Scialabba, Chief Accountant. Karina Lutz discussed the positions of PP&L. The remaining parties relied solely on the representation of their attorneys. The main issues discussed were the determination of eligibility of projects for net metering, the appropriate avoided cost rate for renewable facilities that did not qualify for net metering, and legal

[25] Division's Memorandum Relating to Issue Posed by the Public Utilities Commission (iii) at 2.

implications related to the issuance of checks versus credits where the participants reiterated their positions from the previously filed memoranda.

Discussing eligibility of projects for net metering, the participants discussed various scenarios under which projects would qualify for net metering, particularly where a project may be sized to produce more than 100 percent of the generator's annual usage. While at the outset, Mr. Roughan suggested that a facility seeking to qualify as a net metering facility with a projected generation of 140 percent of usage would not qualify for net metering, he also agreed with CLF's counsel that this facility could bid into a distributed generation contract and sell the excess output at that rate while also qualifying for net metering up to 100 percent of usage.[26] Mr. Roughan also stated, "if [an applicant has] oversized a generation to his load and he's not looking to also try to get into DG contracting, then, yes, he would not be held to net metering. We would treat him as a qualifying facility."[27]

This renewable qualifying facility, under National Grid's proposed tariff, would be eligible for the standard offer rate as opposed to the full retail rate. There was discussion of whether this was appropriate in light of the fact that the statute states that the avoided cost rate shall be applied to "excess renewable net metering credits" which only apply to eligible net metering systems. National Grid's counsel stated that the Company read the statute more broadly to set the avoided cost rate for all renewable generation facilities that are qualified facilities. The Division's counsel opined that using the same avoided cost rate for all renewable qualified facilities, regardless of whether they were eligible for net metering would be consistent with the decisions of the Federal Energy Regulatory Commission and federal law. He stated that those decisions allowed the state to set a different avoided cost rate for facilities based on

[26] Tr. 11/10/11 at 9-10.
[27] *Id.* at 12.

technology and in this case, the state set a rate for all renewables which have the same type and character of generation, regardless of the size. He maintained that the policy reason was to encourage the development of renewable generation rather than non-renewable generation.[28]

WCRPC's counsel argued that the avoided cost rate for other renewables should be set consistent with the distributed generation rates. Both counsel for National Grid and the Division disagreed, National Grid on the basis that the distributed generation contracting provisions involve the purchase of energy, capacity, and RECs whereas under the Net Metering provisions, National Grid will be paying for the energy and capacity produced.[29] Both attorneys noted that the model used to design the distributed generation rates focused on the renewable systems' needs to "allow these systems to get up off the ground and get a reasonable return on their investment."[30] Counsel for the Division noted that avoided cost, on the other hand, focuses on the utility "and the utilities providing through its own generation or supply from the market, the net increment of energy."[31] Ms. Lutz suggested that because of the specificity of the definition in the statute, the Commission should apply the ISO-NE clearing price to renewable generation that does not qualify for net metering. She stated that the policy reason behind this would be to incentivize small projects that are really based on offsetting their loads.[32]

There was also a brief discussion of the determination of a net metering customer's usage over an applicable billing period of one year. Mr. Roughan explained that there would be some months where the generation may be 150 percent of actual load whereas in other months, there may be five percent generation versus actual load. Therefore, the Company would conduct an annual true up for net metering customers. He explained that because of the variability of

[28] *Id.* at 13-17.
[29] *Id.* at 18.
[30] *Id.* at 18-19.
[31] *Id.* at 19.
[32] *Id.* at 22-23.

resources and the means of data collection, there will be a minimal match between site load and generation. He stated that the Company is "looking to collect the delta between what's required to be paid for whatever the circumstances are versus what [the Company] gets from that hourly market." There will be no guaranteed match which will make the application of the power produced difficult to incorporate into the standard offer procurement plan. However, he stated that that is the goal of the Company in the future in order to minimize the effect of the above-market cost on all ratepayers.[33]

IV. Post Hearing Data Request

Following the Technical Record Session, the Commission issued one last data request in this docket in order to reconcile certain provisions of the Net Metering Law with the simultaneously passed Distributed Generation Standard Contract Act (R.I. Gen. Laws § 39-26.2-1 et seq.). The purpose was to assist the Commission in its review of the appropriate analysis for determining whether a facility can qualify for net metering credits where the facility may be larger than necessary to produce up to one hundred percent of the renewable self-generator's usage at the eligible net metering site. The following were the provisions of law at issue:

> R.I. Gen. Laws § 39-26.4-2(2) states: "'Eligible Net Metering System' means a facility generating electricity using an eligible net metering resource that is reasonably designed and sized to annually produce electricity in an amount that is equal to or less than the renewable self-generator's usage at the eligible net metering site...."
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> R.I. Gen. Laws § 39-26.4(12) states: "'Renewable Net Metering Credit' means a credit that applied to an Eligible Net Metering System up to one hundred percent (100%) of the renewable self-generator's usage at the Eligible Net Metering System Site over the applicable billing period...."
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> R.I. Gen. Laws § 39-26.2-6(g) states: "A distributed generation project that also is being employed by a customer for net metering purposes may submit an application to sell the excess output from its distributed generation project. In such case, however, at the election of the self-generator all of the renewable energy certificates and environmental attributes pertaining to the energy consumed on site may be sold to the electric

[33] *Id.* at 38-40.

distribution company on a month-to-month basis outside of the terms of the standard contract. In such case, the portion of the renewable energy certificates that pertain to the energy consumed on site during the net metering billing period shall be priced at the average market price of renewable energy certificates, which may be determined by using the price of renewable energy certificates purchased or sold by the electric distribution company."

The Commission received responses from National Grid, the Division, WCRPC, CLF and CME Energy, LLC. CME Energy, LLC focused on the provisions of the law relating to municipalities and argued that the limits do not apply. However, the remaining responders each arrived at the conclusion that if there is a facility that is sized in excess of 100 percent of its expected amount of on-site usage, the only way that facility could qualify for net metering is if it had bid into and entered into a Distributed Generation Standard Contract for the excess output. In its response, National Grid set forth in some detail the analysis it would conduct in a situation where a customer with an annual usage of 1.0 MW is seeking to construct and install a 3.5 MW wind turbine. National Grid would first review the expected capacity factor of the facility and the customer's peak load. If, after performing that calculation, the customer would appear to be producing less than its expected kWh usage during the year, the customer's facility would qualify for net metering. If not, the only way the customer could qualify for net metering is if the customer already had a Distributed Generation Standard Contract for 100 percent of the excess output above the customer's expected usage. Otherwise, the customer would not qualify for the net metering rate.[34]

V. Commission Findings

On December 21, 2011, the Commission conducted an Open Meeting to consider the propriety of the proposed Net Metering Tariff and the changes to the QF Tariff. The Commission approved National Grid's Tariff R.I.P.U.C. 2075 (Net Metering Provision) and

[34] National Grid's Response to Commission Data Request 2-1(a).

R.I.P.U.C. 2074 (Qualifying Facilities Power Purchase Rate) filed on July 25, 2011 for effect December 21, 2011. In approving the Tariffs, the Commission specifically finds that the defined "avoided cost" set forth in R.I. Gen. Laws § 39-26.4-2(4) is consistent with standards set forth in PURPA and FERC law and regulations. The avoided cost rate set forth in the statute clearly applies to a type of technology (renewable) that might differ from other QFs. Furthermore, while the language of the statute could have been written a bit clearer such that it was not contained solely within the definition of "excess renewable net metering credit", where the General Assembly did set forth an avoided cost rate applicable to renewable energy above 100 percent of a facility's usage, the Commission finds that National Grid's interpretation that the General Assembly was attempting to set forth an avoided cost rate for all renewable qualified facilities is reasonable. Therefore, it is appropriate to pay the Standard Offer Service rate to all renewable QFs which do not qualify for net metering.

With regard to the issuance of checks versus credits, the Commission finds that the issuance of checks versus credits for the incremental portion of energy up to 100 percent of the net metering customer's own consumption does not create a wholesale transaction under federal law. Furthermore, the Commission finds that the tariff language allowing National Grid to choose whether or not to issue checks to net metering customers in lieu of credits is consistent with the provisions of state and federal law. The Commission finds that the allowance of checks was designed for the purposes of administrative efficiency and could ultimately save ratepayers administrative costs. It does not change the nature of the transaction from that of "netting." Additionally, where there is an annual reconciliation of all net metering customers' accounts, there is no concern that a customer is being credited with more than his or her account is entitled.

The Commission finds that National Grid's analysis of determining whether a facility can qualify for net metering credits which are set at the full retail rate where the facility may be larger than necessary to produce up to 100 percent of the renewable self-generator's usage at the eligible metering site is reasonable. The analysis appears consistent with the intent of the Net Metering Law when read in concert with the Distributed Generation Standard Contract Act.

Finally, the Commission notes that this docket represents the third time in less than three years that the Commission has had the QF Tariff before it for the purposes of addressing net metering. This latest iteration stemmed from a package of bills passed by the General Assembly to further promote renewable energy development. While an important policy goal of the State, the Commission notes that there are now several provisions of the law which are designed to promote renewable energy, each at a cost to electric ratepayers and with two exceptions, all passed within the past five years. Currently, Title 39 requires electric customers to pay into the fund for renewable energy programs ($2.1 million per year) and to pay a renewable energy charge for the purchase of renewable energy certificates ("RECs") by National Grid ($6.7 million in 2010). The first of these programs, like net metering, is designed to assist customers in the development of renewable energy projects. Other programs are subsidies for developers such as the purchase of RECs, the requirement of National Grid to enter into contracts with distributed generation projects at pre-approved pricing pursuant to the DG Contract Standards, and the Town of New Shoreham Project projected to commence in 2014. Also, National Grid is required to enter into commercially reasonable long term contracts for newly developed renewable energy resources with a 2.75 percent adder to National Grid, which, to date, have resulted in above-market pricing.

While all of these various financial incentives will most likely promote the development of renewable energy projects, it is still unclear to this Commission whether the renewable energy industry will develop to the point where the ratepayer subsidies can cease and the industry will grow on its own. It is also unclear what the direct economic benefit is to National Grid's ratepayers. While there are clearly societal benefits to clean energy, the Commission believes that there needs to be a date set for a review of whether these subsidies are providing a net economic benefit to the State of Rhode Island and whether ratepayers are truly benefiting from their subsidies. Finally, the Commission believes that the lawmakers should be hesitant to modify these most recently passed laws until such time as they have been allowed to work as intended.

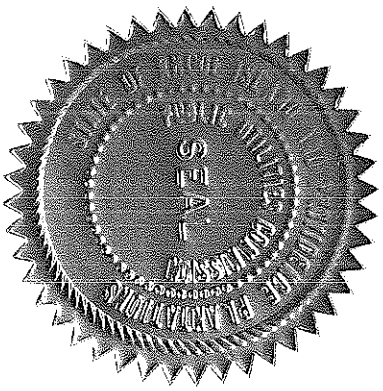
Accordingly, it is hereby

(20649) ORDERED:

1. Narragansett Electric Company d/b/a National Grid's R.I.P.U.C. No. 2075 (Net Metering Provision) and R.I.P.U.C. No. 2074 (Qualifying Facilities Power Purchase Rate) filed on July 25, 2011 are hereby approved.

EFFECTIVE AT WARWICK, RHODE ISLAND ON DECEMBER 21, 2011 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED FEBRUARY 16, 2012.

PUBLIC UTILITIES COMMISSION



Elia Germani, Chairman

Mary E. Bray, Commissioner

Paul J. Roberti, Commissioner

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.