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February 20, 2015

Via Electronic Mail and Hand Delivery

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

Re: Docket No. 4277 and 4288

Dear Ms. Massaro:

Enclosed for filing in the above-referenced matter are an original and nine (9) copies of The Narragansett Electric Company d/b/a National Grid's Response to Objection by WED Coventry One, LLC on Grounds that The Public Utilities Commission Lacks Jurisdiction Over the Subject Matter of the Objection.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adam M. Ramos".

Adam M. Ramos

AMR:cw
Enclosures

cc: Docket No. 4277 and 4288 Service List (electronically only)

► ALBANY ► BOSTON ► CONCORD ► HARTFORD ► NEW YORK ► PROVIDENCE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: DISTRIBUTED GENERATION (DG) STANDARD CONTRACTS PROGRAM ENROLLMENT APPLICATION AND ENROLLMENT PROCESS RULES AND STANDARD CONTRACTS	DOCKET NOS.: 4277 and 4288
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**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID'S
RESPONSE TO OBJECTION BY WED COVENTRY ONE, LLC ON GROUNDS THAT
THE PUBLIC UTILITIES COMMISSION LACKS JURISDICTION OVER THE
SUBJECT MATTER OF THE OBJECTION**

National Grid¹ submits this memorandum of law as requested by the Rhode Island Public Utilities Commission (PUC) arguing that the PUC does not have jurisdiction to resolve the contractual issues raised by the Objection by WED Coventry One, LLC (WED 1) filed in this docket.

I. INTRODUCTION

National Grid and WED 1 agreed that all disputes arising out of the Distributed Generation (DG) Standard Contract (DG Contract) will be resolved in “the state and federal courts located in the State of Rhode Island[.]” The relief requested by WED 1 in the Objection is based solely on its argument that National Grid should have agreed to terminate its DG Contract. WED 1 complains that National Grid should have agreed to terminate the contract and therefore WED 1 should have been eligible for the third enrollment in the DG Standard Contracts program for 2014. Therefore, the dispute clearly arises out of the DG Contract.

According to the plain meaning of the DG Contract, WED 1 must seek relief in either state or federal court – not before the PUC. Courts consistently have held that choice of venue clauses like the one in the DG Contract are lawful and enforceable and divest any other body

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

from jurisdiction over disputes covered by the clause. Therefore, the PUC should decline to consider the objection filed by WED 1 in this docket.

II. FACTUAL BACKGROUND

WED 1 entered into a DG Contract with National Grid on August 2, 2013. Section 10 of the DG Contract states:

10. DISPUTE RESOLUTION

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “**Dispute**”), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then the Parties may seek to resolve such Dispute in the courts of the State of Rhode Island. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the State of Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE.

While this DG contract was in full force and effect, WED 1 attempted to enroll the same project in third enrollment of the DG Standard Contracts program. National Grid determined that WED 1 was not eligible for the enrollment because the project was still under contract from a previous enrollment pursuant to the August 2, 2013 contract. Although WED 1 had requested to terminate that contract, National Grid did not agree to do so because WED 1 would not agree to forfeit the performance guaranty deposit set forth in section 6.2 of the DG Contract.

III. ARGUMENT

The relief that WED seeks is clearly reliant on its position that the August 2, 2013 DG Contract should have been terminated. National Grid disputes the position that the DG Contract was terminated. Consequently, there is a dispute between National Grid and WED 1 as to whether the contract was terminated. WED 1 does not argue that it should have been eligible for the third enrollment of the DG Standard Contracts program even if the August 2, 2013 DG Contract was still in full force and effect. Nor could WED 1 make such an argument, as it is clear and uncontested that a single project could not enter into two separate DG contracts.

Section 10 of the August 2, 2013 DG Contract is clear in its grant of exclusive jurisdiction in the state and federal courts of Rhode Island over any and all disputes that arise under the contract. It expressly states: “The Parties agree to the exclusive jurisdiction of the state and federal courts located in the State of Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement.” Although WED 1 may seek to characterize this dispute as arising outside of the August 2, 2013 DG Contract, the conclusion that it does arise out of that contract is unavoidable. Simply put, all WED 1’s requests for relief and complaints in the Objection rely entirely on the premise that the August 2, 2013 contract should have been terminated. It is clear that National Grid disputes WED 1’s contention that the August 2, 2013 DG Contract was terminated at the time of the third enrollment of the DG Contract program in 2014. Therefore, if the PUC was to address WED 1’s Objection, it would necessarily have to resolve that dispute. The plain language of the August 2, 2013 DG Contract, however, prevents the PUC from doing so.

Courts consistently hold that contractual provisions granting exclusive jurisdiction in particular courts or adjudicative bodies (forum selection clauses) are enforceable and preclude

other adjudicative bodies from exercising jurisdiction over disputes that fall within the grant of exclusive jurisdiction. Forum selection clauses are *prima facie* valid under Rhode Island law. *Tateosian v. Celebrity Cruise Servs.*, 768 A.2d 1248, 1250 (R.I. 2001). Such clauses will only be disregarded if: (1) a court concludes that they are not fundamentally fair, and the party claiming a lack of fundamental fairness bears a “heavy burden of proof[.]” *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 592, 595-97 (1991), or (2) the chosen forum lacks subject matter jurisdiction over the dispute. *Sidell v. Sidell*, 18 A.3d 499, 507. “An enforceable forum-selection clause does more than waive a potential challenge to personal jurisdiction—it settles the proper venue for the case and prevents ““a party that has agreed to be bound * * *[from] * * * assert[ing] forum non conveniens as a ground for dismissing a suit brought in the chosen forum.”” *Id.* Similarly, when the parties have agreed to the exclusive jurisdiction of a particular adjudicative body, a forum selection defeats the jurisdiction of other adjudicative bodies to resolve the dispute. *See, e.g., Lantini v. Entertainment Today Corp.*, PC No. 89-1461, 1991 R.I. Super. LEXIS 108, *3-*5 (R.I. Super. Ct. Aug. 2, 1991) (granting motion to dismiss for lack of subject matter jurisdiction based on arbitration clause in contract).

The PUC should enforce the forum selection clause in the August 2, 2013 DG Contract between National Grid and WED 1. There are no facts that suggest that this forum selection clause is fundamentally unfair. WED 1 can obtain the relief it seeks by bringing its claim that the DG Contract should have been terminated in the Rhode Island state courts. Those courts unquestionably have subject matter jurisdiction over such a dispute. The DG Contract was entered into in Rhode Island, involves parties located in Rhode Island, and is contemplated to be performed in Rhode Island. In fact, Rhode Island state courts resolve contractual disputes between parties much more often than the PUC.

IV. CONCLUSION

Despite WED 1's attempts to obfuscate, its Objection in this Docket asserts a dispute that arises from the August 2, 2013 DG Contract with National Grid. Fundamentally, WED 1 is seeking a finding that the contract was terminated. The parties agreed to submit all such disputes to the courts of the State of Rhode Island in a valid forum selection clause. There is no basis to conclude that the forum selection clause in the DG Contract is fundamentally unfair. The courts of the State of Rhode Island assuredly have subject matter jurisdiction over the dispute. Consequently, the PUC should not exercise jurisdiction over the Objection and strike it from this Docket.

Respectfully submitted,

**The Narragansett Electric Company d/b/a
National Grid,**

By its Attorney,

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Dated: March 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was distributed to the Service List for Docket 4277 and 4288 via email on March 6, 2015.

/s/ Adam M. Ramos