

The resolution of this motion is warranted prior to the deadline for intervenor testimony so that such testimony can effectively address the proper scope of the proceeding. A separate joint motion to amend the procedural schedule is being filed simultaneously in order to provide sufficient time for intervenors to develop testimony after the resolution of this motion for summary disposition.

STANDARD

Rule 1.15 provides that any party may file a motion for summary disposition that may be granted if the Commission determines that there is “no genuine issue of fact material to the decision.”

ARGUMENT

National Grid proposes to apply a new “Access Fee” to all stand-alone generation facilities directly connected to the distribution system, including “Qualifying Facilities, net-metered facilities, RE Growth Program projects, and DG Standard Contract projects.” Testimony of Peter T. Zschokke and Jeanne A. Lloyd, at 59. The proposed Access Fee should be rejected as a matter of law because it clearly violates statutory provisions as it applies to (i) net metering customers, (ii) customers and generators who qualified for a standard contract under the Distributed Generation Standard Contracts program and (iii) customers and generators who qualified under terms of the REG program that have been established before the effective date of the Access Fee.

First, the Access Fee would violate R.I. Gen. Laws §39-26.4-3(a)(5) as it applies to net metering customers. That provision states:

The rates applicable to any net-metered account shall be the same as those that apply to the rate classification that would be applicable to such account in the absence of net-metering, including customer and demand charges, and no other charges may be imposed to offset net metering credits.

The proposed Access Fee is clearly not the same as the rates that would otherwise apply “in the absence of net metering” and, similarly, the proposed Access Fee would be a charge that “offset[s] net metering credits” as defined under R.I. Gen. Laws §39-26.4-2. Further support for the position is given by the purpose of the Chapter defining net metering:

The purpose of this chapter is to facilitate and promote installation of customer-sited, grid-connected generation of renewable energy; to support and encourage customer development of renewable generation systems; to reduce environmental impacts; to reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; to diversify the state's energy generation sources; to stimulate economic development; to improve distribution system resilience and reliability; and to reduce distribution system costs. R.I. Gen. Laws §39-26.4-1.

The Chapter further declares that the Chapter should be “construed in aid of its declared purposes.” R.I. Gen. Laws §39-26.4-4. As a result, both the detailed text R.I. Gen. Laws §39-26.4-3(a)(5) and the broader context of the statute defining net metering show that the proposed Access Fee is contrary to law with respect to those customers and generators.

Second, the imposition of this Access Fee would violate the Distributed Generation Standard Contract Act. R.I. Gen. Laws §39-26.2-5 provides as follows:

Standard contract ceiling price. (a) The ceiling price for each technology should be a price that would allow a private owner to invest in a given project at a reasonable rate of return, based on recent reported and forecast information on the cost of capital, and the cost of generation equipment.

The proposal to impose an Access Fee on projects enrolled under this program, which had its last enrollment in 2014, would refute the purpose of the law, which was to establish a contract rate that would generate a reasonable rate of return on investment. The projects already enrolled in this program either accepted a fifteen year ceiling price designed to achieve that rate of return or bid into the program below that ceiling price, based on projected economics that anticipated such

a reasonable rate of return. Subjecting those projects to the proposed Access Fee would severely jeopardize the economics of all those projects and, thus, the purpose of that statute.

Third, the application of the proposed Access Fee to projects that have already qualified under the REG program or projects that will qualify under the terms of the 2016 enrollment that are about to be proposed² violates provisions of the statute creating the REG program. Such an application would violate the statutory section that mandates permanence of tariffs once set:

It is the intention of the general assembly in enacting this chapter that the developers, owners, investors, customers, and lenders of the distributed-generation projects receiving performance-based incentives under the tariffs be able to rely on the tariffs for the entire term of the applicable tariff for purposes of obtaining financing. Consistent with that intention and expectation, the terms under the tariffs for a given program year, once approved by the commission, shall not be altered in any way that would undermine such reliance on those tariffs during the applicable terms of the tariffs; and in no circumstance will the performance-based incentive rate paid to a renewable energy project developer or owner be reduced during the term of the tariff once a renewable energy project has qualified to receive a tariff under the terms of this chapter. R.I. Gen. Laws § 39-26.6-6 (emphasis added).

National Grid's proposed Access Fee would very clearly violate the legislature's prohibition against alteration of tariff terms by drastically changing the economic playing field for 2015 and 2016 enrollees after tariffs have been set.

CONCLUSION

For these reasons, these parties respectfully request summary disposition of the proposed access fee with respect to (i) net metering customers, (ii) customers and generators who qualified

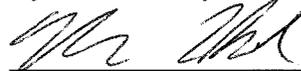
² The Distributed Generation Board ("Board") will be voting on the 2016 ceiling price recommendations, as part of the 2016 Renewable Energy Growth Program recommendations to the Commission on Monday, October 19th and will not be including the access fee. National Grid only recently informed the Board of recommending that an access fee be included in the annual ceiling price development and did not propose or raise this matter at any of the Board's meeting over the past several months as the ceiling prices were being designed by Sustainable Energy Advantage (SEA). In fact, since the design of the 2016 ceiling price process began in the spring, including requests for ceiling price data (including cost inputs); the 1st and 2nd draft of the 2016 ceiling prices prepared by SEA; and two (2) Board public presentations on the developed ceiling prices, National Grid has never informed SEA during the design of the 2016 ceiling prices of a proposed access fee.

for a standard contract under the Distributed Generation Standard Contracts program, and (iii) customers and generators who qualified under terms of the Renewable Energy Growth program that have been established before the effective date of the access fee.

Respectfully submitted,

ACADIA CENTER

By their attorneys,



Mark E. LeBel

ACADIA CENTER

31 Milk Street, Suite 501

Boston, MA 02108

617-742-0054

mlebel@acadiacenter.org

Quentin Anthony (RI # 1939)

41 Long Wharf Mall

Newport, RI 02840

Tel. 401.847.1008

qanthony@verizon.net

CONSERVATION LAW FOUNDATION,

by its Attorney,



Jerry Elmer (RI # 4394)

CONSERVATION LAW FOUNDATION

55 Dorrance Street

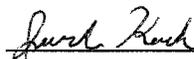
Providence, RI 02903

Telephone: (401) 228-1904

Facsimile: (401) 351-1130

JElmer@CLF.org

NEW ENGLAND CLEAN
ENERGY COUNCIL,
by its Attorney,





Joseph A. Keough Jr. (RI # 4925)

Keough + Sweeney

41 Mendon Avenue

Pawtucket, RI 02861

(401) 724-3600 (p)

(401) 724-9909 (f)

E-Mail: jkeoughjr@keoughsweeney.com

THE ALLIANCE FOR SOLAR CHOICE

By their attorneys,

Michael R. McElroy, Esq. (RI # 2627)

Leah J. Donaldson, Esq. (RI # 7711)

Schacht & McElroy

21 Dryden Lane

P.O. Box 6721

Providence, RI 02940-6721

Tel: (401) 351-4100

Fax: (401) 421-5696

Michael@McElroyLawOffice.com

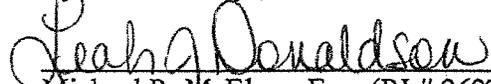
Leah@McElroyLawOffice.com

NEW ENGLAND CLEAN
ENERGY COUNCIL,
by its Attorney,

Joseph A. Keough Jr. (RI # 4925)
Keough + Sweeney
41 Mendon Avenue
Pawtucket, RI 02861
(401) 724-3600 (p)
(401) 724-9909 (f)
E-Mail: jkeoughjr@keoughsweeney.com

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By their attorneys,


Michael R. McElroy, Esq. (RI # 2627)
Leah J. Donaldson, Esq. (RI # 7711)
Schacht & McElroy
21 Dryden Lane
P.O. Box 6721
Providence, RI 02940-6721
Tel: (401) 351-4100
Fax: (401) 421-5696
Michael@McElroyLawOffice.com
Leah@McElroyLawOffice.com

CERTIFICATE OF SERVICE

I hereby certify that the original and nine photocopies of this Motion were mailed first class to the Clerk of the Public Utilities Commission, 99 Jefferson Blvd., Warwick, RI 02888. In addition, electronic copies of this Motion were served via e-mail on the service list for this Docket, as that list was transmitted by the PUC clerk on September 18, 2015. I certify that all of the foregoing was done on September 29, 2015.



Mark LeBel