

**To:** The Rhode Island Public Utilities Commission

**From:** Richard Hahn, La Capra Associates, Inc. on behalf of the Rhode Island Division of  
Public Utilities and Carriers

**Re:** NATIONAL GRID'S TARIFF ADVICE FILING FOR CUSTOMER-OWNED STREET  
AND AREA LIGHTING PROPOSAL – DOCKET NO. 4442

**Date:** August 6, 2014

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**Summary**

On July 25, 2014, the Rhode Island Public Utilities Commission (“Commission”) held an open meeting to discuss the proceedings in Docket 4442. Among other things, the Commission voted to approve the Attachment Agreement, subject to the suggested revisions in my memo dated May 30, 2014. On July 31, 2014, National Grid (“NGRID”) made a compliance filing consisting of a revised Tariff and a revised Attachment Agreement. On August 4, 2014, the Rhode Island League of Cities and Towns (“Towns”) filed objections to NGRID’s compliance filing. The Division has requested that I review that compliance filing and indicate whether the compliance filing comports with my memo. Based upon a review of the material provided, I find that the tariff and Attachment Agreement in the compliance filing comports with my May 30, 2014 memo, and therefore complies with the Commission actions at the July 25<sup>th</sup> open meeting.

**Introduction**

On July 25, 2014, the Commission held an open meeting to discuss the proceedings in this docket. It is my understanding that the minutes of that open meeting are not yet available. However, my understanding is that the Commission took the following actions at that open meeting.

- 1) The Commission voted 3-0 to not include the Purchase & Sales Agreement as part of the tariff.

- 2) The Commission voted 3-0 to approve the Attachment Agreement subject to the suggested revisions in Mr. Hahn's Memo dated May 30, 2014.
- 3) The Commission voted 3-0 to not include metering in the tariff and to open a new docket on the metering issue.
- 4) The Commission also voted 3-0 to have NGRID file a pilot program within 90 days, which will require the Company to engage the parties and survey the cities/towns to determine which communities will participate in the pilot program
- 5) The Commission voted 3-0 to approve the tariff filed by NGRID on April 3, 2014 without the municipalities' changes except for the change that would allow the cities/towns to file an inventory of lights on or about January 30 instead of January 15.
- 6) The Commission voted 3-0 to require NGRID to file a report with the Commission within 90 days of the inventory of lights filed by the cities/towns on January 30 in order to determine the unmetered range of LEDs and appropriateness of the tariff.

On July 31, 2014, NGRID made a compliance filing, which included redlined and clean versions of the Tariff and the Attachment Agreement.

On August 4, 2014, the Towns filed objections to NGRID's compliance filing, which is summarized as follows.

- a) Inventory: The Commission concluded that NGRID was to reconsider its use of specified wattage ranges and billable wattages and report to the Commission within ninety days of receiving the Towns' updated inventory. That requirement is not reflected in the revised tariff.
- b) Attachment Agreement - License Termination: The Compliance Filing neglects to make changes the following sections that were proposed by the Towns and are required to prevent revocation. §§2.3, 2.4, 3.1.3, and 3.1.4 (additional edits). Also, if NGRID can charge the Towns for changes it or any other attachee proposes to make to the pole it can effectively terminate the license (for example, by deciding to remove and replace the pole at the Towns' expense). See §4.3.3.
- c) Attachment Agreement - Company Work: The Memo concludes that "Once the municipalities acquire ownership of the streetlights, they should be able to work on their

facilities so long as they do not interfere with the delivery of electricity, comply with safety requirements, and indemnify the Company against any damage that might be caused." NGRID's revisions do not reflect this result at all. The agreement must now reflect the Town's proposed edits to the definition of "material change" and §§ 4.1.1, 4.1.3 and 4.2.1 in order to accomplish the Commission's ordered result.

- d) Attachment Agreement - Transfer of Access Rights: The Towns seek the benefits of any rights NGRID has related to the streetlight attachments the Towns are paying for. §2.5 of the agreement must be revised to allow the Towns to assume the benefits of any such rights included in the plant costs of the lighting facilities being purchased, per the Towns proposal.

The Division has requested that I review the compliance filing and the Towns' objections, and offer an opinion regarding the appropriateness of the compliance filing. This memorandum provides my response.

### Analysis

Of the actions taken by the Commission on July 25, 2014, the second vote listed above to approve the Attachment Agreement subject to the suggested revisions in my memo dated May 30, 2014 is relevant to the compliance filing. The other five actions by the Commission establish issues that are outside of the Attachment Agreement and not directly related to my memo. The last three of the Towns' objections listed above also relate to the second vote of the Commission regarding the Attachment Agreement. The Towns' first objection listed above is not related to the Attachment Agreement.

My May 30, 2014 memorandum made the following points relative to the Attachment Agreement.

- I. Assignment of rights: The status report states that the municipalities maintain that they should be able to assign their attachment rights, received as a result of the acquisition of Company streetlights, to third-party without consent of NGRID. NGRID opines that the statute and the tariff filed in this proceeding covers ownership of the streetlights only by

municipalities. If the municipalities continued to own the streetlights there is no need for them to assign their attachment rights. I agree with the Company on this issue.

- II. Termination of license: The final status report discusses the issue of termination of attachment licenses. The municipalities do not believe that the Company can terminate these rights. The Company maintains that it needs such termination rights in the event that circumstances arise which would warrant termination. The Company has not provided any examples of situations where termination could be warranted. The municipalities need the attachment licenses in order to continue to operate the acquired streetlights, and therefore the Company should not have the right to terminate these licenses.
- III. Transfer of existing easements and rights: The towns have requested that NGRID transfer all easements and license rights associated with streetlights to the municipalities. The Company presents several reasons why it cannot make such transfers. NGRID further opines that the majority of easements are associated with public property that is owned or managed by the towns. Finally, the Company argues that it must retain these easements and rights in order to maintain and operate the equipment they are not selling to the municipalities. I believe it's appropriate for the Company to retain ownership of these easements and rights, as they are needed to operate the electric distribution system.
- IV. Company work: The municipalities believe that the Company need only be informed of municipality work on the streetlights if that work impacts the Company's distribution system. They also believe that the proposed agreements require excessive supervision and costs to the municipalities. It is unclear what specific provisions the municipalities are concerned about here. However, the other attachment agreements do not appear to require that the attachers notify the Company anytime they perform work on their attachments. It is also my experience that third party attachers do not notify the host utility anytime work is done. Once the municipalities acquire ownership of the streetlights, they should be able to work on their facilities so long as they do not interfere with the delivery of electricity, comply with safety requirements, and indemnify the Company against any damage that might be caused.

Items I. and III. above discuss topics about which I agree with the Company, so no modifications to the Attachment Agreement are required for these two items.

In item II. above, I stated that the Company should not have the right to terminate these licenses. This would require that section 15.3 of the Attachment Agreement be revised as part of the compliance filing. In the redlined version of the Attachment Agreement in the compliance filing, the Company revised section 15.3 as follows: ~~15.3 Company may at any time terminate a license for any Attachment(s) in accordance with this Agreement provided written notice of such termination is received by Customer no less than fifteen (15) days prior to proposed actions causing conflict with the existing Attachment(s).~~ 15.3 Company may exercise its Removal Rights requiring Customer to remove its Attachment(s), at Customer's expense, from any of the designated Pole(s) or Structure(s) within fifteen (15) days after termination of the license covering such Attachment(s). If Customer fails to remove its Attachment(s) within such fifteen (15) day period, Company shall have the right to remove such Attachment(s) at Customer's expense. Also, section 3.1.4 of the redlined Attachment Agreement, the Company removed the words "revoke the license". In the Towns' objections, the Towns state that NGRID neglected edits to the following sections that were proposed by the Towns and are required to prevent revocation: 2.3, 2.4, 3.1.3, 3.1.4, and 4.3.3. The Towns did not attached the proposed edits referred to in the objection. The last set of edits proposed by the Towns that I could find on the Commission's web site was the attachment to the Towns' March 17, 2014 status report. I reviewed the Towns' proposed edits to sections 2.3, 2.4, 3.1.3, 3.1.4, and 4.3.3 in that document to determine if these revisions were required to the Attachment Agreement in the compliance filing in order to comport with my May 30, 2014 memo. The Towns' proposed edits to these sections are not relevant to the issue of license termination, and therefore, are not required to have the Attachment Agreement comport with my memo and the Commission's actions at the July 25<sup>th</sup> open meeting. Based upon this review, I find that the compliance filing accurately reflects the recommendation made in my May 30, 2014 memo regarding license termination.

In item IV. above, I stated that the Towns should be able to work on their facilities so long as they do not interfere with the delivery of electricity, comply with safety requirements, and indemnify the Company against any damage that might be caused, and do not need to notify

NGRID every time the Towns work on the streetlights that they acquire from NGRID. This issue was raised in the Towns' status report of March 17, 2014, although that report did not provide a specific reference to any language in the Attachment Agreement that required revision. I have reviewed the Attachment Agreement provided by NGRID in the compliance filing. I do not see any provisions that prevent the Towns from performing work on their acquired assets unless they secure permission and supervision from NGRID. I think it is important to distinguish between different types of activities, such working on a street lighting asset or relocating or changing an attachment. Consider an example of a conventional street light mounted on a distribution pole. The street light consists of the mounting arm, a fixture, a lamp, and a photocell control. The mounting arm is attached to the pole, which continues to be owned by NGRID. Once the town has acquired this asset from NGRID, it should be able to change the lamp or the photocell without obtaining permission from NGRID. However, if the town desires to change the location of the attachment (the mounting arm), such as moving it to another position higher or lower on the pole, the town should obtain permission from NGRID. This would be necessary to ensure that the new location of the attachment does not adversely impact the electrical distribution system or other third party attachments. This delineation of work is consistent with how utilities treat other third party attachments. When cable TV companies attach power supplies to utility poles to power their hybrid fiber optic – coax systems, they need approval from the utility to attach or relocate this device on the pole. However, the cable TV company can perform work on this device, such as replacing electronic components inside the device, without utility approval.

The Towns' objections state that the agreement must now reflect the Town's proposed edits to the definition of "material change" and §§ 4.1.1, 4.1.3 and 4.2.1 in order to accomplish the Commission's ordered result. I reviewed those sections of the Attachment Agreement in the compliance filing. Section 4.1.1 states that the Towns shall provide Company a written notification of all proposed actions including, but not limited to, installation, replacement, reorientation, relocation, Material Changes or removal associated with the proposed or existing Attachment(s). In their March 17, 2014 proposed edits, the Towns seek to modify this language to read as follows: The Customer shall provide Company a written notification of all proposed actions **that impact service** including, but not limited to, installation, replacement, reorientation,

relocation, Material Changes or removal associated with the proposed or existing Attachment(s) utilizing the forms in APPENDIX II. I believe that language proposed by NGRID does not prevent the Towns from working on their facilities, and that the revision proposed by the Towns is not required for compliance with my memo or the Commission's actions at the July 25<sup>th</sup> open meeting.

Section 4.1.3 states as follows: *The Company will make commercially reasonable efforts to accommodate Customer's request for a Street and Area Lighting Attachment License. However, Company may, in its sole discretion, refuse to grant a Street and Area Lighting Attachment License or refuse authorization for the relocation, reconfiguration, Material Change or replacement of existing Attachments when Company reasonably determines that conditions including, but not limited to, the following exist:*

- (i) The proposed Attachment threatens the safe operation of Electric Distribution System,*
- (ii) Pole or Structure may not be replaced by the Company to accommodate Customer's proposed Attachment,*
- (iii) The existing Facilities on the Pole or within the Structure may not be rearranged to accommodate the proposed Attachment changes, or*
- (iv) The proposed Attachments will negatively impact other customer services provided by Company.*

*The list of above-mentioned conditions is not an exhaustive list and other conditions may exist that would require Company to refuse to grant a license.*

The Towns propose to remove the words "or replacement" highlighted above. I do not believe that such a change is required for compliance with my memo or the Commission's actions at the July 25<sup>th</sup> open meeting.

Section 4.2.1 states as follows: *For each Pole and/or Structure upon or within which the Customer requests a new Attachment requiring an electrical connection or a Material Change, the Company will determine if a Field/Office Survey is required. The Field/Office Survey shall identify the required work, if any, that is necessary to facilitate the electrical connection and determine whether or not the Pole or Structure is adequate to accommodate the requested Attachment. The Company shall provide the Customer with a Field/Office Survey cost estimate*

*representing all anticipated costs. Company shall perform the Field/Office Survey(s) following receipt of the Customer's written authorization and advance payment of the estimated total cost specified by the Company in accordance with Article 6.0. The Towns propose to insert the following sentence at the end of the paragraph: If the Field/Office Survey charge exceeds the standard charge established in Appendix I, within thirty days after completion the Company will provide a certified account of the actual costs and refund any difference between the estimated and actual costs to the Customer. This proposed addition deals with the cost of Company field surveys to accommodate new attachments, and does not prevent the Towns from working on assets acquired from NGRID. I do not believe that such a change is required for compliance with my memo or the Commission's actions at the July 25th open meeting.*

Based upon the above discussion, I find that Attachment Agreement in the compliance filing comports with my May 30, 2014 memo, and therefore complies with the Commission actions at the July 25th open meeting.