

additional time would be needed to work on the outstanding issues, so the parties requested another extension through March 17.

Given the extent of the still outstanding issues requiring resolution, the Towns resolved to prepare to make an independent status filing to the Commission and on March 6 sent National Grid a revised draft of their proposed form of the agreements so that National Grid could see the Towns' position and refer to it as they further considered revisions to their documents. As before, National Grid did not respond directly to the Town's proposed form of agreement. On March 10, National Grid sent the Towns revised versions of its Sales and Licensing agreements. The revisions addressed some outstanding issues but the Company sustained its position on much language of concern to the Towns.

The Towns have worked hard and in good faith to resolve their disagreements with National Grid's proposed forms, investing substantial resources in the process. Nevertheless, the Towns have resolved to file their preferred resolution of the tariff including the Towns' proposed form of agreement as an attachment. We also produce redlined drafts of National Grid's forms to illustrate the Town's specific concerns and proposed revisions to those forms. This memo summarizes the remaining, general concerns.

I. The Tariff

- a. Incorporating agreement: The Towns still submit that the single Sales and Attachment Agreement they propose should be an exhibit to the Tariff. This form of agreement is much simpler, more straightforward and equitable than the forms proposed by National Grid. The Towns' form more directly serves the purposes of the Act by allowing the Towns to better manage the streetlights at reduced cost

while not subjecting them to unfair terms for the transfer and ongoing operation of their streetlights.

- b. Metering: The December 16 status report indicated that the Towns had proposed a metering pilot program to troubleshoot this technology and expedite its adoption. National Grid ultimately informed the Towns that it was not prepared to develop a pilot as part of this proceeding and would not presently commit to a schedule for that. The Towns maintain that this technology is fundamentally a “control” as contemplated by the Act. The Act provides that “the new tariff shall be structured so as to allow options for various street lighting controls, including both conventional dusk/dawn operation using photocell or scheduling controls, as well as schedule-based dimming or on/off controls that dim or turn off street lights during periods of low activity.” R.I. Gen. Laws §39-30-3(a)(1). In their involvement with the development of the Act, the Towns intended “controls” to mean controls that both measure and control the amount of energy delivered to a streetlight. “Periods of low activity” was included because municipal owners have to respond to differing schedules in special events, and only the remotely operated metering controls provide this public safety functionality. Metering control technology is available and already in use in other locations and should be allowed by the tariff and incorporated into streetlights as quickly as possible to enhance efficiency and operation and allow for the most accurate billing. As established at the hearing, streetlight metering controls available on the market and used today meet utility-grade meter standards (ANSI c12.20.5) and are more accurate than standard electromagnetic meters. In early March, the Towns proposed the

following compromise agreement to allow National Grid time to prepare for metered streetlights but not require another rate tariff filing

- The S-05 Rate tariff contain both metered and non-metered provisions
- After the PUC approves the S-05 Rate Tariff:
 - No metering controls will be deployed for three months (Waiting Period)
 - After the Waiting Period, no more than 2,000 controls in no more than two municipalities will be deployed in the next three months (Introduction Period)
 - During the Introduction Period, the metered lights will be billed as unmetered, and the metering data used for comparison.
 - After the Introduction Period, any Town may deploy metering controls, and any deployed metering controls will be used for billing purposes, and the municipalities will be free to control the lighting levels at their sole discretion, with no notice to National Grid of any operating changes, since the lights will be billed only on power distributed and consumed at the fixture and measured by the meter.

National Grid has not responded to this proposal.

- c. Operating Schedules: The Towns maintain that the tariff should allow for the flexibility of dimming at 30% or 50% energy reduction for a four-hour period per night. National Grid still maintains that it is too burdensome or otherwise not practical to include two dimming options.

II. Agreement of Sale

- a. Inventory/Pricing methodology: The December 16 status report indicated that the parties intended to do an illustrative calculation of the purchase price so that the Towns could understand and troubleshoot the methodology and better understand how National Grid will calculate the proposed purchase price in a manner consistent with the Act. The Towns current understanding is that these model calculations are underway for Richmond, South Kingstown and Pawtucket but the Towns have not received results and remain concerned about accuracy of the

methodology given the lack of clarity and accuracy in both the inventory information and purchase price information National Grid produced in response to Data Requests. One important element of this methodology is to ensure the right process to identify streetlights with operating problems prior to transfer so that National Grid can either fix them or discount the price accordingly. National Grid has been clear (and repetitive) that it expects to transfer the Facilities “AS IS WHERE IS” – the Towns are willing to agree to that as long as the transfer price accurately reflects their transferred condition. The PUC’s Order in this docket should be clear that if the parties cannot agree on a fair price, they may submit the pricing dispute to the PUC for resolution within sixty days; this dispute resolution process is not otherwise addressed anywhere in the proposed filings.

- b. Easements, licenses and grants: The Act is clear that once the Towns buy the streetlights, any rights National Grid had to occupy the poles and operate the streetlights automatically transfer to the Towns. R.I. Gen. Laws §39-30-3(c). However, National Grid’s proposed agreement leaves it to the Towns to independently verify fundamental rights to access and operate the streetlights. The Towns argue these access rights are essential values of the assets proposed to be sold and National Grid has custody of such information so any such agreements must be shared and inadequacies resolved or properly discounted from the price before the sale.
- c. Existing warranties: The Towns expect that existing equipment warranties will be assigned with the sale of the street lighting equipment as an important element of the asset value and want that to be clear in this agreement, especially given all the

warranty disclaimers National Grid requires. National Grid argues this proposed language is inconsistent with an “AS IS WHERE IS” transaction.

- d. **Liability, Indemnification and Insurance:** The Towns maintain that one-sided liability, indemnification and insurance requirements are unreasonable, especially under the circumstances of these transfers (a history of overcharged mismanagement). The Towns prefer to remove such provisions but if they must be included the Towns seek reciprocal terms.

III. Attachment Agreement

- a. **Attachment rights:** The Towns submit that they have a statutory right for their streetlights to occupy National Grid’s poles and supporting infrastructure. The Act states that the Tariff must provide “for the use by such municipality of the space on any pole, lamp post, or other mounting surface previously used by the electric distribution company for the mounting of the lighting equipment.” R.I. Gen. Laws §39-30-3(a)(1). In many places, National Grid’s proposed language impedes that right by allowing National Grid or third party attachees to freely terminate the license or make changes to the Towns equipment that impede the Towns’ rights, generally at the Towns’ expense. The Towns understand that their attachments cannot be allowed to impede National Grid’s provision of electric distribution service or create a safety hazard and may sometimes need to be moved for reasons not under National Grid’s control (e.g., pole removal for a roadway project), but otherwise the Towns’ right to attach must not be terminated or otherwise impeded. If National Grid or a third party prefers to otherwise disturb the Towns’ Facilities, they must do so with the Towns’ prior approval and at their own expense.

- b. Restricted use: National Grid proposes to restrict the Towns' use of its purchased equipment "solely" for existing streetlight infrastructure and require additional licensing and approvals for any added infrastructure. The Act states that "[u]pon such payment, the municipality shall have the right to use, alter, remove, or replace such acquired lighting equipment in any way the municipality deems appropriate." R.I. Gen. Laws §39-30-3(b). The Towns submit that when they buy the equipment they may use it for any purpose they see fit, including the installation of new metering equipment and or security or traffic cameras. National Grid need only review or approve such changes if they impact the load on National Grid's pole or involve a new electrical connection the service of which is not captured by a meter or otherwise accounted for under this Tariff.
- c. Easements, licenses and grants: See Agreement of Sale, above.
- d. Labeling: The Towns thought that the parties had reached a clear agreement on the Towns' obligation for labeling but that agreement is not reflected in National Grid's proposed language.
- e. Company Work: The Towns submit that National Grid need only be informed of Town work on the equipment and exercise oversight if that work impacts the load on National Grid's pole or impacts National Grid's distribution system. Otherwise, National Grid need only be notified of changes that impact the electrical service or rate. National Grid's proposed agreements still require much more of National Grid's supervision at substantial and unwarranted cost to the Towns. The Towns also argue that charges for National Grid's work must be at actual cost as evidenced by an accounting.

- f. Company requirements: National Grid’s proposed agreement requires compliance with “Company Requirements” that the Towns have not received. The Towns do not see why they should be required to comply with anything other than existing laws and regulations and certainly would prefer not to have to conduct another negotiation of Company Rules they have not seen.
- g. Liability, Indemnification and Insurance: See Agreement of Sale, above.

In sum, the Towns have dedicated extensive time and resources in the effort to resolve fair and reasonable terms for these streetlight transfers. However, National Grid has maintained its position of entitlement to terms that are not compliant with the Act or its intent to allow the Towns to better manage the streetlights at reduced cost. We respectfully request the Commission’s assistance in resolving these matters.

Respectfully submitted,

THE RHODE ISLAND LEAGUE OF CITIES
AND TOWNS AND THE WASHINGTON
COUNTY REGIONAL PLANNING COUNCIL

By their attorney,



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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2014, I mailed this original pleading and 9 photocopies to the PUC and sent a true copy of the document by electronic mail to the parties, the Office of Energy Resources, National Grid, The Division of Public Utilities and Carriers Advocacy Section, the Rhode Island Office of the Attorney General and the Energy Efficiency Resources Management Council.



Seth H. Handy