STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID'S APRIL 12, 2013 FILING REGARDING THE COVENTRY/WED APPLICATION PURSUANT TO R.I.G.L. § 39-26.3

Dockets No. 4277 and 4288

MEMORANDUM OF LAW
OF CONSERVATION LAW FOUNDATION

Conservation Law Foundation (CLF) respectfully submits its Memorandum of Law concerning the issues raised in National Grid's April 12, 2013 letter filed and served in these dockets styled "National Grid's Requests for Amendment to the Current Nameplate Capacity Size Limits for Wind Projects" (Grid's April 12 Letter).

Background

In Grid's April 12 Letter, Grid asks the Public Utilities Commission (PUC or the Commission) "to increase the maximum nameplate capacity for wind projects allowed to participate in the July . . . . DG Standard Contracts Enrollment." Grid's July 12 Letter, page 1, ¶ 1.

Grid explains that in the recently-concluded first enrollment of 2013, Grid received an application from Wind Energy Development for two proposed projects to be built on land owned by the Town of Coventry. Grid's July 12 Letter, page 1, ¶ 3. (CLF refers herein to this project as "the Coventry/WED Project.") The proposed Coventry/WED

Project would consist of two turbines, one of which would be net metered and one of which would apply for a DG Standard Contract. Id.

In Rhode Island, net metering is governed by the provisions of Chapter 26.4 of Title 39 of the General Laws. CLF refers herein to the "Net Metering Statute."

Distributed Generation Standard Contracts are governed by Chapter 26.2 of Title 39 of the General Laws. CLF refers herein to the "DG Statute."

The gist of Grid's argument to the PUC appears in the first sentence on page 2 of its letter: "Because the [Coventry/]WED Project would be comprised of two 1.5 MW wind turbines developed at the same location, the project would have a total nameplate capacity of 3.0 MW, and thus it fails to qualify for participation in the 2013 DG enrollments." Grid's July 12 Letter, page 2, ¶ 1.

Grid's concern is that this arrangement runs afoul of the anti-segmentation provision of the DG Statute. Grid's July 12 Letter, page 2, ¶ 1. Thus, Grid "proposes that . . . the Commission approve increasing the cap applicable to wind projects to 3.0 MW . . . ." Grid's July 12 Letter, page 3, ¶ 1. This would have the effect, Grid argues, of permitting consideration of the Coventry/WED Project under the DG Statute.

Grid is correct that the Coventry/WED Project contemplates two separate wind turbines of 1.5 MW each. The Office of Energy Resources (OER), in its April 22, 2013 filing with the PUC (OER's April 22 Filing), provides the Commission with copies of the two separate applications filed (with Grid) for the Coventry/WED Project. Only one of the

two applications is filed pursuant to the DG Statute; the Coventry/WED Project contemplates that the second wind turbine of 1.5 MW will be used solely for net metering.

CLF's Position

CLF respectfully urges the PUC to dismiss Grid's request to change the maximum nameplate capacity for small DG projects under the DG Statute. Grid is correct that the DG Statute contains an anti-segmentation provision. But Grid is incorrect that the Coventry/WED Project runs afoul of that anti-segmentation provision. Accordingly, there is no need to change the maximum nameplate capacity for small DG projects; and Grid can approve both the DG portion of the Coventry/WED Project and the net metering portion of the Coventry/WED Project. Crucially, Grid can do so under existing law.

Finally, CLF respectfully believes that OER is mistaken that "National Grid does not have authority to request an increase to current nameplate capacity size limits . . . ." OER's April 22 Filing, page 2, lines 1-2.

Discussion

The Coventry/WED Project filed two separate applications. One is for a 1.5 MW wind turbine and seeks a contract under the DG Statute; the other is for a different 1.5 MW wind turbine that will be net metered under the Net Metering Statute.

Grid is absolutely correct that the DG Statute contains a non-segmentation provision. Grid's April 12 letter, page 2, ¶ 3. Grid is correct that "[t]o allow a larger [DG] project to be segmented would run completely contrary to this statutory restriction." Id.

The anti-segmentation provision of the DG Statute, to which Grid adverts (but for

which Grid provides no statutory citation) appears in the definitions section, R. I. Gen. Laws § 39-26.2-3(12). This sub-section contains the DG Statute's definition of a "Small distributed generation project[.]" The last sentence of this sub-section reads "In no case may a project developer be allowed to segment a distributed generation project into smaller sized projects in order to fall under this definition."

There was an important public-policy reason that the authors of the DG Statute included this anti-segmentation provision. The authors of the DG Statute anticipated that the remuneration for small projects would be higher (on a per-kilowatt-hour basis) than remuneration would be for large projects. The authors of the DG Statute wrote the anti-segmentation provision in order to prevent, say, a 100-MW project from pretending that it was really 100 separate 1 MW projects (for purposes of gaming the system and obtaining the higher per-kilowatt-hour price for smaller projects).

But the WED/Coventry Proposal is <u>not</u> for a single large DG project that is being improperly segmented into two separate smaller DG projects in order to do an end-run around the DG Statute's anti-segmenting provision.[1] Instead, the WED/Coventry Proposal is for a single DG project standing next to a single net metering project. The DG Statute, by its plain language, permits just this arrangement. "A distributed generation project that is also being employed by a customer for net metering purposes may submit an application to sell the excess output from its distributed generation project." R.I. Gen.

---

[1] CLF supports the similar argument on this point made in OER's April 22 Filing. OER's April 22 Filing, page 4, ¶¶ 1-3.

Laws § 39-26.2-6(g). That section of the DG Statute goes on to explain exactly how to handle the RECs "in such case."

In other words, the WED/Coventry Proposal is the precise case that was contemplated by the DG Statute. This is, in the words of the Statute, "A distributed generation project that is also being employed by a customer for net metering purposes . . . ." No improper segmenting is being done. The WED/Coventry Proposal – exactly as the law anticipated – contains a net metered turbine (to be governed by the state's Net Metering Statute) and a separate DG turbine (to be governed by the state's DG Statute).

Moreover, it is not an accident (nor a coincidence) that the DG Statute and the Net Metering Statute fit together in just this way. The DG Statute and the Net Metering Statute were drafted by the same people, in the same room, at the same time.[2] The two bills were signed into law by Governor Lincoln Chafee at the same ceremony on June 26, 2011. It is well settled that "statutes enacted together as part of a carefully crafted statutory plan must be construed together so as to constitute a harmonious whole consistent with the legislative purpose." Halebian v. Berv, 590 F.3d 195, 212 (2d Cir. 2009) (citing and quoting Commonwealth v. Renderos, 440 Mass. 422, 432-33, 799 N.E.2d 97, 106 (2003); internal quotation marks and ellipses omitted).

---

[2] CLF was involved both in the process of drafting the two bills that were enacted as the DG Statute and the Net Metering Statute, and in lobbying the General Assembly in support of their passage.

The drafters of these bills wrote them together in order to give every renewable energy developer a choice of three options for her project: (1) Net meter the output (with a generous compensation (R.I. Gen. Laws § 39-26.4-2(12)); but no long-term contract to collateralize for purposes of obtaining project funding; and not permissible above 100% of the consumption of the net metering self generator (R.I. Gen. Laws § 39-26.4-2(4)); or (2) apply for a DG Standard Contract (and seek long-term payment stability; but perhaps not win a contract at all); or (3) net meter up to the maximum allowable level, the self-generator's own consumption; and then try to obtain a DG Standard Contract for the overage. R.I. Gen. Laws § 39-26.2-6(g).

In this case, it is a simple matter to read the two statutes at issue as a single, harmonious whole. The Coventry/WED Project wants to erect two 1.5 MW wind turbines. The anti-segmentation provision of the DG Statute prevents the Coventry/WED Project from getting two, separate DG contracts for 1.5 MW each. R. I. Gen. Laws § 39-26.2-3(12). Instead, the DG Statute is clear about the correct way to handle this situation: "A distributed generation project that is also being employed by a customer for net metering purposes may submit an application to sell the excess output from its distributed generation project." R.I. Gen. Laws § 39-26.2-6(g).

Accordingly, there is no need for the PUC "to increase the maximum nameplate capacity for wind projects allowed to participate in the July . . . . DG Standard Contracts Enrollment." Grid's July 12 Letter, page 1, ¶ 1. The Coventry/WED Project is proper in

its current form; respectfully, the PUC should instruct Grid to consider the application in accordance with the reasoning outlined herein.

In addition, CLF respectfully disagrees with the OER's position that "Grid does not have authority to request an increase to current nameplate capacity size limits . . . ." OER's April 22 Filing, page 2, lines 1-2. OER cites for this assertion the provisions of R. I. Gen. Laws § 39-26.2-12. However, the cited section of the DG Statute only sets forth certain authority vested by the DG Statute in the DG Standard Contract Board. The main functions of the Board are to recommend (to the PUC) ceiling prices, R. I. Gen. Laws § 39-26.2-12(1); and to monitor and evaluate the overall DG program. R. I. Gen. Laws § 39-26.2-12(3). CLF believes that any person or entity may properly petition to PUC to make adjustments in the overall DG program (so long as the requested adjustments are consistent with the organic statute). For example, CLF believes that a renewable energy developer (or any other person) could lawfully petition the Commission to re-examine some portion of the DG program.

Grid is a key player in the DG Program and has no less authority than any other person or entity to request an appropriate change.

CONSERVATION LAW FOUNDATION,
by its Attorney,

Jerry Elmer (# 4394)
CONSERVATION LAW FOUNDATION
55 Dorrance Street
Providence, RI 02903
Telephone: (401) 351-1102
Facsimile: (401) 351-1130
E-Mail: JElmer@CLF.org

CERTIFICATE OF SERVICE

I certify that the original and nine photocopies of this Memorandum were filed in person with the Clerk of the Public Utilities Commission, 99 Jefferson Blvd., Warwick, RI 02888. In addition, electronic copies of this Motion were served via e-mail on the service list for these Dockets. I certify that all of the foregoing was done on April 26, 2013.