STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

NATIONAL GRID'S ELECTRIC INFRASTRUCTURE, SAFETY & RELIABILITY PLAN FOR 2016	)))	Docket No. 4539

DIVISION OF PUBLIC UTILITIES AND CARRIER'S OBJECTION TO WED'S MOTION TO INTERVENE AND DIVISION'S MOTION TO STRIKE

The Division of Public Utilities and Carriers ("Division") hereby objects to the motion to intervene that WED One Coventry One, LLC, WED Coventry Two, LLC, WED Coventry Three, LLC, WED Coventry Four, LLC, WED Coventry Five, LLC and WED Coventry Six, LLC ("WED") has filed in this proceeding, and moves to strike the Objection that WED has also filed in response to NGrid's 2016 Electric ISR Plan. In support of its objection and motion, the Division submits the accompanying memorandum of law.

Respectfully submitted,

DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorneys,

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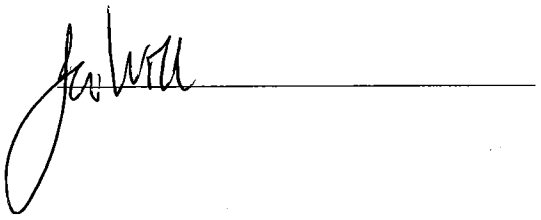
CERTIFICATE OF SERVICE

I certify that a copy of the within objection and motion was forwarded to the Service List in the above matter on the 19 day of February, 2015.



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NATIONAL GRID'S ELECTRIC INFRASTRUCTURE, SAFETY & RELIABILITY PLAN FOR 2016	)))	Docket No. 4539

DIVISION'S MEMORANDUM OF LAW IN SUPPORT OF ITS OBJECTION TO WED'S MOTION TO INTERVENE AND DIVISION'S MOTION TO STRIKE

I. INTRODUCTION

WED One Coventry One, LLC, WED Coventry Two, LLC, WED Coventry Three, LLC, WED Coventry Four, LLC, WED Coventry Five, LLC and WED Coventry Six, LLC ("WED") have filed a motion to intervene in this proceeding, contending that the WED satisfies the requirements of Rule 1.13(b). WED Motion at 1.[1] The Division opposes WED's participation here on the grounds that WED does not possess standing to participate in the pending matter as a full party and that the motion does not comply with the requirements of Rule 1.13(b). It necessarily follows that WED's motion to intervene must be denied and that its objection—filed concurrently with the motion to intervene—must be stricken from the Record.

[1] Rule 1.13(b) of the Commission's Rules of Practice and Procedure identifies the standard that "any person claiming a right to intervene or an interest that of such nature that intervention is necessary or appropriate" must satisfy in order to be granted intervenor status in a Commission proceeding. In pertinent part, Rule 1.13(b) provides that an intervention will be granted when the person possesses: (1) a right conferred by statute, (2) an interest which may be directly affected and which is not adequately represented by existing parties and as to which the movants may be bound by the Commission action in the proceeding, or (3) any other interest of such nature that movant's participation may be in the public interest.

II. ARGUMENT

A. WED DOES NOT POSSESS STANDING TO PARTICIPATE AS A FULL PARTY IN THE PENDING MATTER.

In order for a litigant to participate in a proceeding as a full party, the litigant must possess standing, *i.e.*, the litigant must have sustained injury in fact, economic or otherwise. Newport Elec. Corp. v. Public Utilities Comm'n, 454 A.2d 1224 (R.I. 1983). Only "actual" or "threatened legal injury" is sufficient to satisfy this threshold legal requirement. Blackstone Valley Chamber of Commerce v. Public Utilities Comm'n, 452 A.2d 931, 934 (R.I. 1982). Thus, a plaintiff claiming only a "[m]ere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved.'" In Re: Town of New Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011). When a litigant lacks standing, no matter how well-intentioned, it will be error for the deciding body to permit the litigant to intervene. ABAR Assoc. v. Luna, 870 A.2d 990, 997 (R.I. 2005); In Re: Stephanie B., 826 A.2d 985, 991 (R.I. 2003); West Warwick School Committee v. Souliere, 626 A.2d 1280, 1284 (R.I. 1993).

In its motion to intervene, the sole contention that could conceivably support a claim of standing is that WED "received an interconnection impact study for . . . six projects including a charge of almost $13 million to interconnect the project, over $12 million was for capacity improvements to National Grid's distribution system." WED Motion at 1. That WED received a statement or estimate of a lawful charge to connect to NGrid's distribution system at some point in the future can hardly be considered "actual" or "threatened legal injury" to WED. Rather, it is no more than an expression of WED's

desire to obtain ratepayer funds through NGrid's 2016 ISR budget to help subsidize the cost of interconnection. Much more "is needed" to establish standing when an alleged injury from government inaction is asserted, not by the regulated entity, but by "someone else." Lujan v Defenders of Wildlife, 504 U.S. 555, 562 (1992). Thus, when a plaintiff is not himself the object of the government action or inaction he challenges, "standing is . . . ordinarily 'substantially more difficult' to establish." Id. WED "goes beyond the limit . . . and into pure speculation and fantasy," to claim that it is "appreciably harmed" by a mere claimed interest in NGrid's 2016 ISR budget when it has no "specific connection" to that budget process. Id. at 567. The Commission should deny WED's motion to intervene and strike its objection for lack of standing alone.

B. WED DOES NOT SATISFY ANY OF THE CRITERIA OF RULE 1.13(b).

In applying Rule 1.13(b), the Commission has taken a "more cautious" approach to granting intervention motions ever since the Rhode Island Supreme Court's decision in In Re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240 (R.I. 2000). See Narragansett Electric Company d/b/a National Grid Proposed Standard Offer Service Rate Reduction, Docket No. 3739, Order No. 18794 at 12 (2006). In Hi-Speed, the Court questioned the wisdom and appropriateness of permitting a competitor to intervene to contest an applicant's rate application. Island Hi-Speed, 746 A.2d at 1246. The concerns expressed by the High Court in Hi-Speed and subsequently by the Commission in Narragansett Electric apply equally as well in the pending matter.

1. WED Does Not Possess A Right To Intervene Conferred By Statute.

In its Motion to Intervene, WED has not claimed a right to intervene conferred by statute. For obvious reasons, WED cannot satisfy this criterion, and no further discussion of its merits is required.

2. WED Does Not Possess An Interest Which May Be Directly Affected And Which Is Not Adequately Represented By Existing Parties.

a. No Interest Directly Affected

WED summarily contends that "its interests are directly affected by this proceeding and WED is not adequately represented by the existing parties." WED Motion at 1. Nowhere in its motion, however, does WED explain or identify how Rule 1.13(b)'s criteria are satisfied. Nor is WED's claimed interest in fact a real interest at all. Rather, it is simply a disingenuous attempt of WED to transfer its duly-tariffed financial responsibility to pay for interconnection costs onto ratepayers.

At issue in the pending matter is NGrid's proposed "reconcilable allowance for anticipated capital investments and other spending relating to maintaining safety and reliability of NGrid's electric distribution system for fiscal year 2016," NGrid 2016 Plan Correspondence Dated October 7, 2014, and whether NGrid's management decisions regarding the same are "reasonably needed." See G.L. § 39-1-27.7.1(d). Currently, customers such as WED that desire to interconnect to NGrid's distribution network are required to pay for the cost of interconnection themselves. R.I.P.U.C. No 2078 provides as follows:

5.2 Interconnection Equipment Costs

The Interconnecting Customer shall be responsible for all costs associated with the installation of the Facility and associated interconnection equipment on the Interconnecting Customer's side of the PUC.

5.3 System Modification of Costs

The Interconnecting Customer shall also be responsible for all costs reasonably incurred by Company attributable to the proposed inter-Connection project in designing, constructing, operating and maintaining the System Modifications…

WED, of course, is fully aware of these legally binding financial responsibilities. In correspondence addressed to the Rhode Island House Corporations Committee WED opines that "interconnection cost . . . are the biggest impediment to the benefits of our new energy economy." This legislation (H5131) "seeks to fix that problem prohibit[ing] the utility from charging interconnecting customers for electric power system upgrades…" Handy Law Letter Dated January 29, 2015 at 2. The Commission and Pascoag Utility District have also acknowledged the current state of the law. See Letter from PUC Counsel Dated January 29, 2015 at 1 ("…this bill attempts to shift certain electric distribution upgrade costs associated with interconnecting distributed generation projects from the developer to all ratepayers…"); Letter from Pascoag Utility District re: H5131 at 1 (the bill "shifts the cost-burden of an interconnecting renewable customer to all other ratepayers of the system…"). Since WED and similar third parties, rather than ratepayers, are currently required to pay for interconnection costs (and have admitted as much), WED simply has no legally cognizable interest which it may advance before the Commission in the pending matter. Intervention pursuant to Rule 1.13(b)(2) is not permitted under such circumstances.

b. Adequate Representation by Existing Party

Regardless of WED's claim to an interest which may be directly affected, WED never contends in its motion that the Division cannot adequately represent its alleged

interest before the Commission. The Division, in fact, possesses ample expertise to assess whether it is reasonable and/or appropriate, as WED claims, that "interconnection" costs for renewable projects should be incorporated into the 2016 ISR budget. In the pending matter, the Division has retained an independent, expert consultant, Gregory Booth of PowerServices, Inc., to review NGrid's filing. Mr. Booth has reviewed NGrid's ISR budgets for a number of years, is intimately familiar with NGrid's distribution system, and possesses considerable legal, financial and technical expertise regarding the system's infrastructure needs and requirements. The Division, therefore, can easily and adequately assess the alleged interests (if any) espoused by WED that may require Commission consideration in the hearing process.

The Superior Court concurs with this analysis, holding that prospective third party intervenors are barred from intervening in proceedings to air their concerns when there are specialized administrative agencies in place that may assess and resolve (if necessary) those same concerns. In Block Island Ferry Services, LLC, *et al.* v. Rhode Island Fast Ferry, Inc., *et al.,* PC 2013-5322, the Division denied a third party claimant from intervening in a CPCN proceeding on the basis that the granting of CPCN to the applicant could detrimentally impact safety and/or service and interfere with docking schedules. The Superior Court upheld the Division's ruling, recognizing that CRMC and the Harbormaster (like the Division and Commission here relative to WED's alleged concerns) "are more familiar and better equipped to decide and regulate details having to do with dockage and local traffic issues and both represent the public interest." Permitting intervention in such circumstances, the Court held, "would be duplicative, time consuming and . . . a waste of time..." Id. at 7.

The same rationale applies to the pending matter. WED has attempted to intervene in a proceeding where there exists an administrative agency, the Division, that can just as easily review and assess WED's alleged concerns. Moreover, WED can place its position in the non-evidentiary record through public comment, and the Commission can always query the Division's expert regarding his opinions regarding those same concerns at hearing. To allow WED to intervene and litigate issues that have been considered by the Division and its expert consultant in assessing the reasonableness of NGrid's 2016 ISR budget would be "duplicative" and "time consuming" as well as "a waste of time."

3. WED's Intervention In This Proceeding Is Not In The Public Interest.

The only remaining rationale that can conceivably support WED's intervention in the pending proceeding is WED's claim that its participation "may be in the public interest." While Rule 1.13(b)(3) does not define what matters the Commission should deem "in the public interest," legal precedent makes it abundantly clear that the mere assertion of laudable public interest ends does not necessarily sanction that litigant's participation in a Commission proceeding as a full party. Under Rule 1.13(b)(3), participation that is in "public interest" must do more than achieve the same result that the Commission could arrive at with the assistance of existing parties or through its own reasoned decision-making. In Re: Island Hi-Speed Form of Regulation and Review of Rates, Docket No. 3495, Order No. 17452 at 8 (2003). Vague and non-specific calls for additional review that will further "the public interest" do not demonstrate the requisite interest that would support intervention under Rule 1.13(b)(3). Narragansett Electric

Company d/b/a National Grid Proposed Standard Offer Service Rate Reduction, *supra* at 12.

In the pending matter, WED identifies a number of areas of inquiry which it contends will vindicate the Commission's granting WED's motion to intervene: job creation, stable energy pricing, reduced energy costs, a sustainable Rhode Island economy and environmental benefits. All are laudable goals to be sure; however, none of these vague and non-specific ends have anything to do with the merits of the pending docket. WED's intervention in this matter, then, will not advance any particular interest—public or otherwise. Nor will WED's intervention advance any interest that is different from what the Commission could consider with the Division's participation alone. WED's claim of intervention pursuant to Rule 1.13(b)(3) fails as well.

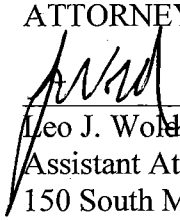
III. CONCLUSION

For the foregoing reasons, the Division requests that the Commission deny WED's Motion to Intervene and strike WED's Objection to NGrid's proposed 2016 ISR Plan.

Respectfully submitted,

DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorneys,

PETER F. KILMARTIN
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I certify that a copy of the within memorandum of law was forwarded to the Service List in the above matter on the 17th day of February, 2015.