



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Rhode Island Division of
Public Utilities and Carriers
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Warwick RI 02888
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May 15, 2013

Luly Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

**In Re: National Grid's Request to Amend Nameplate Capacity Size for Eligible Wind
Projects Pursuant to the Distributed Generation Contract Statute
Docket No. 4277 & 4288**

Dear Luly,

Please find for filing with the Commission in the above captioned docket, a copy of the Division of Public Utilities and Carriers, (the "Division") Memorandum regarding National Grid's request to amend the nameplate capacity size for eligible wind projects pursuant to the distributed generation contract statute.

I appreciate your anticipated cooperation in this matter.

Very truly yours,

Jon G. Hagopian
Senior Legal Counsel

cc: Stephen Scialabba

PUBLIC UTILITIES COMMISSION

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID'S REQUEST TO AMEND :
NAMEPLATE CAPACITY SIZE FOR ELIGIBLE :
WIND PROJECTS PURSUANT TO THE : DOCKET NO. 4277 & 4288
DISTRIBUTED GENERATION CONTRACT :
STATUTE :

STATE OF RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND
CARRIER'S MEMORANDUM OF LAW RELATING TO NATIONAL GRID'S
REQUEST TO AMEND NAMEPLATE CAPACITY SIZE FOR ELIGIBLE WIND
PROJECTS PURSUANT TO THE DISTRIBUTED GENERATION CONTRACT
STATUTE

Now comes the Division of Public Utilities and Carriers (the "Division") and hereby submits the following memorandum of law for consideration by the Public Utilities Commission (the "Commission").

I. FACTS

Wind Energy Development, LLC d/b/a WED Coventry One, LLC (WED), a developer, submitted two separate applications with the Narragansett Electric Company d/b/a National Grid (National Grid) to install two separately interconnected 1.5 MW wind turbines on property owned by the Town of Coventry.¹ WED is proposing to sell the output from one of the wind turbine facilities into the electric grid through the DG Standard Contract Enrollment

¹ Memorandum of Law By WED & Town of Coventry at p. 2.

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program for 2013.² WED proposes that the second 1.5 MW turbine facility will operate as a net metering facility to service accounts of the Town of Coventry.³

National Grid denied WED's DG enrollment application here asserting that WED is attempting to segment a DG project in violation of the anti segmentation provision set-forth in R.I. Gen. Laws § 39-26.2-3 (12) of the distributed generation standard contract statute, (DGSC).⁴ National Grid has filed the instant petition with Commission to ostensibly cure this perceived violation by expanding the wind class from 1.5 MW to 3 MW for the DG Standard Contract Enrollment program for 2013.⁵

II. ISSUE PRESENTED

Whether the WED proposal to install two 1.5 megawatt wind turbines on a parcel of land owned by the Town of Coventry violates the anti segmentation provision set-forth in R.I. Gen. Laws § 39-26.2-3 (12) of the DGSC in an instance where the proposed installation will provide for one 1.5 MW wind turbine to be installed and separately interconnected under the DGSC and the second 1.5 MW wind turbine to be staged at the same site and separately

² *Id.*

³ *Id.*

⁴ Letter of National Grid April 12, 2013 at p. 2.

⁵ *Id.*

interconnected to the electric grid pursuant to R.I. Gen Laws § 39-26.4-2 (7) of the net metering statute?⁶

III. APPLICABLE LAW

STATUTORY INTERPRETATION

In its review of the statutory section, the Commission should be guided by the very well established rules of statutory construction set-forth in a long line of cases handed down from the Rhode Island Supreme Court. The following fundamental principles of statutory construction are dispositive of the issues presented here. The Rhode Island Supreme Court has held in construing a statute that the Court's "ultimate goal" is to give effect to the General Assembly's intent. State v. Menard, 888 A.2d 57, 60 (R.I. 2005). The primary indicia of the Legislature's intent "can be found in the plain language used in the statute." Martone v. Johnston School Committee, 824 A.2d 426, 431 (R.I. 2003). The language of a statute must be given its "plain and ordinary meaning[]." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). The Supreme Court of Rhode Island has cautioned however, under no circumstance will the Court construe a statute to produce a meaningless or absurd result. Tidewater Realty, LLC v. State of Rhode Island, 942 A.2d 986, 992 (R.I. 2008). Finally, the Rhode Island Supreme Court has held that in the event that the plain and ordinary meaning of a statute

⁶ See, Memorandum of Law By WED & Town of Coventry Docket 4277 & 4288 at p. 2, 4/30/2013.

produces a meaningless or absurd result, it is "...not only the right but the duty..." of the Court to construe the statute so that "the purpose of the act may be effectively carried out." Kaya v. Partington, 681 A.2d 256, 262 (R.I. 1996). *See also* Town of North Kingstown v. North Kingstown Teachers Assoc., 297 A.2d 342, 346 (R.I. 1972) (Joslin, J.); Capobianco v. United Wire & Supply Corp., 77 A.2d 534, 538 (R.I. 1950).

**DISTRIBUTED GENERATION
STANDARD CONTRACT ACT**

The following are the relevant sections and provisions of the DGSC statute at issue in the instant matter. The central ground for National Grid's denial of WED's enrollment application lies in the following provision of the DGSC statute R.I. Gen. Laws § 39-26.2-3 (12) which states in pertinent part as follows:

"Small distributed generation project" means a distributed generation project that has a nameplate capacity no larger than the following: Solar: five hundred kilowatts (500 KW); Wind: one and one-half megawatts (1.5 MW). For technologies other than solar and wind, the board shall set the nameplate capacity size limits, but such limits may not exceed one megawatt. The board may lower the nameplate capacity from year to year for any of these categories, but may not increase the capacity beyond what is specified in this definition. 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.

Similarly, to put the review here in context, a large distributed generation project is defined pursuant to R.I. Gen. Laws § 39-26.2-3 (8) as follows:

"Large distributed generation project" means a distributed generation project that has a nameplate capacity that exceeds the size of a small distributed generation project in a given year, but is no greater than five megawatts (5 MW) nameplate capacity.

Notably, pursuant to R.I. Gen. Laws § 39-26.2-3 (6) it is provided that:

"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.

Finally, pursuant to R.I. Gen. Laws § 39-26.2-2 it is provided as follows:

The purpose of this chapter is to facilitate and promote installation of grid-connected generation of renewable energy; support and encourage development of distributed renewable energy generation systems; reduce environmental impacts; reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; diversify the state's energy generation sources; stimulate economic development; improve distribution system resilience and reliability; and reduce distribution system costs.

R.I. Gen. Laws § 39-26.2-13 states that "[t]his chapter shall be construed liberally in aid of its declared purposes."

NET METERING ACT

The purpose of the net metering statute is stated as follows

The purpose of this chapter is to facilitate and promote installation of customer-sited, grid-connected generation of renewable energy; to support and encourage customer development of renewable generation systems; to reduce environmental impacts; to reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; to diversify the state's energy generation sources; to stimulate economic development; to improve distribution system resilience and reliability; and to reduce distribution system costs.⁷

An eligible net metering system is defined as follows:

"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 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)

⁷ § 39-26.4-1

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.

IV. DISCUSSION

As a threshold matter, it is necessary to determine if the 1.5 MW wind turbine for which net metering treatment is requested complies with the Net Metering Statute. Based upon the definition provided above, it is clear that the 1.5 MW wind turbine for which net metering treatment is requested does qualify as an Eligible Net Metering System under the statute. This project is clearly owned and operated by a developer on behalf of the Town of Coventry and therefore shall be treated as an eligible net metering system. The Division concludes that the 1.5 MW wind turbine is an eligible net metering system, and therefore does not need to be considered under the DG statute.

Furthermore, the interpretation that National Grid asserts should be adopted relating to the prohibition against segmenting a small DG project is strained and unreasonable for the following reasons. A review of the relevant definitions and sections of R.I. Gen. Laws § 39-26.2-1 *et seq.* demonstrates precisely why the Commission must reject National Grid’s interpretation in the instant matter. National Grid asserts that the WED project fails to qualify for participation on the 2013 DG enrollment because the project is not distinct and is simply a smaller segment of a larger project which is prohibited by the DGSC statute.

First and foremost the statutory definition of a “distributed generation project” pursuant to R.I. Gen. Laws § 39-26.2-3 (6) is explicit and unequivocal in its application. This section provides that “distinct” in this context means- a distinct installation of a distributed generation facility. (**Emphasis** supplied.) It 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.⁸ The proposal by WED does not in any way attempt to segment a distributed generation project into two 1.5 MW phases. On the contrary, it is a proposal to separately interconnect a 1.5 MW distributed generation wind

⁸ Distributed Generation by 39-26.2-1 *et seq.* and Net Metering by 39-26.4-1 *et seq.*

project following the separate interconnection of a 1.5 MW net metering wind facility. The above referenced definitions, particularly the “small generation” project definition and the balance of the distributed generation statute simply does not address in any manner the segmentation of a DG and net metering project as asserted by National Grid.

Now the issue of the statutory intent of the legislature must be reviewed. The Commission must ask what the intent of the legislature was in crafting the anti segmentation prohibition, keeping in mind that it must ascribe a reasonable interpretation which does not lead to an absurd result. It is clear that the intent of the legislature in crafting this specific limitation wanted to prevent a project owner from price gaming through the segmenting of a project in a manner that yields the highest and best price for the output. One other certainty is that R.I. Gen. Laws § 39-26.2-3 (6) is “conspicuously devoid of any reference” to net metering.⁹ The Division asserts that National Grid’s denial of WED’s application offering 1.5 MW of wind power into the DG program because of a violation of the so called “anti segmentation” provision in the Small DG project definition was erroneous and should be recognized as such by the Commission.

Finally, the issue of class adjustment is dealt with squarely pursuant to the powers enumerated in R.I. Gen. Laws § 39-26.2-12. Those powers reside in

⁹ See *Burke-Tarr Company v. Ferland Corporation*, 724 A.2d 1014, 1019 (R.I. 1999).

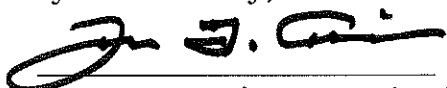
the Office of Energy Resources until such time as a board is duly constituted to undertake such duties.¹⁰ The significance here is the power to make adjustments up or down originates with the board if duly constituted or otherwise with the OER who makes its recommendations for action thereon to the Commission for approval. The Division asserts that this process should be adhered to in accordance with the statute. **(Emphasis supplied)**

V. CONCLUSION

For the reasons set forth here the Division respectfully requests that the Commission consider and adopt the position of the Division with respect to the instant issue.

Thomas Ahern, Administrator
State of Rhode Island
Division of Public Utilities and
Carriers

By his attorney,



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¹⁰ See, R.I. Gen. Laws § 39-26.2-3 (3).