STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF WIND ENERGY DEVELOPMENT, LLC AND ACP LAND, LLC RELATING TO INTERCONNECTION	: : :	DOCKET NO. 4483

MEDIATION/NON-BINDING ARBITRATION
SUMMARY AND RECOMMENDATIONS

I. Summary of Positions

On January 15, 2014, Wind Energy Development, LLC (WED) and ACP Land, LLC (ACP) (collectively Petitioners) filed a petition for dispute resolution with the Public Utilities Commission (PUC) in accordance with provisions of The Narragansett Electric Company Standards for Connecting Distributed Generation (tariff).[1] Petitioners claimed that National Grid: (1) was charging a pass-through interconnection tax from which these projects are exempt pursuant to federal law; (2) was charging more than their cost of conducting interconnections; (3) was charging more than their cost of conducting interconnection studies; and (4) was not producing timely studies.[2]

Petitioners claimed that National Grid should not be charging a pass-through interconnection tax because National Grid is not liable for the tax. In support of their position that National Grid is not liable for the tax, Petitioners relied on IRS Notices 88-129 and 2001-82 as well as four private letter rulings issued by the Internal Revenue Service (IRS).[3] Next, Petitioners disputed that project developers should be responsible for requesting a final accounting of interconnection costs. Because the estimated costs are prepaid by the developers,

[1] The Narragansett Electric Company d/b/a National Grid (National Grid) tariff at issue is R.I.P.U.C. No. 2007, approved by the Public Utilities Commission on December 21, 2011.
[2] Pet. at 1.
[3] *Id.* at 2-3.

the Petitioners asserted that the final accounting should be automatic.[4] Petitioners made a similar argument with regard to non-residential projects for which National Grid may increase the amount charged based on the actual costs incurred for the study.[5] Finally, Petitioners claimed that National Grid was not producing timely impact studies.[6]

On February 14, 2014, National Grid submitted a response to the petition. Addressing the tax gross-up charge, National Grid first declared that the PUC lacks jurisdiction to decide issues of tax liability. Second, National Grid claimed that IRS Notice 88-129 only provides a "safe harbor" from tax liability for transmission interconnections whereas the projects at issue in this proceeding are distribution interconnections. Third, National Grid noted that under the IRS rules, private letter rulings can only be relied upon by the taxpayer to whom the letter is directed. Therefore, National Grid maintained that the interconnecting customer should pay for the cost of obtaining a private letter ruling with the assistance of National Grid as the taxpayer.[7]

Turning to Petitioner's position regarding a final accounting of system modification costs and interconnection study costs, National Grid relied on the language of the various agreements incorporated into the tariff and noted that the language does not require an automatic final accounting, but rather, requires the interconnecting customer to request a final accounting within a fixed period of time. National Grid explained that it prefers this method because final accountings can be burdensome to conduct.[8] National Grid concluded that Petitioners' complaint is with the language of the tariff and rather than any alleged tariff violations by National Grid. With regard to the interconnection study costs, National Grid also cited the distributed generation interconnection statute, R.I. Gen. Laws § 39-26.3-4(a)(6), which "only

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[4] *Id.* at 4-5.
[5] *Id.* at 5-6.
[6] *Id.* at 6.
[7] Letter from Thomas R. Teehan to Cynthia Wilson-Frias, 1-2 (Feb. 14, 2014).
[8] *Id.* at 2.

provides for increasing the fees and specifically does not allow for the statutory fees to be reduced."[9] Finally, National Grid disputed Petitioners' claim that the interconnection studies were not timely produced by National Grid, noting that ACP's interconnection study was produced in 63 days for the predecessor project owner and a revised study was produced after certain design changes were submitted to National Grid. With regard to the WED Coventry II project, National Grid noted that it could not complete the study until "flicker data" was produced by the developer, thus delaying National Grid's finalization of the study.[10]

II. Process

This matter has arisen out of section 9.2 of the tariff that provides for dispute resolution through mediation/non-binding arbitration. This is the first time an interconnecting customer has submitted a written request to the PUC for dispute resolution, thus triggering the provision.[11] Petitioners and National Grid agreed that the various deadlines set forth in section 9.2 of the tariff would not be strictly followed. Section 9.2.b of the tariff allows PUC staff to assist the parties in attempting to resolve the differences at an initial meeting. If the differences remain unresolved after the meeting, the parties will select a neutral from a list maintained by the PUC. PUC staff assigned to this portion of the matter would manage the selection. However, after the first meeting with PUC legal counsel assigned to this matter, the parties agreed that there was not yet sufficient information for resolving the dispute. However, both parties were interested in

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[9] *Id.* at 3, n.3.

[10] *Id.* at 4. Referencing IEEE Standard 519, the tariff states that "[f]licker is considered objectionable when it either causes a modulation of the light level of lamps sufficient to be irritating to humans, or causes equipment misoperation." R.I.P.U.C. No. 2078, Sheet 32, n.11.

[11] National Grid's Massachusetts interconnection tariff contains the same provision. However, an informal inquiry to the Massachusetts Department of Public Utilities staff revealed that no party had requested dispute resolution under the Massachusetts tariff. Therefore, this matter not only represents the first time a substantive review has commenced under the tariff, but also represents a test of the process and reasonableness of the provision.

meeting with PUC legal counsel to attempt resolution before moving forward with outside mediation/non-binding arbitration.[12]

The following four issues were identified: (1) whether National Grid is charging a pass through interconnection tax from which these projects are exempt pursuant to federal law; (2) whether National Grid is charging more than their cost of conducting interconnections; (3) whether National Grid is charging more than their cost of conducting interconnection studies; and (4) whether National Grid is producing timely studies. In a memorandum to the parties, PUC legal counsel stated:

> With regard to the scope of review, taking into account the Commission's jurisdiction, issues 2-4, are squarely within the Commission's jurisdiction. With regard to issue 1, whether National Grid is charging an improper/unreasonable charge is within the Commission's jurisdiction. I also believe the issue may be appropriate for mediation in this context. However, the Commission does not sit as a tax court and in assisting the parties on this issue I believe it would be outside of my expertise and arguably, the jurisdiction of the Commission to determine whether National Grid has tax liability.[13]

There appeared to be a question of how National Grid reached the decision to charge the tax and what steps they took to ensure this resulted in a reasonable charge. Legal Counsel explained that mediation might be appropriate to discuss how resolution of the tax liability might be sought, who should seek it, who should pay, and what the implications of reaching certain types of resolutions might be on future interconnecting projects.[14]

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[12] Utilizing the assistance of one staff member to review disputes and make recommendations to the PUC is consistent with prior PUC practice. In telecommunications, pursuant to federal law, disputed interconnection agreements are subject to arbitration by a PUC staff member, with the recommended decision made to the full PUC. See Regulations Governing Arbitration, Mediation, Review and Approval of Interconnection Agreements (http://www.ripuc.org/rulesregs/commrules/ICA-Regs(5-12-97)rev.pdf). In these cases, only the staff member assigned the matter receives the submissions and a "Chinese Wall" is employed such that there is no communication within the agency regarding substantive matters until such time as the staff member has issued a report and/or recommendations.

[13] Mem. to Attys. Handy and Teehan, 1 (Feb. 12, 2014).

[14] E-mail from Cynthia Wilson-Frias, Senior Legal Counsel, to Seth Handy, Esq. (with copy to National Grid) (Feb. 12, 2014) (on file in Clerk's Office).

Limited discovery was issued to the parties from PUC legal counsel and two meetings were held with the parties. During the proceeding, ACP withdrew its allegation that National Grid did not produce a timely interconnection study.

III. Discussion/Recommendations to PUC

A. Income Tax Gross-Up (pass-through tax)

Petitioners maintain that it is "crystal clear" that IRS Notice 88-129 does not require a tax to be imposed on National Grid for contributions in aid of construction where a distributed generation project is interconnecting to National Grid's distribution system for the purpose of sending power to National Grid. However, National Grid noted that IRS Notices 88-129 and 2001-82 referenced transmission interties and expressed concern that the IRS may find that a distribution interconnection to be sufficiently different for the Notice not to be applicable.

In addition, the Petitioners noted that there are several private letter rulings, including one provided by National Grid, with respect to a distribution interconnection project that indicate that "the transfer of the intertie by Generator to Taxpayer will not constitute a contribution in aid of construction under § 118(b) and will be excludable from the gross income of Taxpayer as a nonshareholder contribution to capital under § 118(a)." Petitioners assert that if the letter rulings apply to situations with a distribution intertie, then as a matter of law, the IRS Notices must apply to the distributed generation projects in Rhode Island. However, National Grid properly noted that the basis for the private letter rulings is fact-specific and specifically state that they cannot be relied upon by anyone other than the taxpayer for whom the letter was written.

Despite these arguments as to tax liability, the simple question for the PUC is not whether National Grid owes the tax, but whether National Grid's charge is reasonable and appropriate. If National Grid owes the tax, it is a reasonable charge. If National Grid does not owe the tax, it is

an unreasonable charge. Therefore, the question becomes which party has the burden of determining whether the tax is owed and whether the charge reasonable?

The burden of proof of the reasonableness of a rate, toll or charge is unequivocally on the utility.[15] In this case, the tariff does not state that the tax will be charged, but rather that when an Impact Study or Detailed Study is provided, National Grid will provide, along with the Study, "a statement of the Company's policies on collection of tax gross-ups."[16] A review of National Grid's policy, contained in a footnote to the cost estimate, is "[t]he associated tax effect liability is the result of an IRS rule, which states that all costs for construction collected by National Grid, as well as the value of donated property, are considered taxable income. Current tax effect rate is 11.29% for The Narragansett Electric Company assets."[17] National Grid represented that in addition to reviewing the IRS Notices 88-129 and 2001-82 and two private letter rulings the Company consulted with two large public accounting firms "to confirm its analysis relative to the payment of the tax in dispute."[18]

Based on the evidence presented, it appears that National Grid is charging the tax in good faith and paying it to the IRS. Thus it does not appear that National Grid is assessing an unreasonable charge.[19] However, if National Grid does not owe the tax, it should not be paying

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[15] R.I. Gen. Laws § 39-3-12.
[16] R.I.P.U.C. 2078, Sheet 39.
[17] National Grid's Response to IR-5, Attachment 5(a). Petitioners alleged that the tax rate assessed to these projects has varied "without notice or Commission approval." Pet. at 2. However, no evidence of this was presented by the parties. Furthermore, it is not clear Commission approval would be required for this particular tax where it is supposed to be designed as a pass-through of actual costs rather than one upon which distribution rates are set for the revenue requirement. Therefore, National Grid should be charging its actual tax rate if the tax is due.
[18] National Grid's Response to IR-6.
[19] What is unclear at this time is whether the interconnection costs included in the ceiling prices approved by the PUC for distributed generation projects includes the tax. A review of Docket No. 4288 shows that the CREST model allows for the interconnection costs to include taxes, that the interconnection costs included in the ceiling prices appear to begin with estimates provided by National Grid, and that the interconnection costs appear to take into account prior years' costs. If the interconnection costs included in the ceiling price did, indeed, account for assessment of the tax, then most of the Petitioners will not be affected by a decision by the PUC on this tax issue. In fact, allowing the distributed generation projects to avoid the tax could result in a windfall, meaning that ratepayers are paying higher ceiling prices than required to fulfill the state's policies. The only exception to this is the WED 2

it and thus, should not be passing it through to the developer. Therefore, the question becomes which party should have the burden of paying for the resolution of this issue – the taxpayer (National Grid) or the project developers? National Grid has argued that it should be each project developer paying for a private letter ruling while the Petitioners maintain that the issue is either resolved, or National Grid should pay for the private letter ruling, which they estimate could cost $30,000.

There is currently no mechanism in Chapter 26.3 of Title 39 by which National Grid is entitled to recover administrative expenses associated with the distributed generation standard contracts. The interconnection study costs are supposed to cover the actual cost of interconnection and can be adjusted upward for non-residential customers to reflect the actual costs if not covered by the statutory rate. The interconnection study costs in R.I. Gen. Laws § 39-26.3-4 were only set by statute for calendar year 2012. After that, the PUC was required to set a new fee schedule that is no less than that which is contained in the statute. The PUC has not exercised its authority. Accordingly, the PUC could adjust interconnection study fees to include some level of expense associated with obtaining a private letter ruling from the IRS to determine whether National Grid is liable for the tax associated with a contribution in aid of construction for these projects.

Because developers are initiating the project, and obtaining an IRS private letter ruling could be a prudent and legitimate expense of going forward with each project, developers should

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project which will be operating under the net metering tariff, with its output paid at the rate set forth in the net metering law, where credits are paid at the rate equal to the distribution charge, the transmission charge, and the transition charge. This project would operate under a tariff rather than a contract and therefore, may have a stronger argument that it is being adversely affected by National Grid's position. Petitioner notes that if the tax is not owed, the ceiling prices, if they include the tax, would result in an unnecessary cost to ratepayers.

arguably bear the cost of obtaining a private ruling.[20] However, where the cost of obtaining a private letter ruling may be more expensive than paying the tax, it may not be appropriate to require a private letter ruling (or the related costs through the interconnection study) in all cases. Therefore, this is an open policy question for the PUC to consider more fully as part of the further review allowed in the tariff.[21]

B. Accuracy of Interconnection Studies and Interconnection Charges

There are two interrelated issues that must be addressed. The first issue relates to the tariff provisions allowing for a final accounting and the second issue relates to the accuracy of estimates. In 2008, when the first version of the Standards for Connecting Distributed Generation were considered by the PUC in Docket No. 3904, the Division recommended that provisions for cost true-ups be incorporated in the tariff to allow for excess cost recovery to be refunded to Interconnecting Customers. The Division stated that "[t]he Interconnecting Customer should not pay more than the actual costs incurred by [National Grid]."[22] The tariff approved in Docket No. 3904 contained a provision related to final accounting which is still reflected in the current tariff. Several places in the tariff address the interconnecting customer's responsibility for actual costs of interconnecting.[23]

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[20] Because Petitioners believe that National Grid does not owe the tax, Petitioners advised that they neither believe developers nor that all ratepayers should fund private letter rulings. Such a finding by the PUC would be requiring National Grid to either seek letter rulings through its shareholders or to not pay a tax the utility believes it owes.

[21] Hopefully, with the increase in state-mandated renewable development programs around the country, the IRS will issue a Notice that will provide some certainty and finality for all involved.

[22] Div. Memorandum (Feb. 28, 2008).

[23] For example, Section 5.1 states: "[t]he Interconnecting Customer shall be responsible for reasonably incurred costs of the review by the Company and any interconnection studies conducted as defined by [the fee schedules]." This section allows National Grid to recover costs that exceed the statutory fees from non-residential interconnections. Also, Section 5.3 states that [t]he Interconnecting Customer shall also be responsible for all costs reasonably incurred by the Company attributable to the proposed interconnection project in designing, constructing and maintaining the System Modifications…To the extent that Company Terms and Conditions and/or tariffs allow, the Company will refund the appropriate portion of System Modification costs to the Interconnecting Customer as required by the applicable tariff." In addition, Section 5.6 states, "Interconnecting Customer acknowledges that it will be responsible for the actual costs of the System Modifications described in the attached exhibit to the

Currently, in order to obtain a final accounting of costs, an Interconnecting Customer must request the accounting within 90 business days after completion of system modifications and construction. Otherwise, National Grid does not complete a final accounting and no refund is provided to customers. This is stated in the tariff, on the Feasibility Study Agreement, the Impact Study or ISRDG Agreement, the Detailed Study Agreement, and the Interconnection Service Agreement.[24]

According to National Grid, requiring customers to request the final accounting is appropriate because the accounting can be burdensome, but also, the simple approach within the Interconnection Standards "recognizes the reality that although construction costs may fluctuate above and below the initial study estimate they can be reasonabl[y] calculated for each project and over the course of time the amounts paid by the entire class of interconnecting customers will reflect the costs expended for interconnection construction under the DG program."[25] In other words, while National Grid is providing project-specific estimates and collecting project-specific payments, it is looking at the group of distributed generation projects as a whole.

The problem with this approach is that it conflicts with the plain language of the tariff which requires interconnecting customers to pay the actual costs and in the absence of a final accounting there is no basis for believing the costs have been accurately recovered from the interconnecting customers. For example, ACP requested an audit within the 90 day timeframe and on March 7, 2014, National Grid notified ACP that of the $91,531 paid by ACP, the costs were only $32,376.01, resulting in a refund due to ACP in the amount of $59,154,99. The major reason for the discrepancy was a field decision to reduce the number of new poles by half.

Interconnection Service Agreement, whether greater or lesser than the amount of the payment security provided under this section."

[24] R.I.P.U.C. 2078 in Exhibit D, Exhibit E, Exhibit F, and Exhibit G.

[25] National Grid's Response to IR-3.

However, as the developer was not part of that field decision, absent the final accounting, only National Grid would have the information available to it.[26] ACP took issue with the amount of information contained in the final accounting. However, National Grid explained that the content and format of the final accounting was the same as the estimate provided with the impact study agreement. Furthermore, National Grid explained that the company cannot provide the final accounting until all contractor invoices have been entered into its system.

As a short-term solution, National Grid agreed to include a line on the interconnection service agreement and on the billing invoice to remind project developers that they have 90 days to request a final accounting. As a long-term solution, the PUC should require National Grid to modify the tariff to require an automatic final accounting where the costs in the impact study exceeds $5,000.[27] This would cover non-residential projects in excess of 250kw where National Grid deems the statutory fee to be inadequate, but would not require a review for very small installations where the cost of the final accounting may outweigh the difference in expense. However, small interconnecting customers for smaller customers should still retain the right to request a final accounting.[28]

C. Timeliness of Studies

The issue here is whether National Grid is producing studies within the statutory/tariffed time periods. To a certain extent the relevant statutory language added a layer of complication to

[26] Although out of time, National Grid agreed to conduct a final accounting for the WED NK Green, LLC project. The PUC should require National Grid to provide a copy to the PUC when provided to WED NK Green, LLC.

[27] Each agreement attached to the tariff contains the same "final accounting" language and if one is changed, consistency would suggest that all of the agreements should be changed.

[28] Petitioners pointed out that the impact study estimates are required to have a probability of accuracy of ±25% and posited that where a field decision is made that will impact the estimate by more than ±25%, there should be a real-time notice to the interconnecting customer. National Grid expressed concern that the information is not always relayed back to the company by contractors and they may not receive the information prior to receiving the invoices. However, National Grid is working internally to develop a formal process for field decisions that will affect cost to be provided to National Grid in a timelier manner. Furthermore, National Grid is in the process of conducting an internal review of several projects to compare the 2012 and 2013 estimates to actual costs as a "reality check" to determine how accurate the estimates have been. National Grid should be required to keep the PUC apprised of the progress and results on these matters.

discussion of this issue. R.I. Gen. Laws § 39-26.3-3(c) states, "[u]pon receipt of a completed application requesting a feasibility study and receipt of the applicable feasibility study fee, the electric distribution company shall provide a feasibility study to the applicant within thirty (30) days." Similarly, R.I. Gen. Laws § 39-26.3-3(d) states, "[u]pon receipt of a completed application requesting an impact study and receipt of the applicable impact study fee, the electric distribution company shall provide an impact study within ninety (90) days." To determine the deadline, it first must be determined when an application is complete.

Section 3.4 of the tariff states that for a renewable interconnecting customer a feasibility study will be completed 30 calendar days after the return of an executed feasibility study agreement with payment. The timeframe for an impact study for renewable distributed generation will be 90 calendar days after returning an executed impact study for renewable distributed generation agreement with payment. These statements are clear that the deadlines are based on receipt by National Grid of a study agreement and payment therefor. However, the impact study agreement does require the interconnecting customer to provide all additional information and technical data necessary for National Grid to conduct the impact study not already provided by the interconnecting customer.[29]

With regard to the two WED projects, two issues arose.[30] First, the WED projects are 1.5 MW wind projects that the PUC previously reviewed and found that although the projects were on one parcel of land, they were two separate projects for purposes of the distributed generation standard contract enrollment and net metering analysis. At the time of the PUC's review, National Grid had required two separate interconnection applications, one for each turbine. One

[29] R.I.P.U.C. No. 2078, Exhibit E.

[30] As a result of discovery in this matter, ACP withdrew its timeliness claim, recognizing that there had been some design changes discussed between the developer and National Grid which may have affected the timeline. The WED feasibility studies appeared to have been completed within 36 calendar days and because the tariff references business days, National Grid met the deadline.

project has a distributed generation standard contract and the other will operate under the net metering tariff. Subsequent to the PUC's decision regarding whether the WED projects were one or two, National Grid and the customer agreed to conduct the studies for both projects as if they were one although National Grid believed the pricing structure was different for each, as evidenced by an email to the developer dated August 9, 2013 from National Grid. No payment was received from the developer despite several emails from National Grid to the developer.[31] Thus, National Grid took the position that the impact study had not been executed as of February 18, 2014, and therefore, had not provided it.

During the meetings, it was revealed that the developer may have initially believed both projects should pay one fee or that each should pay the lower cost set forth in the distributed generation interconnection statute. National Grid ultimately agreed to reduce the impact study fee for the net metering project to the statutory fee for distributed generation projects. However, the payment dispute led to a delay in delivery of the impact study. The tariff does not directly address how payment for impact studies should be assessed in this type of situation. Based on these circumstances, the PUC would not have a basis for imposing a penalty in this matter as it appears the delay arose from a misunderstanding and lack of appropriate communication between both National Grid and the developer.

The second issue relative to the WED projects was the need for the developer to provide flicker data to compete an anti-islanding study.[32] According to National Grid, an anti-islanding study may not be required to complete every impact study, but is only necessary in places where

[31] Petitioners' Resp. to IR-2, attachments.

[32] "Anti-Islanding describes the ability of a Facility to avoid unintentional islanding through some form of active control technique." Islanding is a "situation where electrical power remains in a portion of an electrical power system when the Company's transmission or distribution system as ceased providing power for whatever reason... Islanding may be intentional, such as when certain segregated loads in a Customer's premises are provided power by a facility after being isolated from the Company [electric power system] after a power failure. Unintentional Islanding, especially past the [point of common coupling], is to be strictly avoided." R.I.P.U.C. No. 2078, Sheets 2 and 5 (capitalization in original as capitalized terms refer to defined terms in the tariff).

the total generation from the project exceeds the minimum load in the area of the project. National Grid explained that they will not know whether flicker data is needed until the impact study is in process. Unfortunately, the data is not readily available and the interconnecting customer must obtain it from the manufacturer.

In the case of WED, National Grid requested the flicker data approximately 30 days after receiving the executed impact study agreement and payment. National Grid did not receive the flicker data until January 2014, almost six months from the date of request. During the meetings, National Grid represented that the impact study could be completed within a month from receiving the flicker data.

This is a case where the impact study application was complete on June 21, 2013, when the executed application and payment was received by National Grid, thus triggering the 90-day review period. However, neither WED nor National Grid was aware an anti-islanding study would need to be completed at that time. In order to avoid this problem, National Grid could require additional data to be provided by every applicant at the time of making the application. However, this would place an additional burden on every applicant where only a few applications may be affected. Furthermore, it is unclear at this time if the way the flicker data is provided depends on the unique characteristics of the circuits affected. Under the circumstances, National Grid did not act unreasonably and did provide a timely impact study once it had all of the data it needed. To interpret the statutory and tariff language to be strict timelines would fail to recognize the unique circumstances that may surround each interconnection on the electric system and may have the adverse consequence where National Grid might start requiring more burdensome information from applicants in order to ensure they would never miss the deadlines.

To avoid situations like these in the future, National Grid should conduct an "accepted projects conference" following each distributed generation enrollment and before the submission of impact study applications. Such a conference could be more narrowly tailored than the outreach conferences conducted prior to enrollments and could ensure adequate communication and education of interconnecting customers relative to specific projects and expectations. Currently, National Grid will conduct a scoping meeting/discussion with the customer, if necessary, and has found it works well for customers who request one. This should be offered as a matter of course to each enrollee.

D. Other Issues Identified

As with any other informal proceeding, issues arise that were not necessarily raised in the initial petition. The tariff is very detailed and complicated. Among others, questions were raised as to how the language of the tariff could be simplified, whether the distributed generation interconnection statute applies to distributed generation and net metering projects, and what were the consequences to a distributed generation project not successful in enrollment.[33]

Therefore, in addition to the previous recommendations regarding various provisions of the tariff, the PUC should order National Grid to meet with several interested parties, not just Petitioners, to discuss the tariff provisions and determine what changes should be proposed to the PUC to address this issue. The PUC should require this review to take place within a 60-day timeframe for filing with the PUC for its review.[34]

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[33] According to National Grid, unsuccessful distributed generation contract applicants are removed from the interconnection process because certain thresholds must be met by certain times and if an interconnecting customer does not meet those thresholds, the project is removed from its queue. The purpose of this is to reduce the costs for viable projects. According to National Grid, the Massachusetts tariff contains more formal language to his effect. According to Petitioners, California allows a developer to pay to remain in the interconnection process. Petitioners also believe there may be some federal requirements that might apply to these interconnections.

[34] A cursory review of pending legislation to change the sale of electricity to National Grid from distributed generation projects from contracts to tariffed sales would not change the interconnection standards. Therefore, there is no apparent reason not to move forward with a full tariff review. *See* 2014 – H 7727 Relating to Public Utilities

Finally, it has become clear during this proceeding that the timeframes set forth in Section 9 of the tariff are unrealistic and, if the provision is retained by the PUC, should be amended as follows:

> Section 9.2.a, second sentence should be changed to "The other party shall also submit a summary within 10 days of the written request to the Commission."
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> Section 9.2.b, should be changed to "The parties will meet with a Commission staff person within 17 days of the submission of a petition to convene the Dispute Resolution Process. During that meeting, the Commission staff person may assist the parties in attempting to resolve the outstanding differences, or shall provide two options to the parties: (1) to engage with the Commission staff person to attempt to resolve the dispute or make recommendations to the Commission or (2) to proceed with formal mediation/arbitration as set forth in 9.2.c-l.
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> In the event the parties choose to engage the assistance of the Commission staff member, the Commission staff member will set a reasonable schedule for the submission of any discovery issued by the Commission staff member and for a subsequent meeting with the parties. The matter will proceed as directed by the Commission staff member and any party may request to move to the formal third-party mediation/arbitration set forth in 9.2.c-l prior to the final meeting conducted by the Commission staff member. Any information obtained by the Commission staff member, maintained by the Commission Clerk, shall be made available to the third-party mediator/arbitrator. Within ninety (90) days of the convening of the Dispute Resolution Process, the Commission staff member shall submit a summary of the dispute resolution process with the resolution, if one was agreed to, or recommendations to the Commission for its review under Rule 9.3.

In the event of a single issue or strictly factual issue, the matter may be resolved much more quickly. It is also unclear whether the third-party mediation/arbitration schedule set forth in the tariff, as it is currently written, is realistic.

E. Next Steps

Section 9.2.1 of the tariff states: "If one or both Parties do not accept the neutral recommendation and there is still no agreement, the dispute proceeds to Step 9.3." Section 9.3 of the tariff provides for adjudication by the PUC at the request of one or both of the parties, in writing. There is no deadline in the section for requesting adjudication. For clarity, because this

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and Carriers – Distributed Generation Growth Program (LC004759); 2014 – S 2690 Relating to Public Utilities and Carriers – Distributed Generation Growth Program (LC004420).

has been presented as a recommendation to the PUC, the parties should advise the PUC within fourteen (14) days from the date of this recommendation regarding the recommendations they will accept and those which they do not.

Respectfully submitted,

Cynthia G. Wilson-Frias
Senior Legal Counsel to PUC

Dated: 4/30/14