



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500

Chairperson Margaret E. Curran
Commissioner Paul J. Roberti
Commissioner Herbert F. DeSimone, Jr.

MEMORANDUM

08/14/14

From: Amy D'Alessandro, Esq.

To: Raquel Webster, Esq.
John Habib, Esq.
Seth Handy, Esq.

CC: Docket 4483 Service List

Re: 4483- DG Interconnection Dispute between WED, ACP Land and National Grid

This is a response to the parties' comments regarding the August 1, 2014 procedural memorandum.

I. Procedural Schedule. At the procedural conference, the parties agreed that a hearing would only be necessary if the PUC wishes to hear oral argument on the issues briefed. Petitioners have asked for the procedural schedule to reflect this, and the Company does not object. Therefore, the procedural schedule will reflect that a hearing will only be necessary if the Commission wishes to hear oral argument on the issues briefed.

Issue 1, as presented by Mr. Handy, refers to powers of the Division which is an entirely separate and distinct body from the Commission charged with separate powers and duties.¹ References to powers of the Division have no bearing on this proceeding. Furthermore, resolution of issue no. 1, as presented by Mr. Handy, requires an interpretation of tax law which has already been identified as a jurisdictional issue in this docket. Therefore, issue 1 will remain as set forth in the procedural memorandum of August 1.

¹ Letter of Seth Handy at 1 (08/04/14).

Issue 1, presented by National Grid, asks whether the Commission has jurisdiction to determine whether Petitioners are liable for payment of taxes related to their interconnection projects. This issue appears to be subsumed within the question of the reasonableness of the pass through interconnection taxes (presented by Commission counsel and National Grid) since a determination of the reasonableness of the tax necessarily requires a determination of the tax liability on the part of National Grid, and ultimately the interconnection customer, in this case Petitioners. That being said, the Commission will accept briefing of both issues in the hope of perhaps shedding additional light on the issue.

Mr. Handy would like to address whether the PUC has jurisdiction to order the parties to seek tax clarification from the IRS (issue 2). National Grid has posed a substantially similar issue in its memorandum.² This issue has been included in the procedural schedule below with an effort to incorporate the language proposed by both parties.

Mr. Handy would like to address whether National Grid is required to provide a final accounting when actual impact study costs in excess of the statutory cap for commercial projects are billed to the customer (issue 4). He would also like to address whether National Grid must perform a final accounting of actual interconnection costs and refund any excess estimated interconnection costs upon project completion (issue 5). These issues are appropriate for briefing by the parties; however, the issue of whether an automatic accounting should be performed whenever impact study costs exceed \$5,000 will also be briefed.

The procedural schedule will remain as follows with the understanding that a hearing will only be necessary if the Commission concludes that it wants to hear legal argument on the issues briefed.

Pre-hearing Briefs Due	08/29
Reply Briefs Due	09/12
Hearing	Oct. 29
Open Meeting	Nov. 12

Briefs shall address the following issues:

1. Does the PUC have jurisdiction to determine the reasonableness of the pass through interconnection taxes charged by National Grid to Petitioners.
2. Does the PUC have jurisdiction to determine whether Petitioners are liable for payment of taxes related to their interconnection projects?
3. Does the PUC have the authority to require either the Petitioners or National Grid to seek a private letter ruling (PLR) from the IRS to determine whether taxes are owed by the Petitioners related to their interconnection projects? If

² National Grid's Comments to Procedural Memorandum dated August 1, 2014 at 2 (issue #3) (08/06/14).

so, does the PUC have the authority to determine whether the costs associated with seeking the PLR should be borne by either party?

4. If the actual cost of an impact study exceeds the statutory cap for a commercial project, must National Grid provide a final accounting of those excess costs when it bills them to the interconnecting customer?
5. Must National Grid perform a final accounting of its actual interconnection costs and refund any excess estimated interconnection costs upon project completion?
6. Should National Grid perform an automatic final accounting when interconnection costs exceed \$5,000?

II. Confirmation of Agreements. Petitioners request that the agreement 4 be slightly amended and also urge the Commission to address the tariff review simultaneously with the resolution of the within disputes. The Commission will incorporate the Petitioners' edits into agreement 4; however, the Commission remains unpersuaded that the tariff review should be considered simultaneously with the dispute resolution. In support of a simultaneous tariff review, Petitioners state, "delay is detrimental to pending projects;" however, Petitioners do not identify which projects would be affected by the tariff review, nor do they specify the nature of the detrimental treatment such projects would endure as a consequence of the tariff review being deferred until after this dispute is resolved. The tariff review proposed during mediation is a comprehensive review of the entire tariff, approximately 85 pages in length, including attachments, all of which will be subject to scrutiny by various interested parties and the Commission. The tariff review contemplates a potential myriad of issues, resolution of which will have broad application to all distributed generation customers. Such a review goes far beyond the scope of this dispute involving three private parties. Including the tariff review as part of this dispute has the potential to detract from, and ultimately prolong, resolution of this dispute, an undesirable effect for both parties. Deferring the tariff review will allow the parties and the Commission sufficient time to engage in a full and proper analysis of the issues raised in this dispute and promote a timely and efficient resolution. Furthermore, the Company has represented that it intends to revise the tariff in September to reflect recent changes to ISO-NE's operating procedure 14 and the recently enacted Renewable Energy Growth legislation and has requested that the working group/stakeholder meetings occur subsequent to these tariff revisions, with a final proposal due in early November. The Petitioners have not provided a sufficient basis for deviating from this reasonable and efficient approach to the tariff review. For these reasons, the Commission will consider the Company's stakeholder tariff review proposal in early November, as more clearly set forth below.

The parties have agreed on the following provisions which shall apply to all distributed generation and net metering interconnections, and the same shall be incorporated into a final order of the Commission:

1. National Grid will conduct an accepted projects conference following each distributed generation (DG) enrollment.

2. National Grid will notify customers of the accepted projects conference upon transmittal of the executed DG standard contract.
3. National Grid will conduct a routine scoping meeting with all DG enrollees.
4. National Grid will inform customers of their right to request a final accounting of actual interconnection costs on the billing invoice and interconnection service agreement.
5. On or before September 30, 2014, after National Grid has revised the distributed generation interconnection tariff (R.I.P.U.C. No. 2078) to reflect recent changes to ISO-NE operating procedure 14 (OP14) and the Renewable Energy Growth legislation, National Grid will convene a working group of parties expressing interest in meeting on a regular basis to discuss the distributed generation interconnection tariff (R.I.P.U.C. No. 2078) provisions and determine whether additional modifications to the tariff should be proposed to the Commission. If parties express an interest in doing so, the Company will establish a schedule of regular meetings to be held at the Company's Melrose Street, Providence office during a three-month period. The Company will report to the Commission on the outcome of those meetings, including any proposed agreed upon tariff revisions and any unresolved issues raised by the parties, and present the same for review and decision by the Commission by November 7, 2014. The filing shall include tariff revisions resulting from ISO-NE OP14, the Renewable Energy Growth legislation, and the distributed generation working group, as well as any unresolved issues raised by the working group.

III. Status of Petitioners' Settlement Proposal.

Following the procedural conference on July 31, 2014, National Grid was asked to respond to Petitioners' settlement proposal. On August 12, 2014, National Grid filed a response to the settlement proposal (100 pages in length including attachments), containing what appears to be a rejection of Petitioners' proposal and a counterproposal. The Commission is asking to be kept apprised of the status of the parties' negotiations and to notify the Commission if/when a settlement is reached. The Commission also asks the parties to clearly identify the project(s) which may be the subject of any future proposals.

IV. The Parties are asked to complete discovery by October 22, 2014.