

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

IN RE: NATIONAL GRID'S REQUEST TO AMEND NAMEPLATE CAPACITY SIZE FOR WIND	) ) ) ) ) )	DOCKET NO. 4277 and 4288
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**MEMORANDUM OF LAW BY  
WIND ENERGY DEVELOPMENT, LLC AND  
THE TOWN OF COVENTRY**

By its attorneys, Wind Energy Development, LLC d/b/a WED Coventry One, LLC (WED) and the Town of Coventry (Coventry) submit this memorandum of law in support of the dismissal of this proceeding, declaratory judgment and an order to enroll their proposed wind project in the Distributed Generation Standard Contract (DGSC) program. National Grid's filing is not necessary because it is based on a fundamental misinterpretation of the distributed generation long term contract statute that has damaged WED and Coventry and warrants relief.

**Facts**

Coventry has contracted with WED for the installation of two 1.5 megawatt wind turbines in Coventry (the "Turbines"). The Turbines are on one parcel of property owned by Coventry and leased to WED for development and operation of the Turbines. WED has entered a Power Purchase Agreement (PPA) with Coventry for one of the turbines under which the "project" is defined as development of "a wind powered electric generating project" (the NM Project). Under the PPA, Coventry agrees to purchase the lesser of either (a) all of the power produced by the NM Project, or (b) all of the energy consumed by Coventry, under a municipal net metering financing arrangement pursuant to R.I.G.L. §39-26.4-2(7). Under the PPA, WED has the right to sell to any third party any excess energy produced by the NM Project that Coventry cannot consume; however, if there is any

excess energy produced from the NM Project, WED has no intention of selling any such excess to National Grid through a distributed generation standard contract (DGSC), nor has it applied to do so.

In a letter dated February 28, 2013, WED's counsel notified National Grid of WED's intent to net meter one turbine pursuant to R.I.G.L. §39-26.4-1 *et seq.* (the NM Turbine) and pursue a DGSC for the other turbine pursuant to R.I.G.L. §39-26.2-1 *et seq.* (the DG Turbine). The Turbine development projects have been carefully planned and permitted. Petitioners were instructed by National Grid to pursue separate interconnection applications for each turbine. Each application showed both turbines, including a one line drawing showing separate interconnection points and separate meters for each turbine. As requested on the National Grid interconnection application form, each application indicated whether the interconnecting turbine would be exporting power (selected for the DG Turbine) or net metering (selected for the NM Turbine). WED filed a DGSC application for the DG Turbine with a total proposed DGSC amount of 1.5 megawatts generated only from the DG Turbine.

On April 3, 2013, National Grid sent WED a letter concluding that WED was ineligible for a DGSC because the size of this proposed DGSC project is three megawatts and the Office of Energy Resources has not established a DGSC class for wind projects greater than 1.5 megawatts in size. On April 8, 2013, National Grid informed WED that its DGSC application was not accepted for enrollment. National Grid subsequently called WED to inform them that the rejection of its project was an error, but National Grid has yet to inform WED of the status of its DGSC application. No other wind projects applied for a DGSC in this enrollment; the DG Turbine was the only applicant for its class.

On April 12, 2013, National Grid filed this petition with the Rhode Island Public Utilities Commission to increase the DGSC class for wind to allow 3 megawatt wind projects (RIPUC Docket

4288). In this filing, National Grid argues that the Coventry turbines must be considered one project for the purposes of applying the size classification in the Office of Energy Resources 2013 filing for Distributed Generation Ceiling Prices, Classes and Targets.

### **Legal Argument**

Neither the DGSC law nor the contents of any administrative dockets developed under the law require or support National Grid's reading of the DGSC law. Pursuant to R.I.G.L. §39-26.2-3(6) a "distributed generation project" means a distinct installation of a distributed generation facility." This definition clearly does not say that a distributed generation project is the combination of a distributed generation facility and a net metering facility. According to R.I.G.L. §39-26.2-3(5), "Distributed generation facility" means an electrical generation facility that is a newly developed renewable energy resource as defined in §39-26.1-2, located in the electric distribution company's load zone with a nameplate capacity no greater than five megawatts (5 MW), using eligible renewable energy resources as defined by §39-26-5, including biogas created as a result of anaerobic digestion, but, specifically excluding all other listed eligible biomass fuels, and connected to an electrical power system owned, controlled, or operated by the electric distribution company." Here again, the definition never mandates or even suggests inclusion of a net metered turbine in a "distributed generation project."

The Office of Energy Resources filing for 2013 Distributed Generation Ceiling Prices, Classes and Targets defines its class as "Small DGSC System Technologies and Sizes," further supporting the interpretation that the distributed generation standard contract system size must be defined by the distributed generation standard contract system size and not by the combined size of the net metered and distributed generation standard contract system. If this project was properly classified as a 3 megawatt DGSC project and was able to be entered into the DGSC program, National Grid surely

would not credit 3 megawatts toward either the annual program target or the total program goal for a project that net meters 1.5 megawatts; therefore, it is clearly unjust, unreasonable, insufficient, preferential and unjustly discriminatory action to treat this project as a 3 megawatt DGSC project for classification purposes.

If these turbines were appropriately construed as one DGSC project, R.I.G.L. §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 DGSC. For National Grid to interpret this provision to require including both the net metering component and the distributed generation component in the project size for DGSC purposes is unfounded.

Even if the statute were ambiguous on these points, R.I.G.L. §39-26.2-13 mandates that National Grid construe the statute liberally in aid of its declared purposes. National Grid's strained reading clearly defies each one of the statute's purposes as established at R.I.G.L. §39-26.2-2 "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." OER recently reported that of the 22 projects awarded DGSCs, only one was a wind turbine project and the rest have been solar projects, even though the ceiling prices for wind are substantially lower than for solar. National Grid's reading of the DGSC law further impedes source diversity under the DGSC program and unnecessarily lifts the cost of the DGSC program.

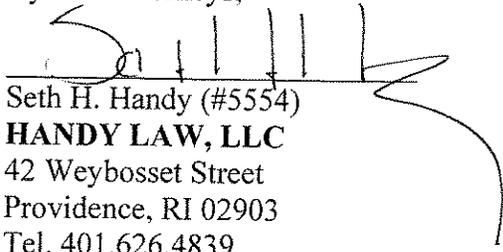
For these reasons, WED and Coventry do not agree with the premise for National Grid's request and respectfully request:

- 1) Dismissal of National Grid's request;
- 2) A declaratory judgment, pursuant to R.I.G.L. §§39-26.2-3(5)-(6), that the WED/Coventry DGSC facility is composed of the 1.5 megawatt DG Turbine and that the size of that DGSC facility is 1.5 megawatts;
- 3) Alternatively, a declaratory judgment, pursuant to R.I.G.L. § R.I.G.L. §39-26.2-6(g), that while the WED/Coventry DGSC project is composed of both the 1.5 megawatt NM turbine and the 1.5 megawatt DG Turbine, the size of that project is 1.5 megawatts for DGSC classification purposes;
- 4) A declaratory judgment that pursuant to the Office of Energy Resources filing for 2013 Distributed Generation Ceiling Prices, Classes and Targets the DGSC system size for the WED/Coventry turbine developments must be defined by the DGSC system size of 1.5MW and not by the combined size of the net metered and the distributed generation standard contract system.
- 5) An Order compelling National Grid to enroll the DG Turbine into the DGSC program.
- 6) Any other relief deemed appropriate given the costly delay this causes the projects.

Respectfully submitted,

WIND ENERGY DEVELOPMENT, LLC and  
THE TOWN OF COVENTRY

By their attorneys,

  
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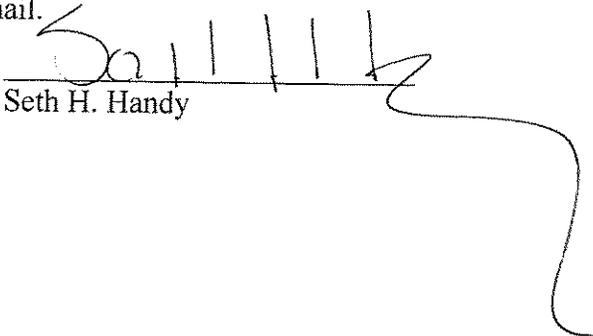
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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2013, I delivered a true copy of the foregoing document to the parties on the current service list by electronic mail.

  
Seth H. Handy