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	)

WIND ENERGY DEVELOPMENT, LLC
and ACP LAND, LLCS'
MEMORANDUM OF LAW

Wind Energy Development, LLC (WED) and ACP Land, LLC (ACP) (collectively Petitioners) appreciate the Commission's invitation to file this memorandum presenting contextual information and argument not suited for cross examination of witnesses regarding the interconnection tariff.

There are resource imbalance issues that cripple Petitioners' advocacy effort and sustain status quo interests in these docket proceedings to the detriment of Rhode Island. Ratepayers fund National Grid staff and legal counsel, with a mark-up. In contrast, advocates like the Petitioners must fund their own advocacy. As John Farrell of the Institute for Local Self Reliance has noted:

> Many of the enabling statutes for state regulatory commissions expressly mention the preservation of the public interest. Despite this legal charter, in most states regulatory commissions tend to see themselves as arbiters between public interest advocates and utilities rather than an actual advocate for the public interest. Contesting utility interests is left to non-utility "intervenors" who must clear many hurdles: . . .
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> > • utilities can use their customer revenue to finance their perspective before the Public Utilities Commission while independent intervenors typically have to self-finance several thousand dollars for their intervention. If independent intervenors do receive compensation for their work, it's always after the fact.

Beyond Utility 2.0 to Energy Democracy, John Farrell, The Institute for Local Self Reliance, p. 20 (see https://ilsr.org/report-energy-democracy/). While helping to fund National Grid's team (including in-house and outside counsel), Petitioners did not have the resources to retain an expert on

the interconnection tariff.[1] Moreover, even if Petitioners could have dedicated the resources to hire an expert to counter ratepayer-funded utility advocacy (and such an expert was willing), that expert would not have access to the information needed to counter National Grid's exaggerated posture on interconnection. As established at the hearing, the conditions of our distribution system are not transparent to interconnecting customers. It is impossible to contest National Grid's inflated concerns about grid stability, cost and fairness without equal access to the underlying technical information. Such imbalances fundamentally favor existing interests to the detriment of Rhode Island energy policy.

The uneven playing field tilts more as the State of Rhode Island fails to advocate for and even opposes its own policies. Petitioners' counsel interacted regularly with Division staff throughout the development of the Office of Energy Resources' new State Energy Plan that was just recently approved for Rhode Island. *State Energy Plan - Portfolio of Policies*, Petitioners Exh. 11. The plan calls for Rhode Island to modernize our grid to enhance reliability and least cost procurement through non-wires alternatives including distributed generation. Id. at p. 54. The Plan concludes that "grid modernization will assist efforts to meet the RISEP energy security target of increased fuel diversification by supporting a growth in electric sector renewable energy and increased electrification of the thermal and transportation sectors." Id. at p. 55. It calls for a working group to address the status of our grid infrastructure in Rhode Island and establish recommendations to improve that infrastructure for better integration of renewables. Id. at p. 54.

> Increased distributed generation in Rhode Island is necessary to achieve fuel diversification and emissions reductions, as laid out in RISEP security and sustainability targets. Proactively addressing renewable energy soft costs and regulatory burdens will simplify the addition of generating capacity and lower the costs of installing future renewable energy systems.

[1] Even if Petitioners did have the funds to hire an expert, in our experience such experts are unwilling to align against National Grid for fear of retribution to their clients.

Id. at p. 66. OER developed this plan based on input from stakeholders, including National Grid and the Division, who had every opportunity to comment and impact its development. Yet, when Petitioners advocated for improvements to the interconnection process and the distribution system, including reasonable cost allocation guidelines that do not require interconnecting customers to bear the expense of upgrading the distribution system to benefit other customers, OER did not participate and the Division opposed Petitioners' position.

OER also commissioned the Brattle Group study in April 2014. *Distributed Generation Standard Contracts and Renewable Energy Fund*, Petitioners' Exh. 10. Here again, stakeholders participated in the development, review and finalization of the study, including Petitioners' counsel, National Grid and the Division. The Brattle Group concluded that "Increased renewable capacity in Rhode Island can decrease New England wholesale electricity prices by replacing generation from high cost plants." Id. at 27. It found that "[a]ll three scenarios considered, which add between 164 MW and 1008 MW of renewable energy capacity to Rhode Island between 2015 and 2024 (including REF capacity), yielded net positive economic and environmental impacts." Id. It found that "[e]conomic output will increase between $556 and $2,340 million in present value terms. . . [t]he average number of jobs created will be between 246 and 1,095. . . [c]arbon dioxide emissions will be reduced creating a social benefit of between $13 million and $54 million on a net present value basis. . .[t]he combined damages avoided by reducing SO2, NOX, PM-10, and PM-2.5 emissions ranges between $22 million and $94 million on a net present value basis" and "carbon dioxide emissions will be reduced creating a social benefit of between $13 million and $54 million on a net present value basis." Id.[2] Despite this study that OER commissioned and National Grid and the Division assisted,

[2] ISO also concludes that "New England states have policies seeking to introduce cleaner, lower carbon-emitting resources while influencing wholesale electricity markets" and that "[a]dditional renewables are expected to decrease wholesale electric energy prices." *Discussion Paper on New England's Capacity Markets and a Renewable Energy Future*, pp. 1, 3 (Petitioners' Exh. 9).

the Division's expert contested Petitioners' claim that the network upgrades needed to interconnect distributed generation benefit Rhode Island customers.

It is little wonder that the developers of more than fifty percent of the projects that have not interconnected after initiating an interconnection application (response to PUC 9-3) do not stand up for their interests in these proceedings, given the imbalance of resources and the State's position. Developers are in no position to protest when the fox guards the henhouse and the farmer is, at best, indifferent. In this docket, Petitioners established a developer's right to pay only the actual cost of interconnection, provoked an IRS letter ruling request that will eliminate National Grid's interconnection tax, and received other concessions for their interconnections that they otherwise could not have expected without intervention at the Commission and in the General Assembly. However, Petitioners have paid a dear price for standing up to National Grid. The cost, conflict and time for interconnection has spiked with each protest, as indicated by the chart attached as Exhibit A.[3] Most recently, the access fee proposed in docket 4568 is a direct assault on Petitioner Wind Energy Development's plan to produce energy savings and other benefits to the public sector by remote net metering wind power.

This dynamic is nothing new. Back in 1978, Congress passed the Public Utility Regulatory Policy Act (PURPA) to address precisely this problem.[4] PURPA's purpose was to encourage development of small power production facilities. "'Congress believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels,' and it recognized that electric utilities had traditionally been 'reluctant to purchase power from, and sell power to, the nontraditional facilities.'" American Paper Inst., Inc. v. American Electric Power Services, et al., 461 U.S. 402, 404-

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[3] This chart was admitted in evidence in docket 4567.

[4] At the hearing, National Grid contested the fact that this tariff was developed under PURPA. The fact that the Company is not even aware of its PURPA compliance obligations explains why Petitioners need to invest in these very same fights almost forty years later.

5 (1983) (citing FERC v. Mississippi, 456 U.S. 742) (Petitioners Exh. 12). "A decrease in utilities' reliance on fossil fuels may result in reduction of the prices of those fuels to levels lower than would have been the case with higher demand." Id. at 416, fn 10. PURPA ordered the Federal Energy Regulatory Commission (FERC) to establish "such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules require electric utilities to offer to - (1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities and (2) purchase electric energy from such facilities." 16 U.S.C. §824a-3(a). The FERC rules require that "[a]ny electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart." 18 C.F.R. §292.303(c). As the DC Circuit put it:

> Without an interconnection obligation, the Commission reasoned, a qualifying facility seeking to interconnect with an unwilling utility would have to obtain an interconnection order from the Commission, after going through the potentially time-consuming and costly hearing procedures of s 210 of the Federal Power Act. See 16 U.S.C. §824i. The Commission designed §292.303(c) to avoid this problem and thereby reduce the burden on small power producers. See Small Power Prod. & amp; Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, Order No. 69, F.E.R.C. Stats. & Regs. (CCH Transfer Binder, Regulations Preambles 1977-1981) p 30,128, at 30,873 (1980) ("Order No. 69").

Western Massachusetts Electric Co. v. Federal Energy Regulatory Comm., 165 F.3d 922, 927 (D.C. Cir. 1999). PURPA requires that "[b]eginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) of this section or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority." 16 U.S.C. 824a-3(f). The interconnection tariff at issue here was developed in response to that mandate. Its purpose must be consistent with Congressional intent to reduce reliance on fossil fuel by easing the generation

and sale of renewable energy. That is the result Petitioners have pursued in this docket, almost forty years after PURPA's passage.

Petitioners resolved to bring this petition because it is clear that National Grid's incentives still are unaligned with federal and state policy. The same "reluctance to purchase power from, and sell power to, nontraditional facilities" cited by Justice Marshall in 1983, grips National Grid today. John Farrell summarizes the current dynamic this way:

> Utilities have made battlegrounds out of nearly 20 states, fighting their own customers about installing rooftop solar and other measures. They continue to invest in the infrastructure – power plants and power lines – for a 20th century, centralized electricity system, assets that may be stranded by the exponential growth of on-site power generation, distributed energy storage, and electric vehicles. They struggle to retain control and ownership of the electricity system even as technology increasingly lends itself to decentralized control and ownership. . . Their strategies are wide-ranging, from constraining when and how projects connect to the grid, capping the amount of customer-owned projects, or substantially reducing compensation for customer-owned power generation.

Beyond Utility 2.0 to Energy Democracy, supra, p. 2, 27. In his farewell letter in 2014, former California utility commissioner Mark Ferron voiced his concern that:

> The Commission will come under intense pressure to use [its] authority to protect the interest of the utilities over those of consumers and potential self generators, all in the name of addressing exaggerated concerns about grid stability, cost and fairness. I am very worried about our utilities' commitment to their side of the regulatory compact. We at the Commission need to watch our utilities' management and their legal and compliance advisors very, very carefully: it is clear to me that the legalistic, confrontational approach to regulation is alive and well. Their strategy is often: 'we will give the Commission only what they explicitly order us to give them.'

Id. at 20-21.[5] The Commission faces precisely this pressure here with the proposed revisions to the interconnection tariff.

We are in the midst of a transformative new energy economy. In the old energy economy,

> . . .both the technology of the original electricity system and its ownership were large and centralized. Vertically-integrated utility companies owned everything, from the power plant to the meter outside a home or business. In an era when cost-effective power generation came

[5] Citing Ferron, Mark. Final Commissioner Report by Mark Ferron, January 16, 2014. Accessed 11/7/14 at http://bit.ly/1vRklXF.

> from coal or nuclear – with massive economies of scale – centralized ownership was the key to raising the capital for power generation. Utilities were rewarded with public monopolies and guaranteed rates of return to attract low-cost capital and drive down costs. . .

Id. at p. 6. But, now, "[t]he new technologies of power generation no longer require the same scale or centralization of ownership." Id. at p. 7. This transition benefits customers, but not the utility.

> The flattening of electricity demand and rise in distributed renewable energy are causing tension in the utility business. Utilities continue to make investments in the grid as though these changes are not already happening, largely because their financial incentives remain tied to a Utility 1.0 business model. As former utility executive Karl Rabago says, 'utilities simply do not think things they do not own or control can be resources. . .'

Id. Some States, including Rhode Island, have tried to correct this misalignment of incentives through policies like decoupling. However:

> While revenue decoupling can reduce the pressure to increase sales, incentives to build new power plants and power lines are often stronger. . .As noted by Commission staff in New York: '[Rate of return] regulation may...encourage the utility to over-invest in capital spending, because earnings are directly tied to rate base. . .regulators in New York warn that while decoupling makes utilities indifferent to sales losses from energy efficiency and distributed generation, it does not shield ratepayers from the risk of widespread revenue loss should distributed generation grow substantially.

Id. at p. 19, 31.[6]

This age-old conflict of interest manifests itself most clearly in one central issue raised in this docket, whether public resources should be focused on large, transmission-scale investments or improvements to the distribution system to accommodate renewables.

> The distribution system, rather than the transmission system, is likely to be the hub of the 21st century electricity system, acting as a two-way network between power producers and consumers. Unfortunately, this system is aging badly. The American Society of Civil Engineers estimates that utilities will have to spend $20 billion annually over the next several years just to replace aged distribution infrastructure and that, 'America will see an investment gap in distribution infrastructure of $57 billion by 2020.' Not only that, but 'the majority of

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[6] Citing Fisher, George. Utility Equity Research In The 21st Century Part 1: Regulatory Environment, ROIC, WACC, Hurdle Rate. (Seeking Alpha, 9/29/14). Accessed 10/1/14 at http://bit.ly/1vuCHXu; Reforming the Energy Vision. (NYS Department of Public Service, Staff Report, 4/24/14). Accessed 10/20/14 at http://cl.ly/0C0V0T2j2u30 .
30 Reforming the Energy Vision. (NYS Department of Public Service, Staff Report, 4/24/14), p12. Accessed 10/20/14 at http://cl.ly/0C0V0T2j2u30 .

> the spending on distribution in recent years has been targeted at hardening the system against weather-related outages,' and not in preparing for a two-way grid to support lots of distributed renewable energy systems. On the other hand, utility spending on new and upgraded transmission lines has increased steadily since 2007(not long after the 2005 Energy Policy Act increased the ease and financial return for doing so). 'Investor-owned utilities plan to spend an additional $54.6 billion on transmission infrastructure [between late 2013 and] 2015.'

Id. at p. 6-7, 16.[7] Both financial incentives and regulatory proceedings like this one drive resource prioritization.

> . . . Not only is it difficult for non-transmission options to share costs, but utilities frequently receive federal incentives for high voltage transmission lines that cross state boundaries. . . the federal overseers of transmission projects don't consider any non-grid benefits that would weight a decision toward a transmission alternative for serving grid needs. . . Local economic benefits are a key omission in both federal and state regulatory bodies. . . While states would prefer to make evaluations of new grid infrastructure on these broad energy and economic values, most regulatory bodies focus narrowly on benefits to utilities and utility ratepayers.

Id. at p. 22-23.

This misalignment of incentives cannot come as news to National Grid – they have been participating in New York's "*Reforming the Energy Vision*" that produced the following conclusion:

> At present, utilities have a financial disincentive to provide efficient and timely interconnection approvals. There is little or no earning potential for utilities in the development of distributed generation by third parties, and there are substantial downside risks in the event of a system problem. Slow or overly protective requirements could be addressed by a Commission complaint process, but the Commission cannot oversee every interconnection request, and by the time a project has proceeded to the point of a complaint it will already be time-consuming and costly.

NY Public Service Comm., *Order Adopting Regulatory Policy Framework and Implementation Plan*, (Feb. 26, 2015) (Petitioners Exh. 6), p. 92. That REV Order concludes that "[i]n order for distributed generation to compete on equal footing, interconnection with the grid must be enabled through technical rules and processes that are not only safe but also efficient and expeditious." Id. at p. 91. Even National Grid's own former President, Tom King wrote that "Delivering safe and reliable

[7] Citing Lacey, Stephen. America Gets a D+ in Energy Infrastructure. (GreentechMedia, 4/1/13). Accessed 11/7/14 at http://bit.ly/1tQRinV; Transmission & Distribution Infrastructure. (Harris Williams & Co., Summer 2014) Accessed 12/3/14 at http://bit.ly/11UcmIE; Lewis, Craig. It's Time for Grid Planners to Put Distributed Resources On Par With Transmission (Greentech Media, 11/13/13), Accessed 8/11/14 at http://bit.ly/1ujkvs6.

electricity will always form the bedrock of what we do, but the modern utility must expand its vision and adapt to changing circumstances in order for our employees to provide energy sustainability for our customers, communities and shareholders." CERES, *The 21st Century Electric Utility*, Forward (Petitioners' Exh. 5). That report, to which National Grid's President provided the Forward, noted that:

> By the end of 2009, the wind industry had installed over 35,000MW cumulatively in the U.S., approximately 10,000MW of which – roughly 28 percent of the total – was installed in 2009 alone. Although some utilities and grid operators have had concerns about how large wind generation growth could impact grid operations, to date the increasing levels of wind generation have not posed any major grid performance issues.

Id. at p. 18. Yet, in this docket National Grid still pressures the Commission to "use [its] authority to protect the interest of the utilities over those of consumers and potential self generators, all in the name of addressing exaggerated concerns about grid stability, cost and fairness." Ferron, Mark. Final Commissioner Report by Mark Ferron, January 16, 2014.

Conclusion

It is clear to Petitioners that the revisions National Grid has proposed to the interconnection tariff do not satisfy the mediator's direction to simplify the tariff. Nor have the amendments responded to Petitioners concerns that were raised repeatedly throughout this proceeding. Instead, the proposed amendments are another example of National Grid's "take that" approach; changes that predominantly serve the Company's interests to the detriment of the Petitioners that initiated this proceeding.

Ultimately, this Commission can only serve the interests of its customers (distributed generation and otherwise) by providing for independent and neutral operation of the distribution system.

In other words, removing the conflict of interest that causes incumbent utilities to

> prefer building new infrastructure to conservation, efficiency, or local power from competitors or even utility customers. . . 'This new kind of distribution system needs a new kind of management'. . . separating utility financial health from energy sales (a concept typically called decoupling) and separating utility profits (for investor-owned utilities) from building and owning infrastructure.

Id. at 20-21.[8] In the absence of such new management, National Grid cannot be expected to properly separate its own divergent, economic interests from the equitable and efficient administration of interconnection to serve Rhode Island's energy policy.

As a start, in this proceeding, Petitioners respectfully request careful reconsideration of its specific comments in light of the context provided herein, including the Commission's statutory commitment to serve the public interest. In addition, Petitioners ask the Commission to appoint a neutral ombudsman to audit what happened to the more than fifty percent of customers that applied for interconnection in Rhode Island and did not interconnect, and then to monitor and neutralize the administration of the interconnection process moving forward.

WIND ENERGY DEVELOPMENT, LLC, & ACP LAND, LLC

By their attorneys,

HANDY LAW, LLC

Seth H. Handy (#5554)
Weybosset Street
Providence, RI 02903
Phone: (401) 626-4839
Facsimile: (401) 753-6306
seth@handylawllc.com

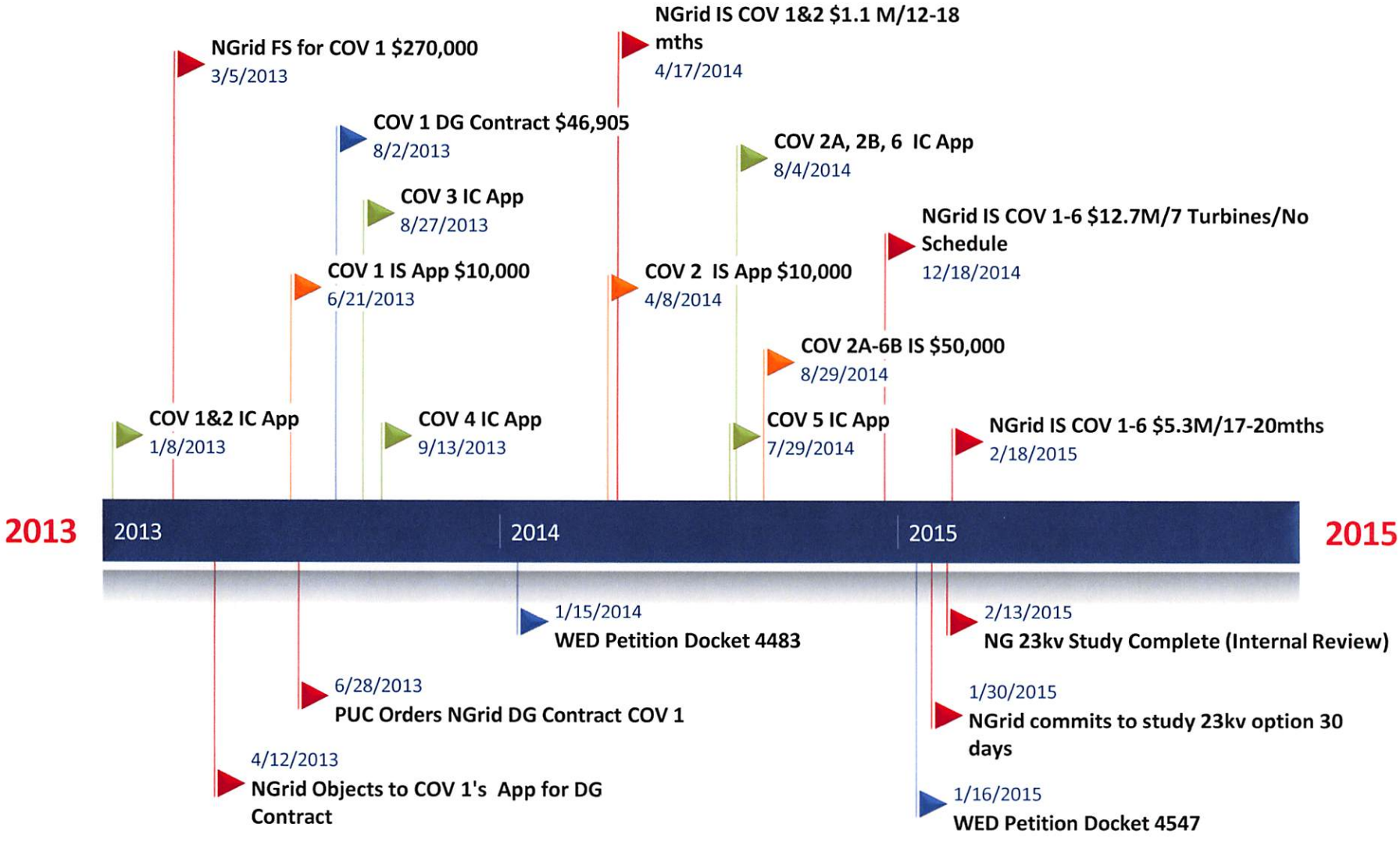
[8] Citing Aggarwal, Sonia, et al. Trending Topics in Electricity Today: the Distribution System Operator. (American's Power Plan, 9/23/14). Accessed 10/29/14 at http://bit.ly/1wEoPRM .

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2015, I delivered a true copy of the foregoing document to the service list by electronic mail.

Seth H. Handy

EXHIBIT A



IC = Interconnection
IS = Impact Study
FS = Feasibility Study