

March 18, 2015

BY HAND DELIVERY AND ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket 4536-A - Tariff Advice Filing for Renewable Energy Growth Program and Solicitation and Enrollment Process Rules
Responses to PUC Data Requests – Set 4

Dear Ms. Massaro:

On behalf of National Grid¹, I have enclosed the Company's responses to the fourth set of data requests issued by the Rhode Island Public Utilities Commission in the above-referenced proceeding.

Thank you for your attention to this matter. If you have any questions concerning this filing, please contact me at 781-907-2121.

Very truly yours,



Raquel J. Webster

Enclosures

cc: Docket 4536-A Service List
Steve Scialabba, Division
Leo Wold, Esq., Division

¹ The Narragansett Electric Company d/b/a National Grid (National Grid or the Company).

Service List

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

Copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.



Joanne M. Scanlon

March 9, 2015
Date

Docket No. 4536-A National Grid Tariff Advice Filing for Renewable Energy Growth Program (RE Growth Program) and Solicitation & Enrollment Process Rules for 2015

Docket No. 4536-B RI Distributed Generation Board (DG Board) Report and Recommendation Regarding 2015 Renewable Energy Growth Classes, Ceiling Prices and Targets

Service List updated 1/9/15

| Parties' Name/Address | E-mail | Phone |
|--|--|--------------|
| Celia B. O'Brien, Esq. Raquel J. Webster, Esq. National Grid 280 Melrose Street Providence, RI 02907 | Celia.obrien@nationalgrid.com | 781-907-2153 |
| | Raquel.webster@nationalgrid.com | 781-907-2121 |
| | Joanne.scanlon@nationalgrid.com | |
| | Amy.tabor@nationalgrid.com | |
| | Jeanne.lloyd@nationalgrid.com | |
| Daniel W. Majcher, Esq. (for DB Board) Dept. of Administration Division of Legal Services One Capitol Hill, 4 th Floor Providence, RI 02908 | Daniel.majcher@doa.ri.gov | 401-222-8880 |
| | Marion.Gold@energy.ri.gov | |
| | Christopher.Kearns@energy.ri.gov | |
| | Nicholas.ucci@energy.ri.gov | |
| Jon Hagopian, Sr. Counsel Division of Public Utilities and Carriers 89 Jefferson Blvd. Warwick, RI 02888 | Jhagopian@dpuc.ri.gov | 401-784-4775 |
| | Sscialabba@dpuc.ri.gov | |
| | Acontente@dpuc.ri.gov | |
| | Jshilling@dpuc.ri.gov | |
| Richard Hahn Lacapra Associates 1 Washington Mall, 9th floor Boston, MA 02108 | rhahn@lacapra.com | |
| | apereira@lacapra.com | |
| Karen Lyons, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903 | Klyons@riag.ri.gov | 401-222-2424 |
| | dmacrae@riag.ri.gov | |
| | jmunoz@riag.ri.gov | |
| Seth H. Handy, Esq. (Wind Energy Dev.) Handy Law, LLC 42 Weybosset St. Providence, RI 02903 | seth@handylawllc.com | 401-626-4839 |

COMM 4-1

Request:

The Company represented on more than one occasion that the general laws do not allow exceptions to the forfeiture of performance guarantee deposits for non-performance due to force majeure events. (Comm 1-12(d) and Comm 2-5.) However, at the hearing, Corinne DiDomenico testified that the Commission has the authority to make an exception to the forfeiture of performance guarantee deposits for non-performance due to force majeure events.

- a) Explain why the Company reversed its position that the statute does not allow an exception to the forfeiture of deposit for non-performance due to force majeure events.
- b) Clarify for the record the Company's position on exceptions to the forfeiture of deposits for non-performance due to force majeure events. Does the statute (R.I.G.L. 39-26.2-7(2)(iv)) allow it or not?

Response:

The Company has not reversed its position on this issue. As noted in the Company's response to data request COMM 2-5, R.I. Gen. Laws § 39-26.2-7(2)(iv) provides no exceptions to the forfeiture of the performance guarantee deposit for non-performance, including severe weather events such as a hurricane. Accordingly, based on the Company's interpretation of this provision, the Company believes that it has no discretion but to void the Certificate of Eligibility for a customer that fails to construct its project once the Certificate of Eligibility has been awarded, retain the performance guarantee deposit, and credit its customers with the deposit amount. The Company would not be attempting to penalize an Applicant in this circumstance; it would be enforcing the tariff consistent with what it believes is a reasonable interpretation of state law.

The Company further noted in that response that § 39-26.6-5(e) provides the PUC with exclusive jurisdiction over the enforcement and implementation of the tariffs and rules. When the PUC asked Ms. DiDomenico, at the March 9, 2015 hearing, whether the PUC had the authority to make an exception to the forfeiture of performance guarantee deposits for non-performance due to force majeure events, she deferred to counsel for National Grid, who responded in the affirmative, which the Company believes is consistent with the PUC's jurisdiction in § 39-26.6-5(e) and its overall authority to interpret the Rhode Island General Laws as applied to jurisdictional distribution companies. Accordingly, although the Company does not believe that R.I. Gen. Laws § 39-26.2-7(2)(iv) allows exceptions to the forfeiture of deposits for non-performance due to force majeure events, it is within the PUC's authority to disagree with the Company's interpretation based on its own interpretation of that statute. It must be noted that the Company has no incentive to interpret the statute in the manner that it has, other than to design

Prepared by or under the supervision of:
Corinne M. DiDomenico, Jeanne A. Lloyd, and Legal Department

The Narragansett Electric Company
d/b/a National Grid
RIPUC Docket No. 4536
In Re: Renewable Energy Growth Program Proposal
Responses to Commission's Fourth Set of Data Requests
Issued on March 12, 2015

COMM 4-1, page 2

the RE Growth Program in a manner that is consistent with the language used by the legislature in authorizing the program, and the Company's understanding of the intent of the RE Growth Program law to promote the construction and operation of renewable distributed generation resources in Rhode Island.

The Narragansett Electric Company
d/b/a National Grid
RIPUC Docket No. 4536
In Re: Renewable Energy Growth Program Proposal
Responses to Commission's Fourth Set of Data Requests
Issued on March 12, 2015

COMM 4-2

Request:

If the Company's position is that the statute allows exceptions to forfeiture of deposits for force majeure events, then the Company should have no problem incorporating language in the tariff reflecting this position. Is the Company willing to provide a tariff revision incorporating exceptions to forfeiture of deposits for non-performance due to force majeure events? Include specific reasons supporting your response.

Response:

Please see the Company's response to COMM 4-1.

COMM 4-3

Request:

The Company stated in Comm 2-4(b) that “in all instances where a project fails to meet the deadline for operation, the COE would be automatically voided as required by law and not at the discretion of the Company.” However, contrary to this representation, isn't it true that the Company has ultimate discretion to revoke a COE by virtue of the following provision:

“If the Company determines that a Customer or Applicant has violated the terms and conditions of this Tariff, or the provisions of any other applicable Company tariffs or applicable rules, regulations, or laws, the Company may revoke the Customer or Applicant's Certificate of eligibility.” (Section 11 of Non-Residential Tariff, R.I.P.U.C. 2152, Sheet 10)

Response:

Yes, the Renewable Energy (RE) Growth Program statute is very prescriptive regarding the eligibility and requirements for projects to participate in this program. These include: project segmentation, technology classifications, ceiling price definitions, among others. Therefore, projects must continue to maintain eligibility under the program to continue to participate. As stated in the Company's response to COMM 4-1, that statute also requires that the Certificate of Eligibility (COE) be voided for projects that fail to perform (i.e., fail to meet the deadline for operation).

The Company acknowledges that Section 11 of the Non-Residential Tariff includes criteria upon which the Company may use as the basis to revoke a project's COE and which may reach beyond the specific requirements of the RE Growth Program. However, the Company is administering the terms of a tariff with which a project must remain in compliance and, therefore, the Company should have discretion to evaluate a project's continued participation in the RE Growth Program should a project fall out of compliance with the tariff. Therefore, the Company is suggesting a revision to this provision to ensure the Company can continually monitor compliance with the tariff and resolve instances of non-compliance in a timely and appropriate manner while bringing issues of non-compliance with provisions beyond the scope of the tariff to the PUC for resolution.

The Narragansett Electric Company
d/b/a National Grid
RIPUC Docket No. 4536
In Re: Renewable Energy Growth Program Proposal
Responses to Commission's Fourth Set of Data Requests
Issued on March 12, 2015

COMM 4-3, page 2

If the Company determines that a Customer or Applicant has violated the terms and conditions of this Tariff, the Company may revoke the Customer or Applicant's Certificate of Eligibility. If the Company determines that a Customer or Applicant has violated the provisions of any other applicable Company tariffs or applicable rules, regulations, or laws, the Company may, after notifying the Customer or Applicant in writing of such non-compliance and providing the Customer or Applicant a reasonable period to remedy such non-compliance and the violation persists, request the PUC to review the non-compliance and determine appropriate action, which may include requiring the Customer or Applicant to comply with the applicable provision being violated or revoking the Customer or Applicant's Certificate of Eligibility.

COMM 4-4

Request:

- a) Would the Company object to the following revision to Section 11 of the tariff (R.I.P.U.C. 2152. Sheet 10):

If the ~~Company~~ Commission determines that a Customer or Applicant has violated the terms and conditions of this Tariff, or the provisions of any other applicable Company tariffs or applicable rules, regulations, or laws, the Company may revoke the Customer or Applicant's Certificate of Eligibility.

- b) Isn't the above revision consistent with other terms and provisions of the tariff, including Section 10 (R.I.P.U.C. 2152, Sheet 9), and R.I. General Laws Section 39-26.6-5(e) giving the Commission exclusive jurisdiction over implementation of the REG tariff and rules.

Response:

- a) Although the Company would not object to the revision posed in this data request, the Company is proposing its own revisions to Section 11 of the Non-Residential Tariff in response to data request COMM 4-3. In clear instances, in which the terms of the Non-Residential Tariff are violated, the Certificate of Eligibility should be revoked as required by the provisions of the statute. It is the Company's opinion that it should retain the right to revoke a Certificate of Eligibility in those instances to ensure a timely, consistent, and efficient administration of the Renewable Energy (RE) Growth Program. However, the Company acknowledges that the current language of Section 11 may be too broad in terms of the Company's administration of the RE Growth Program and, therefore, would bring any non-compliance in those instances to the PUC for resolution.
- b) Although the revisions posed in this request are consistent with other terms of the Non-Residential Tariff, including Section 10 and R.I. Gen. Laws § 39-26.6-5(e), the revisions that the Company is proposing in the response to data request COMM 4-3 are also consistent with other terms and provisions of the tariff, including Section 10 of the Non-Residential Tariff and R.I. General Laws § 39-26.6-5(e).

COMM 4-5

Request:

Respond fully to the edits proposed by WED in its March 12 filing, including whether the Company is willing to incorporate any of the edits and if so, why/why not.

Response:

The Company objects to the edits offered by WED in its March 12 filing. WED's edits would broaden the scope of the extension provision offered by the Company beyond what the Company believes is an appropriate additional safeharbor, i.e., the timing of Company construction associated with interconnection. The one-year extension under Section 3.f, which can be elected by the project developer *for any reason*, and the additional extension proposed under Section 3.g for Company scheduling associated with interconnection construction are sufficient to provide a project developer a reasonable additional time period for unexpected delays. Applicants under the program should, if they are selected, be expected to move forward with their Interconnection Service Agreements and any appropriate payments required, according to the schedule provided in such agreements. Any indefinite extensions for other reasons would undermine the statutory goals of encouraging renewable development in a timely and cost-effective manner. There are several statutory provisions that support this: 1) the application is required to provide information relative to permitting, financial feasibility, ability to build, and timing for deployment¹; 2) the time periods required to reach output²; 3) the requirement to pay a performance guarantee deposit and submit competitively priced bids³; and 4) in the event of a tie, the project that appears to be the furthest along in development shall be selected⁴. Notably, small and medium-scale solar projects are not required to submit performance guarantee deposits. Therefore, the statute did contemplate exceptions to the requirement for posting a performance guarantee deposit for smaller scale projects. However, project developers seeking to build commercial scale projects larger than 250 kW are expected to perform at a competitive level to receive the fixed price guarantee from customers for the tariff term. The statute set a higher bar to seek project developers with experience, and projects that are viable and soon to be deployed. Otherwise, speculative project developers will tie up the queue with projects that lack the viability to achieve operation within the timelines required. Therefore, any further extensions beyond what is proposed by the Company in Section 3.f and 3.g would only contribute to the delay and potential failure to reach the goals of the program in a timely manner.

¹ R.I. Gen. Laws § 39-26.6-16(a).

² R.I. Gen. Laws § 39-26.6-5(a).

³ R.I. Gen. Laws § 39-26.6-16(c).

⁴ R.I. Gen. Laws § 39-26.6-16(e).