

October 13, 2015

VIA HAND DELIVERY & ELECTRONIC MAIL

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

**RE: Docket 4568 – The Narragansett Electric Company d/b/a National Grid
Review of Electric Distribution Rate Design Pursuant to R.I. Gen. Laws § 39-26.6-24
National Grid’s Objection to Motions for Summary Disposition and
Memorandum of Law in Support of Objection**

Dear Ms. Massaro:

On behalf of National Grid¹, I enclose ten (10) copies of the (1) Company’s Objection to Motion for Summary Disposition by Green Development, LLC d/b/a Wind Energy Development, LLC and Motion for Summary Disposition by Acadia Center, Conservation Law Foundation, New England Clean Energy Council, and The Alliance for Solar Choice. Also enclosed are ten (10) copies of the Company’s Memorandum of Law in support of its Objection.

Thank you for your attention to this transmittal. If you have any questions concerning this filing, please contact me at 781-907-2153.

Very truly yours,



Celia B. O'Brien

Enclosures

cc: Docket 4568 Service List
Leo Wold, Esq.
Karen Lyons, Esq.
Steve Scialabba, Division

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

Certificate of Service

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

Paper 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

October 13, 2015

Date

**Docket No. 4568 National Grid's Rate Design Pursuant to R.I. Gen. Laws Sec 39-26.6-24
Service List updated 10/2/15**

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respectfully requests that the Rhode Island Public Utilities Commission (PUC) deny the Motions for Summary Disposition filed by WED and the Other Interveners pursuant to PUC Rule 1.15(a).

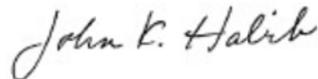
Respectfully submitted,

**THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID**

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Dated: October 13, 2015

the contrary is unfounded; and (3) any claims that the Access Fee is inconsistent with other statutes or regulations are outside the scope of what the PUC should consider under a Motion for Summary Disposition in this case. For the reasons set forth herein, WED and the Other Interveners' Motions for Summary Disposition should be denied.

I. BACKGROUND

Section 24 of the RE Growth Statute sets forth the requirements for the PUC to open a docket “to consider rate design and distribution cost allocation among rate classes in light of net metering and the changing distribution system that is expected to include more distributed energy resources, including, but not limited to, distributed generation.” R.I. Gen. Laws § 39-26.6-24(a). The statute also sets forth the requirements for the PUC to “determine the appropriate cost responsibility and contributions to the operation, maintenance, and investment in the distribution system that is relied upon by all customers, including, without limitation, non-net metered and net metered customers” and “to require [the Company] to file a revenue-neutral allocated cost of service study for all rate classes and a proposal for new rates for all customers in each rate class.” *Id.* Section 24 of the RE Growth Statute also requires the Company to use the distribution revenue requirement upon which the current distribution rates were set and allows the Company to use the allocated cost of service study filed in its last rate case (Docket No. 4323). *Id.* The statute requires the PUC to balance a number of specific factors in establishing any new rates the PUC may deem appropriate and allows the PUC to “consider any reasonable rate design options, including without limitation, fixed charges, minimum monthly charges, demand charges, volumetric charges, or any combination thereof, with the purpose of assuring recovery of costs fairly across all rate classes.” R.I. Gen. Laws § 39-26.6-24(b).

Pursuant to Section 24 of the RE Growth Statute, on July 1, 2015, the PUC opened the above-referenced docket. On July 31, 2015, National Grid filed a revenue-neutral rate design proposal, using the distribution revenue requirement and allocated cost of service study from its last rate case (Docket No. 4323), for review and approval by the PUC. Subsequent to this filing, on September 29, 2015, WED filed a Motion for Summary Disposition and, on the same day, the Other Interveners jointly filed a Motion for Summary Disposition. Both Motions for Summary Disposition requested that the PUC summarily dispose of one element of National Grid's rate design proposal, referred to as the Access Fee. Both Motions for Summary Disposition allege that the Access Fee should be rejected as a matter of law because it allegedly violates certain statutes and regulations and there is no genuine issue of fact material to summary disposition.⁴

II. LEGAL STANDARD

PUC Rule 1.15(e) provides that any party “may file a motion for summary disposition of all or part of the rate tariff filing and if the PUC determines that there is no genuine issue of fact material to the decision, it may summarily dispose of all or part of the rate tariff filing.”

III. ARGUMENT

The Company objects to both Motions for Summary Disposition for three reasons. First, both Motions for Summary Disposition fail to show that no material facts are in dispute, and in fact are themselves based on unproven facts material to the PUC's decision and, as a result, both Motions fail to meet the standard for summary disposition under PUC Rule 1.15(e). Second, the Access Fee is wholly consistent with the statutory directive under which it is proposed, Section 24 of the RE Growth Statute, and any claim to the contrary is unfounded. Lastly, any claims that the Access Fee is inconsistent with other statutes or regulations are factual matters that must be

⁴ The Motions for Summary Disposition do not request summary disposition of any other portions of National Grid's July 31, 2015 rate design filing in this proceeding.

determined through a fully litigated proceeding. Accordingly, the PUC should deny the Motions for Summary Disposition filed by WED and the Other Interveners.

A. The Motions Fail To Meet The Standard For Summary Disposition

Rule 1.15(e) of the PUC's Rules of Practice and Procedure provides the legal standard for a motion for summary disposition as follows: "[I]f the PUC determines that there is no genuine issue of fact material to the decision, it may summarily dispose of all or part of the rate tariff filing." To obtain summary disposition, the moving party has the burden to show that there is no genuine issue of material facts in the record that could support approval of the non-moving party's proposed filing or portion thereof. In Re: Block Island Power Company General Rate Filing, Docket No. 3655. To decide whether Summary Disposition on the Access Fee is appropriate, the PUC must determine whether there are no material issues of fact regarding whether the Access Fee is consistent with the statutory requirements of Section 24 of the RE Growth Statute. Id. (motion for summary disposition of a request for interim rate relief is determined on the basis of whether there is genuine issue of fact material to the decision of whether the criterion for interim relief is satisfied).

Both Motions for Summary Disposition claim that no facts are in dispute and the PUC should reject the Access Fee as a matter of law. However, both Motions for Summary Disposition are replete with factual assertions that National Grid disputes and that due process requires must be determined by the PUC after the issues have been fully litigated. For instance, WED's Motions for Summary Disposition make three primary arguments: (1) the Access Fee is inconsistent with Section 24 of the RE Growth Statute; (2) that the Access is unjust, unreasonable, discriminatory, and illegal; and (3) the Access Fee frustrates the purposes of the RE Growth Program and does not consider the benefits of DG (see WED Motion for Summary

Disposition at 3). All three of these arguments in support of WED's Motion for Summary Disposition rely on unproven allegations, which are material to the PUC's decision and which National Grid disputes as true. Rather than demonstrate that no facts are in dispute, WED's arguments actually raise additional questions of fact.

For instance, WED argues that the Access Fee frustrates the purposes of the RE Growth Statute by failing to take into account the following issues:

Will the access fee reduce environmental impacts and reduce carbon emissions that contribute to climate change by encouraging the siting of renewable energy project in the load zone of the electric distribution company? Will it diversify the energy generation sources within the load zone of the electric distribution company? Will it stimulate economic development? Will it improve distribution system resilience and reliability with the load zone for the electric distribution company? Will it reduce distribution system costs?

WED Motion for Summary Disposition at 11.

The answer to all these questions is unknown at this time and illustrates why the Access Fee deserves to remain in the case, not why it should be rejected as a matter of law. Demonstrating that certain issues surrounding the Access Fee remain unresolved is not a valid reason for the PUC to reject the Access Fee pursuant to a Motion for Summary Disposition. In sum, it has not been proven nor is it undisputed as to whether the evidence shows that the Access Fee imposes charges in a discriminatory manner or whether the Access Fee is an unjust and unreasonable charge to those customers to whom the charge applies for their use of the electric distribution system. This is precisely why summary disposition of the Access Fee is not appropriate and must be denied. The PUC cannot simply accept the allegations in WED's Motion on their face and dismiss the Access Fee as a matter of law without providing National

Grid an opportunity to dispute these assertions and prove its case through discovery, evidentiary hearings, and a full briefing schedule.

The PUC should also reject the Other Interveners' Motion for Summary Disposition for similar reasons. In support of their Motion for Summary Disposition, the Other Interveners argue that the Access Fee should be rejected because, fundamentally, it changes the economic playing fields that certain customers relied on to make investments in their DG and therefore jeopardizes these customers' reasonable rate of return, which violates statutory provisions as it relates to specific groups of customers (Other Interveners' Motion for Summary Disposition at 2). Whether the Access Fee will jeopardize the reasonable rate of return for certain customers and whether those alleged adverse impacts amount to violations of law are factual issues material to the PUC's decision, which National Grid disputes. National Grid has submitted evidence that shows it incurs certain costs to serve stand-alone DG customers and that the Access Fee is a reasonable proposal to recover these costs pursuant to the directives of Section 24 of the RE Growth Statute (Testimony of Peter T. Zschokke and Jeanne A. Lloyd at 62-64). Accordingly, before the PUC can determine that the Access Fee should be rejected on the ground proposed by the Other Interveners, the PUC must first make a number of factual determinations, including what is the amount of costs that are incurred by the Company, whether DG customers should be responsible for them, whether the Access Fee is the appropriate means to recover these costs and whether the Access Fee is consistent with other statutory provisions related to net metering and the RE Growth Program.

As a result, both Motions fail to show that there are no material facts in dispute and the Access Fee should be rejected as a matter of law. The issues raised by the Motions for Summary Disposition require further factual development and should be resolved through a fully litigated

proceeding on the merits, not through summary disposition. Accordingly, the arguments underlying the Motions are improper bases to support summary disposition under Rule 1.15(e) that should be rejected by the PUC.

B. The Access Fee Is Consistent With Section 24 of the RE Growth Statute

To the extent that either Motion can be construed as a request to dismiss the Access Fee because it is inconsistent with the statutory directives under which it is proposed, R.I. Gen. Laws § 39-26.6-24, such claims are directly contrary to the evidence in the record and misinterpret the legal standard under Section 24 of the RE Growth Statute.

Section 24 of the RE Growth Statute requires the PUC to open a docket “to consider rate design and distribution cost allocation among rate classes in light of net metering and the changing distribution system that is expected to include more distributed-energy resources, including, but not limited to, distributed generation.” R.I. Gen. Laws § 39-26.6-24(a). Pursuant to this statute, National Grid is required “to file a revenue-neutral allocated cost of service study for all rate classes and a proposal for new rates for all customers in each rate class.” Id.

The Access Fee is simply one element of the Company’s proposed rate design that is wholly consistent with directives under Section 24 of the RE Growth Statute. As National Grid stated in its initial filing, the Access Fee is proposed to provide adequate cost recovery commensurate with the cost responsibility of the stand-alone DG facilities. Testimony of Peter T. Zschokke and Jeanne A. Lloyd at 62. The Company’s distribution system is designed and constructed to service the expected maximum needs of all of its customers, including customers with DG. Id. For customers with distributed generation, the amount of infrastructure required to serve that customer is based on the maximum amount of electricity flowing to the customer from the distribution system or flowing back into the distribution system by a

generator. Id. Therefore, proper cost allocation and cost recovery should recognize demand that results from either inflows or outflows of energy. Id. The proposed Access Fee would contribute towards the cost of the distribution system that the DG facility relies upon for the movement of generated energy from the site of generation to other locations, as well as contributing towards the recovery of ongoing operation, maintenance, and replacement costs of interconnection equipment. Id. As part of this proposal, the Company will credit any revenue billed through this Access Fee to its Revenue Decoupling Mechanism (RDM) reconciliation. Id., at 64. Therefore, the Company will not realize incremental revenue from this proposal, but the stand-alone DG facility will pay for its use of the system that all other customers have been funding. Id.

Accordingly, the Company's initial filing demonstrates that the Access Fee is consistent with the requirements under Section 24 of the RE Growth Statute to provide a proposal to redesign distribution rates based on cost allocation principles. Any claim to the contrary is unfounded and should be rejected. At the very least, the evidence provided in the Company's initial filing demonstrates that there are matters of material fact to the PUC's decision in this docket as to whether the Access Fee is consistent with Section 24 of the RE Growth Statute and, as a result, the Access Fee cannot be summarily disposed of at this time.

C. Other Legal Requirements Are Outside The Scope Of The Motions For Summary Disposition

Any claim that the proposed Access Fee is inconsistent with statutes other than Section 24 of the RE Growth Statute is outside the scope of a Motion for Summary Disposition. Under PUC Rule 1.15(e), the PUC's decision is limited to whether there is any genuine issue of fact material to show that the Access Fee is consistent with Section 24 of the RE Growth Statute. Whether or not the proposed Access Fee is consistent with additional statutes and regulations are

beyond what the PUC must decide for purposes of summary disposition and are instead matters to be litigated.

In the Motions, both WED and the Other Interveners allege that the Access Fee violates certain other statutory provisions and regulations. For instance, the Other Interveners argue that the Access Fee should be rejected as a matter of law on the basis that it (1) offsets net metering credits in violation of R.I. Gen. Laws § 39-26.4-3(a)(5) by offsetting net metering credits; (2) jeopardizes that rate, and rate of return, established for customers and generators who qualified for a standard contract under DG Standard Contracts program, R.I. Gen. Laws § 39-26.2-5; (3) changes the terms of tariffs that generators relied on to enroll in the Renewable Energy Growth Program in 2015 and 2016 in violation of R.I. Gen. Laws § 39-26.6-6. Contrary to the allegations of the Other Interveners, any impact that the Access Fee has on these three laws has no bearing on the decision of whether National Grid has demonstrated a material issue of fact regarding whether the Access Fee is consistent with the statutory requirements of Section 24 of the RE Growth Statute. See Docket No. 3655 at 5. Similarly, WED argues that the Access Fee violates the statutes identified by the Other Interveners and a number of additional statutes and regulations, including the PUC's general standards and duty to protect customer against unjust, unreasonable, and illegal charges and the Federal Public Utilities Regulatory Policies Act. Contrary to the assertions of WED and the Other Interveners, any requirements outside of Section 24 of the RE Growth Statute are simply outside of the scope of whether or not there are material issues of fact to show the Access Fee is consistent with Section 24 of the RE Growth Statute. Furthermore, whether the Access Fee is compliant with the various statutes and regulations noted above raises a host of complex factual and legal issues that should be resolved by the PUC after all parties have had an opportunity to fully litigate each claim. As such, any

claims made by WED and the Other Interveners that the Access Fee violates statutes and regulations other than Section 24 of the RE Growth Statute should not be decided by the PUC under the summary disposition standard of review.

IV. CONCLUSION

For the reasons set forth above, the Company objects to the Motions for Summary Disposition and respectfully requests that the PUC deny the Motion for Summary Disposition filed by Green Development, LLC d/b/a Wind Energy Development, LLC and the Motion for Summary Disposition filed by Acadia Center, Conservation Law Foundation, New England Clean Energy Council, and The Alliance for Solar Choice.

[Signature page follows]

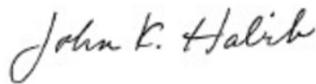
Respectfully submitted,

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Dated: October 13, 2015