STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: R.I. OFFICE OF ENERGY RESOURCES' REPORT AND RECOMMENDATIONS REGARDING 2013 DISTRIBUTED GENERATION CLASSES, CEILING PRICES AND TARGETS AND ENROLLMENT RULES	:	DOCKET NO. 4277/4288

REPORT AND ORDER

I. Background

The Distributed Generation Standard Contracts Act ("DG Act") requires the Office of Energy Resources ("OER") to establish renewable energy classes, set renewable energy class targets, and propose ceiling prices for each renewable energy class on an annual basis and to file those recommendations with the Public Utilities Commission ("Commission") for its review.[1] On January 31, 2013, the Commission approved OER's proposed targets and ceiling prices along with the comments and testimony from the hearing and approved the targets and pricing as revised on January 9, 2013.[2] Under the approved program, the class and target for wind projects is 1.5 MW from wind projects sized from 50 kW to 1.5 MW.[3] The ceiling price set for this class was 14.8 cents per kWh.[4]

II. National Grid's Motion to Amend Generation Classes

On April 12, 2013, The Narragansett Electric Company d/b/a National Grid filed a Petition to Amend the Current Nameplate Capacity Size Limits for Wind Projects ("Petition") from 1.5 MW to 3.0 MW. In support of its Petition, National Grid explained that during the first enrollment of 2013, it had "received an application from Wind Energy Development, a developer

[1] R.I.G.L. §§ 39-26.2-3(10), 39-26.2-4 and 39-26.2-5. The Distributed Generation Standard Contracts Act requires the Distributed Generation Standard Contract Board (Board) to file the recommendations if the members have been appointed. However, to date, no members have been appointed and thus, the Act delegates the Board's duties to OER. R.I.G.L. § 39-26.2-3(3).
[2] *Order No.20995* (issued March 25, 2013).
[3] *Id.* at 10.
[4] *Id.*

of a proposed project that would consist of two 1.5 MW wind turbines located" on a single piece of property owned by the Town of Coventry.[5] National Grid stated that the developer was "seeking to finance the project by utilizing one of the two turbines for net metering and to obtain a long-term DG standard contract with the other turbine at the site."[6] According to National Grid, because WED was proposing to use two facilities with the same technology that would be located on one piece of property, the two turbines should be viewed as one project rather than two distinct projects and thus, the filing of an application of only one half of the project violated the anti-segmentation provision of the DG Act, specifically, R.I. Gen. Laws § 39-26.2-3(6).[7] National Grid asserted that even though the DG Act provides a mechanism by which a developer could net meter and sell excess energy through a DG Standard Contract, "the [DG] Act does not distinguish between the methods the developer uses for financing" and thus, the analysis of the Town of Coventry project would be based on the total size of both turbines and not just the portion being financed through a DG Standard Contract. According to National Grid:

> [T]he total size of a DG project is based on the total nameplate capacity of the renewable energy electrical generation facilities present at the site. In fact, in the case of a project that will be financed through a combination of a DG contract and net metering, as is the intent with the WED project, the Act specifically refers to that arrangement as a single distributed generation project and not two separate projects.[8]

Noting that small DG projects are paid the ceiling price while large DG projects are required to bid in, presumably below the ceiling price, National Grid stated that the purpose of

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[5] National Grid's Petition at 1.

[6] *Id.*

[7] *Id.* at 2. R.I. Gen. Laws § 39-26.2-3(6) states: "'Distributed generation project' means a distinct installation of a distributed generation facility. An installation will be considered distinct if it is installed in a different geographical location and at a different time, or if it involves a different type of renewable energy class."

[8] National Grid's Petition at 2. 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 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 anti-segmentation provision is to prevent a developer who could achieve economies of scale from unfairly benefitting from a price designed to allow smaller developers a reasonable opportunity to develop the smaller project. Therefore, according to National Grid, under its reading of the law and the associated public policy, the WED project would be ineligible to bid into the DG enrollments in 2013. For this reason, National Grid proposed that the Commission amend the 2013 program for the second enrollment to allow WED to re-bid the 3 MW project.[9]

III. OER's Position

On April 22, 2013, the OER submitted an Opposition to National Grid's Petition maintaining that it is the only entity which can request an amendment to the approved DG program under the DG Act. Addressing the merits of the Petition, OER argued that National Grid was not applying the DG Act properly to the facts of the Town of Coventry projects. According to OER, the two wind turbines represented two separate projects, one to be net metered and the other to seek a DG contract. Further, OER asserted that even if the two projects are viewed together, "there is no improper segmentation and the WED/Coventry Proposal is permissible."[10]

Of importance to the OER were the following facts: (1) the applicant submitted two separate applications; (2) National Grid treated the two applications separately for purposes of conducting interconnection studies; (3) neither wind turbine is to be dependent upon the other for the production of energy; and (4) the purpose of each turbine is different. OER stated that the net metering project is designed to offset Coventry's load while the DG project is designed to sell electricity into the market. According to OER, each one fits within a separate statutory

[9] *Id.* at 2-3.
[10] OER's Opposition Letter at 1.

provision and should be considered separately.[11] OER requested the Commission to order National Grid to treat the applications as two separate projects and to dismiss National Grid's Petition.[12]

IV. Conservation Law Foundation's Position

On April 26, 2013, Conservation Law Foundation ("CLF") filed a Memorandum with the Commission urging the Commission to dismiss National Grid's Petition on the basis that National Grid was incorrect that the Town of Coventry proposals violate the anti-segmentation provision of the DG Act.[13] However, CLF disagreed that entities other than OER are precluded from petitioning the Commission for adjustments in the overall DG program.[14] According to CLF, the proposal by WED was for a single distributed generation project standing next to a separate net metering project and thus, the anti-segmentation provision was not violated.[15] According to CLF, the anti-segmentation provision of the Act "prevents the Coventry/WED Project from getting two, separate DG contracts for 1.5 MW each."[16]

V. Town of Coventry/Wind Energy Development's Position

On May 1, 2013, WED/Town of Coventry ("WED") submitted a Memorandum of Law seeking the following relief: (1) dismissal of National Grid's request; (2) a declaratory judgment finding that under R.I. Gen. Laws § 39-26.2-3(5)-(6), the WED DG Standard Contract facility is composed of a 1.5 MW DG turbine and that the size of the facility is 1.5 MW; (3) an alternative declaratory judgment finding that under R.I. Gen. Laws § 39-26.2-6(g), while the WED/Coventry DG Standard Contract facility is composed of both the 1.5 MW net metering

[11] *Id.* at 3-4.
[12] *Id.* at 4.
[13] CLF's Memorandum of Law at 3.
[14] *Id.* at 7.
[15] *Id.* at 4-5.
[16] *Id.* at 6.

turbine and 1.5 MW DG turbine, the size of the project for DG Standard Contract classification purposes is 1.5MW; (4) a declaratory judgment that the DG Standard Contract system size must be defined by the size of the DG Standard Contract and not by the combined size of a DG project which also employs net metering; (5) an Order compelling National Grid to enroll the DG turbine into the DG Standard Contract program; and (6) any other relief deemed appropriate given the costly delay this causes the projects.[17]

WED provided the following facts about the two wind turbines: (1) the two turbines are on one parcel of land owned by Coventry and leased to WED for development and operation of the turbines; (2) WED and the Town of Coventry entered into a Power Purchase Agreement ("PPA") for the Net Metering Project, any excess energy from which will not be sold to National Grid through a DG Contract; (3) after contacting National Grid regarding the two turbines, WED was "instructed by National Grid to pursue separate interconnection applications for each turbine"; (4) the interconnection applications showed two separate meters and two separate interconnection points; and (5) each application was appropriately delineated by marking Net Metering for the Net Metering Project and DG for the Distributed Generation Project.[18]

In support of its argument, WED cited the statutory definition of "distributed generation project", noting that "this definition clearly does not say that a distributed generation project is the combination of a distributed generation facility and a net metering facility."[19] WED asserted that "[i]f these turbines were appropriately construed as one DGSC project, R.I. Gen. Laws § 39-26.2-6(g) expressly contemplates projects that net meter a portion of their generated power and then submit an application to sell the excess output through a DG [Standard Contract]." In this case, WED had indicated that the excess energy from the Net Metering Project will not be sold

[17] WED Memorandum at 5.
[18] *Id.* at 1-2.
[19] *Id.* at 3. *See supra* fn 7.

through a DG Standard Contract because a DG Standard Contract had not been sought for that project.[20] Furthermore, WED maintained that National Grid could not count the total of a combined Net Metering/DG Project toward the distributed generation standard contract size for compliance purposes, but only that portion for which National Grid entered into a DG Standard Contract.[21] If the Commission were to accept National Grid's interpretation, it is conceivable that a 3 MW Net Metering project selling its excess through a Distributed Generation contract for 1.5 MW would be counted as 3 MW for reporting purposes, despite the fact that the contract was for only 1.5 MW.[22]

VI. Division of Public Utilities and Carriers Position

On May 15, 2013, the Division of Public Utilities and Carriers ("Division") submitted a Memorandum of Law to the Commission. The Division cited the same provisions of the DG Act that were cited by the other parties. However, the Division went one step further and more fully discussed the Net Metering Act, particularly the provision defining Eligible Net Metering System, which the Division determined applied to the 1.5 MW wind turbine described as a net metering system.[23] The Division noted that the project is clearly owned and operated by a

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[20] *Id.* at 1,4.
[21] *Id.* at 4.
[22] *Id.*
[23] Division's Memorandum at 6-7. R.I. Gen. Laws § 39-26.4-2(2) defines "Eligible Net Metering System" as 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 system site measured by the three (3) year average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net metering system site. A projected annual consumption of energy may be used until the actual three (3) year average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net metering system site becomes available for use in determining eligibility of the generating system. The eligible net metering system must be owned by the same entity that is the customer of record on the net metered accounts. Notwithstanding any other provisions of this chapter, any eligible net metering resource: (i) owned by a municipality or multi-municipal collaborative or (ii) owned and operated by a renewable generation developer on behalf of a municipality or multi-municipal collaborative through municipal net metering financing arrangement shall be treated as an eligible net metering system and all municipal accounts designated by the municipality or multi-municipal collaborative for net metering shall be treated as accounts eligible for net metering within an eligible net metering system site.

developer on behalf of the Town of Coventry and therefore, qualifies. Thus, the Division concluded that because "the 1.5 MW wind turbine is an eligible net metering system, [it] therefore does not need to be considered under the DG [Act]."[24]

Addressing National Grid's argument that the two wind turbines violate the anti-segmentation provisions of the Act which require each DG project to be separate and not part of a larger project, the Division asserted that this provision does not apply to the fact scenario in this case. The Division states that the word "distinct" in R.I. Gen. Laws § 39-26.2-3(6) means "a distinct installation of a distributed generation facility." According to the Division, "[i]t leaves no room for interpretation and certainly would not apply to the installation of a distributed generation facility and net metering facility located side-by-side, each governed by separate chapters of the Rhode Island General Laws." A review of WED's proposal, according to the Division, shows no attempt to segment a distributed generation project into two distributed generation projects, but rather, "is a proposal to separately interconnect a 1.5 MW distributed generation wind project following the separate interconnection of a 1.5 MW net metering wind facility."[25] Furthermore, even if the language of the statute was not clear, the Division argued that this interpretation would not lead to an absurd result because such an interpretation does not lead to gaming of the process where there are two separate statutes, one of which does not refer to the other for purposes of definitions, which apply to two separate facilities.[26]

VII. National Grid's Reply

On May 22, 2013, National Grid filed a Reply maintaining that its treatment of the two wind turbines is consistent with the information provided by WED. National Grid cited a letter

[24] *Id.* at 7.
[25] *Id.* at 8-9.
[26] *Id.* at 9. The Division also noted that the Act gives OER (in the absence of a Distributed Generation Contracts Board) the power to seek adjustments to the DG program. *Id.* at 9-10.

from WED's attorney that "WED plans to pursue a distributed generation standard contract, identifying the two turbines as one project in which it intends to net meter 1.5 MW from the southerly turbine and seek a distributed generation standard contract for the excess energy generated from the northerly 1.5 MW turbine, as provided in Rhode Island General Laws § 39-26.2-6(g)."[27] According to National Grid:

> [t]he Act does not exempt a project that net meters and obtains a DG Standard Contract for the remaining output from the site from the non-segmentation prohibition. If facilities are installed at the same geographical location and involve the same type of renewable energy class, they simply are not separate projects under the Act. Thus under the Act, the WED/Coventry project is considered one project with a total nameplate capacity of 3.0 MW.[28]

Furthermore, National Grid argued, this is the same interpretation take by a solar developer whose project was recently enrolled in the 2013 DG program. According to National Grid, the developer of a solar project that was also being employed as a net metering project bid into the 101 kW to 250 kW Solar category. National Grid stated that "the project developer's submission of the combined output of the solar project as a single project under the Act is completely consistent with the Act's plain language" regarding anti-segmentation.[29] Finally, National Grid asserted that the fact that OER is statutorily authorized to recommend changes to the approved DG Program does not preclude other interested parties from bringing issues related to the DG Program to the Commission for its consideration.[30]

VIII. Oral Argument

On June 3, 2013, after due notice, the Commission conducted a public hearing at its offices at 89 Jefferson Boulevard, Warwick, Rhode Island for the purposes of entertaining oral argument. The following appearances were entered:

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[27] National Grid's Reply at 1.
[28] *Id.* at 2.
[29] *Id.*
[30] *Id.*

FOR OFFICE OF ENERGY RESOURCES:	Daniel Majcher, Esq.
FOR NATIONAL GRID:	Thomas Teehan, Esq.
FOR CONSERVATION LAW FOUNDATION:	Jerry Elmer, Esq.
FOR WIND ENERGY DEVELOPMENT, LLC AND THE TOWN OF COVENTRY:	Seth Handy, Esq.
FOR DIVISION:	Jon Hagopian, Esq. Senior Legal Counsel
FOR COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

Counsel set forth the positions in their briefs, with Attorney Teehan's main argument centering on the fact that two facilities are being proposed at the same time using the same technology. According to his read of the Act, both turbines thus constituted one DG project which would not qualify for the 2013 program. He clarified that the solar project cited in National Grid's Reply had one point of interconnection. He agreed that the WED turbines had two interconnection applications but he was unaware of what the final interconnection configuration would be.[31]

In response to a question about a ceiling price for a 3 MW project, Attorney Teehan suggested the Commission could use the ceiling price set for the 1.5 MW project, but simply require WED to bid below that ceiling price. This suggestion was met with opposition from OER and CLF who both noted that the statute requires OER to conduct a public review of the targets and ceiling prices prior to submitting its recommendation to the Commission and further, that OER would not be able to complete such a review in a timely manner. In addition, it was

[31] Tr. 6/3/13 at 8-14.

noted that the ceiling prices for the large DG prices are typically set below the ceiling prices for the small DG projects and therefore, the current Small Wind DG ceiling price may be too high.[32]

Attorneys Elmer, Handy, Hagopian and Majcher each agreed with the characterization of WED's proposals as two separate installations.[33] According to Attorney Handy, the net metering project was designed to offset a portion of the Town of Coventry's load and has an associated PPA with the developer while the DG project is under review by National Grid for a DG contract with National Grid. Attorney Handy stated that the turbines are not connected to one another and neither has access to the other to fulfill the respective purposes. In other words, the net metering facility cannot access the DG facility to offset the Town of Coventry's load while the DG facility cannot access the Net Metering turbine to fulfill the DG contract.[34] Attorney Teehan maintained that these distinctions did not matter and that "[a]ny kind of a development at the same site with the same kind of resource falls within the non-segmentation provisions of the statute."[35] Therefore, he concluded that both turbines should be counted as part of one DG project for purposes of enrollment.[36]

Related to the discussion, there seemed to be confusion regarding how National Grid was reporting its compliance with the Act. According to Corinne Abrams, Manager of Energy Procurement for National Grid, National Grid reports compliance based on nameplate size rather than contract size, regardless of whether it is a pure DG contract or a combination of Net

[32] *Id.* at 18-21, 27-30, 32-41, 67.
[33] *Id.* at 43, 50. Attorney Elmer stated, "[w]hat's happening here is not segmenting one big DG project into multiple, separate, smaller DG projects. This is a DG project standing next to a net metering project which is expressly, expressly permitted by the statute." *Id.* at 43. Attorney Hagopian stated that because the DG Act requires DG installations to be separate installations and the Net Metering law requires net metering installations to be separate installations. He maintained that they should not be mixed and the DG definition should only apply to DG projects and the Net Metering definition to net metering projects. *Id.* at 50. Attorney Majcher noted that WED submitted separate interconnection applications for separate types of projects which are not connected in any way. He stated, "it's clear and the OER position is that it's a separate and distinct project...." *Id.* at 66.
[34] *Id.* at 57-61. A review of the Record shows that Coventry's load is sufficiently in excess of the size of the proposed wind turbine to qualify for Net Metering.
[35] *Id.* at 62-63.
[36] *Id.*

Metering and distributed generation. Attorney Handy argued that that is inappropriate because this approach allows National Grid to count more toward distributed generation compliance than it will receive and further, that in the case of a DG project that is Net Metering a portion of the output and has a DG contract for the remainder, it would allow National Grid to count the net metered energy toward its DG compliance.[37]

IX. Commission Findings

At an Open Meeting held on June 6, 2013, the Commission considered the arguments and the relevant statutes and found that based on the facts before the Commission in this case, the WED/Coventry DG application should be processed by National Grid as a 1.5 MW DG wind project.[38] The Commission finds that WED/Coventry has proposed two separate projects to be separately interconnected. While the two wind turbines are on one tract of land owned by Coventry, the siting of the facility is not determinative. For example, the Commission can envision a DG project on two separate pieces of land adjacent to one another which might violate to the anti-segmentation provision of the Act.

In this case, the Commission is persuaded by the fact that there are two separate wind turbines for the following reasons: (1) they are not connected to one another, (2) they are proposed to be separately interconnected to the power grid, and (3) they are designed for two different purposes - one for net metering and the other for distributed generation. This is not a situation where there is a developer constructing two 1.5 MW facilities on the same tract of land and seeking a separate DG contract for each facility.[39]

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[37] *Id.* at 70-71.

[38] The Commission notes that this case involves a municipality as a contracting party with a private developer. Both the DG Act and Net Metering Law contain special provisions for municipalities which might not apply to private individuals.

[39] The facts of this case can also be distinguished from a 3 MW wind turbine for which an applicant might seek a DG contract for the excess of 100% of its expected amount of on-site usage (or in the case of a municipality, the

This is not the first time, nor does the Commission expect this to be the last time that a request for an interpretation of the interrelationship between the Net Metering Law and the DG Act comes before the Commission. The Petition filed by National Grid seeking an interpretation of the DG Act was an appropriate means of clarifying this area of fairly new law. The renewables market is evolving and so is the behavior of various entities seeking to take advantage of the various laws and incentives available to this industry. Sometimes laws are written before there is sufficient experience to understand how all of the provisions interact with one another or how they might be implemented. The appropriate forum to address these ambiguities is through a request to the Commission for an initial interpretation.[40]

Accordingly, it is hereby

(21087) ORDERED:

1. The Narragansett Electric Company d/b/a National Grid's Petition to Amend the Current Nameplate Capacity Size Limits for Wind Projects is hereby denied as unnecessary.
2. The Narragansett Electric Company d/b/a National Grid shall process the Distributed Generation Application for the Wind Energy Development Distributed Generation 1.5 MW wind project, assuming Wind Energy Development would have otherwise qualified for enrollment in the first enrollment of 2013.

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municipality's usage). At this time, the Commission is not passing judgment on the appropriate size to use for purposes of reporting DG compliance in this particular scenario.

[40] *See* R.I. Gen. Laws § 42-35-8; Commission Rules of Practice and Procedure 1.10(c).

EFFECTIVE AT WARWICK, RHODE ISLAND ON JUNE 6, 2013 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JUNE 28, 2013.

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.