STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: TARIFF ADVICE FILING REGARDING NET METERING PURSUANT TO R.I GEN. LAWS §39-26.2-1	)	DOCKET NO. 4268

WASHINGTON COUNTY REGIONAL PLANNING COUNCIL'S RESPONSE TO FEDERAL QUESTIONS RAISED

By its attorney, the Washington County Regional Planning Council (WCRPC) provides this response to the federal questions raised in this proceeding.

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?**

The recently passed laws conflict regarding the treatment of excess energy from a net-metered facility. 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 §39-26.2-2(4). R.I. Gen. Laws §39-26.2-3(5). 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. R.I. Gen. Laws § 39-26.2-6(g). This conflict in the new laws together with our State's clearly defined public policy goals highlight the fact that Rhode Island should develop a consistent definition of "avoided cost" for renewable energy generating sources and apply that definition consistently across the net metering and distributed generation programs.

Section 210(b) of PURPA requires that any mandates that utilities purchase wholesale renewable energy (i.e,. energy bought for resale) must be at rates that are: (1) just and reasonable to electric consumers and in the public interest; (2) not discriminatory against

QFs; and (3) not in excess of "the incremental cost to the electric utility of alternative electric energy." 16 U.S.C. § 824a-3 (2006). 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. Id. Avoided cost rates may "differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies." 18 C.F.R. § 292.304(c)(3)(ii) (2010). FERC's recent guidance makes it clear that State's have the authority to define avoided cost for renewable energy according to the characteristics of specific generating sources. California Public Utilities Commission, 133 FERC ¶61,059 at pp. 13-14 (Oct. 21, 2010).

> Thus, under *SoCal Edison*, if a state required a utility to purchase 10 percent of its energy needs from renewable resources, then a natural gas-fired unit, for example, would not be a source "able to sell" to that utility for the specified renewable resources segment of the utility's energy needs, and thus would not be relevant to determining avoided costs for that segment of the utility's energy needs. Stated more generally, *SoCal Edison* supports the proposition that, where a state requires a utility to procure a certain percentage from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement.

See also Signal Shasta, 41 FERC ¶ 61,120 at 61,294 and 61,296, n. 4 (standard offer contracts containing different avoided costs for the different types of QF sales that are subject to each of the standard offer contracts is consistent with PURPA and FERC regulations).

Rhode Island law clearly requires that our utilities purchase energy from renewable resources. R.I. Gen. Laws §§39-26-4 (utilities must obtain three percent of electricity sold at retail from renewable resources); 39-26.1-3 (requiring utilities to enter long-term contracts for renewable energy); 39-26.2-4(a) (utility must contract for forty megawatts of distributed generation projects by

end of 2014). Therefore, Rhode Island is in a position to define avoided cost for specific generating sources of renewable energy.

As mandated by our new distributed generation long-term contracts law, the Office of Energy Resources (OER) has recently developed proposed "ceiling prices" for wind and solar projects of specific sizes that have been proposed to the PUC for approval in pending docket number 4288. R.I. Gen. Laws §39-26.2-5. The methodology used to develop those proposed prices is entirely consistent with FERC's guidance to states on developing technology-specific avoided costs for required purchases of renewable energy. In a well-coordinated stakeholder process, OER worked with consultants to gather input on project economics for three sizes of solar project and one class of wind turbine project. The consultant gathered data from local stakeholders and other states and databases on developed and developing projects to ascertain standard development costs, generation and revenue projections and a market-appropriate rate of return on investment. This market data was then fed in to the National Renewable Energy Laboratory's peer reviewed CREST model in order to first calculate "strawman" proposed pricing and then, based on stakeholder comment and additional refining, develop proposed ceiling prices. These prices are carefully designed to both encourage development of these desired and mandated sources of energy, while ensuring that energy is produced at the lowest price possible for the benefit of our ratepayers. Fundamentally, this methodology created cost-effective, market-based pricing that should be viewed as the "avoided costs" for these generating sources.

It 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. In the absence of such consistency, it could be unclear how Rhode Island defines avoided cost for these generating sources. Such lack of

clarity can give rise to confusion in the market that could threaten to impede achievement of our policy goals.

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.**

A net metering transaction, as defined by Rhode Island law, will not be considered a wholesale sale under federal law regardless of whether National Grid elects to credit a net metering customer's accounts or issue a check for the value of the energy generated by the net metering customer up to the full value of the customer's consumed energy. A net metering facility, as clearly defined by Rhode Island law, is not a wholesale generator by federal definition. FERC jurisdiction is limited to wholesale generators, those who sell power to utilities for resale. 16 U.S.C. §§ 824, 824d, 824e (2006); e.g., Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988). Federal law makes it clear that states may not set rates for the sale for resale of energy and capacity by a qualifying facility that exceed the purchasing utility's avoided cost. California Public Utilities Comm., 132 FERC ¶61,047 at ¶¶64,070 (2010); Connecticut Power and Light, 71 FERC ¶61,035, 61,153 (1995). However, as long as a customer is a net consumer of electricity over a defined billing period, it is net metering and not engaged in wholesale sales subject to federal law. MidAmerican, 94 FERC at p. 5 ("there is no sale (for end use or otherwise) between two different parties when one party is using its own generating resources for the purpose of self-supply of station power, and accounting for such usage through the practice of netting."); SunEdison, 129 FERC ¶61,146 at ¶18 (2009)("the Commission does not assert jurisdiction when the end-use customer that is also the owner of the generator receives a credit against its retail power purchases from the selling utility"). The Rhode Island legislature walked this line carefully in the design of the amendments to our net

metering law that are under consideration in this docket. Rhode Island now clearly defines net metering as generation of energy scaled to meet the generator's own needs for energy consumption. See e.g., R.I. Gen. Laws §39-26.4-2(2), (8). If a net metering customer generates more energy than it consumes, that excess energy is sold at avoided cost, as required by federal law. Thus, our new net metering law is carefully designed to ensure that net metering customers will not be considered wholesale generators for net-metered (as opposed to "excess") energy.

Given the clear definition of net metering under Rhode Island law, FERC will not exercise its jurisdiction over Rhode Island's net metering customers. FERC precedent is clear that federal law does not preempt state net metering programs. MidAmerican Energy Co., 94 FERC ¶61,340 at 5-6 (2001)(net billing arrangements are left to state regulatory authorities); Standardization of Generator Interconnection Agreements and Procedures, 106 FERC ¶61,220 at 744 (2004) ("net metering allows a retail electric customer to produce and sell power onto the Transmission System without being subject to the Commission's jurisdiction"). It is up to Rhode Island to administer its net metering program, and as long as the program is designed to be consistent with federal standards, as ours clearly is, there is no risk of federal conflict. The Federal Power Act and PURPA could not be invoked to nullify or reduce the credit made available to net metering customers for their self-supply of power pursuant to Rhode Island law.

Rhode Island's recent net metering amendments allow National Grid to elect whether net metering entities receive a check for the value of renewable generation credits or apply those credits against consumption at the customer's accounts. R.I. Gen. Laws §39-26.2-3(a)(3)(ii). As contemplated by Rhode Island law, the utility can choose to act as a billing agent, issuing a check for administrative convenience rather than offsetting a customer's retail accounts. The simple fact that National Grid can now elect whether it wants to issue a check for the value of renewable generation

credits or credit meters make it very clear that the check mechanism will not be mistaken as a wholesale transaction. As previously noted, federal law prohibits the state from requiring a utility to buy energy for resale above avoided cost. California Public Utilities Comm., 132 FERC ¶61,047 at ¶64,070; Connecticut Power and Light, 71 FERC ¶61,035 at 61,153. Even if net metering customers were deemed to be selling energy under our net metering program (which they are not), National Grid clearly has the option of whether to buy that energy through the issuance of a check or credit that energy against the customer's accounts. The simple fact of National Grid's choice means that the check mechanism is not a mandated wholesale transaction subject to federal law or FERC jurisdiction.

One should not underestimate the significance of the convenience afforded by our net metering program's check mechanism. As one example, the process a municipality would have to go through to credit energy production against potentially numerous municipal accounts and ensure equitable distribution of those credits to the benefit of specific municipal counterparts (schools, police and fire departments, etc.) presents a very significant administrative burden that our towns simply cannot afford. If meter crediting is mandated, National Grid will also incur the substantially enhanced administrative burden of tracking the application of credits against numerous specific meters and then accounting for that crediting in its facility-specific billing. Nothing in federal law requires the imposition of such burdens.

Lastly, it should be noted that the check mechanism is especially beneficial to municipalities and municipalities are exempt from federal law governing wholesale sales. The amendments to our net metering law allow municipalities to net their production against an unlimited number of municipal accounts. R.I. Gen. Laws §39-26.4-2(2).[1] Municipalities are exempt from the Federal Power Act and PURPA's rate restrictions. Section 201(f) of the Federal Power Act says that:

[1] It must be noted, however, that others stand to benefit from the check mechanism as well, including, as one example, affordable housing developments where, in the absence of the check, production would need to be netted against a large number of housing meters and then accounted for equitably among all unit owners.

> No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State. . .

16 U.S.C. §824(f) (2005). FERC decisions are clear that rates for sales from states or their subdivisions are not within its authority and not subject to its regulation because they are not rates for Qualified Facility sales at wholesale under PURPA. Connecticut Light and Power Co., 70 FERC ¶61,012 at 19 (1995); Midwest Power Systems, Inc., 78 FERC 61,067 at 5 (1997); CPUC 1, 132 FERC 61,047 at ¶71 (federal preemption of the CPUC's AB 1613 program does not apply to public agency sellers that are exempt from Commission jurisdiction under section 201(f) of the FPA). Even if our net metering program's check mechanism were misinterpreted as a wholesale sale under federal law (which it is not), it would be of no consequence to municipalities. Therefore, at the very least, the check mechanism should be maintained for the administrative benefit of Rhode Island's municipalities.

Respectfully submitted,

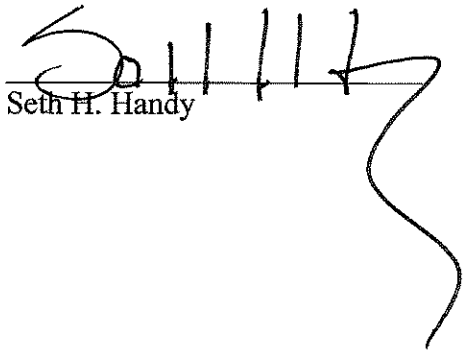
THE WASHINGTON COUNTY REGIONAL PLANNING COUNCIL

By its attorney,

Seth H. Handy (#5554)
HANDY LAW, LLC
42 Weybosset Street
Providence, RI 02903
Tel. 401.626.4839
seth@handylawllc.com

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2011, I filed this original memo and 9 photocopies with the PUC and sent a true copy of the document by electronic mail to the parties, National Grid, The Division of Public Utilities and Carriers Advocacy Section and the Conservation Law Foundation.



Seth H. Handy