STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

REVIEW OF ELECTRIC DISTRIBUTION DESIGN PURSUANT TO R.I. GEN. LAWS § 39-26.6-24	)	Docket No. 4568

RENEWED MOTION FOR SUMMARY DISPOSITION
BY
GREEN DEVELOPMENT, LLC dba WIND ENERGY DEVELOPMENT, LLC

Green Development, LLC dba Wind Energy Development, LLC (WED) hereby moves again for summary disposition of the access fee proposed in National Grid's filing pursuant to Rule 1.15 of the Rhode Island Public Utilities Commission's Rules of Practice and Procedure. WED has consulted with the parties pursuant to Rule 1.15(b) and based on responses received to date, only National Grid intends to oppose this motion.

Summary disposition is warranted before the hearing for three reasons. National Grid has not met its burden on the fee. The fee is illegal as proposed for net metering customers. The rationale for the fee does not apply to distributed generation standard contract or renewable energy growth customers and the fee violates the statutory intent of those programs. WED also incorporates and restates the arguments in its first motion for summary disposition.

STANDARD

Rule 1.15 provides that any party may file a motion for summary disposition that shall be granted if the Commission determines that there is "no genuine issue of fact material to the decision." The test is not whether the record is devoid of any evidence favoring the non-movant. Rather, the test is whether a reasonable fact-finder could resolve this dispute in favor of the nonmoving party

Hodgens v. General Dynamics Corp., C.A. No. 96-117T, slip op. at 5-6 (D.R.I. May 6, 1997)(citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986)); Ludwig v. Kowal, 419 A.2d 297, 301 (R.I. 1980); Saltzman v. Atlantic Realty Co., Inc., 434 A.2d 1343, 1345 (R.I. 1981).

UNDISPUTED FACTS

The following facts, relied on in this motion, are undisputed.

1. National Grid proposes to assess a fee on distributed generation (DG) facilities that are directly connected to the distribution system but have no on-site load for access to the distribution system. National Grid Testimony at pp. 59-60.

2. The proposed fee would be based on nameplate capacity adjusted for expected availability capacity. Id. at 60.

3. The fee is assessed as follows:

> The Company is proposing, based on the voltage level at which a stand-alone DG facility is connected (primary or secondary), an Access Fee per kW-month based on the demand related cost of service unit charge. The Access Fees are as follows:
>
> Primary Voltage Level Fee: $5.00 per kW-month
> Secondary Voltage Level Fee: $7.25 per kW-month

4. If this access fee is accepted and implemented, National Grid proposes that subsequent enrollees in the Renewable Energy Growth Program (REG) would recover the fee through ceiling prices that would be adjusted accordingly. *National Grid Testimony at Technical Session, September 17, 2015*.

5. DG and REG customers both sell their electricity to National Grid on the customer side of their meter. Docket 4288, Contracts for Large and Small Distributed Generation Projects, §§1, 4.5 ("Delivery Point" is Facility's busbar on Seller's side of interconnection point with Buyer's distribution system); R.I. Gen. Laws § 39-

26.6-18 (REG customers install their own meters to measure the output of their generation).

ARGUMENT

No reasonable fact finder could conclude that the proposed access fee should be approved and imposed on renewable energy generating customers. The fee is unsubstantiated and inconsistent with the statutory standard under which it is proposed. The fee is illegal as proposed to apply to net metering customers, and inimical to the DG Standard Contract and REG programs.

I. National Grid Has Not Met its Burden of Production on the Fee.

National Grid has not met its burden of production to substantiate and justify the fee.[1] The Company's proposal hardly recognizes a need to justify this fee. National Grid's rebuttal testimony attempts to supplement its case with new evidence, but new evidence is not permitted on rebuttal and that evidence reinforces the lack of support for the fee.

In its proposal, the Company states that "proper cost allocation and cost recovery should recognize demand that results from either inflows or outflows of energy."[2] That is nothing but a statement of general principal in the absence of any connection between the proposed fee, energy flows and Company costs. The Company also states that the proposed fee would "contribute towards the support for the distribution system" and "ongoing operation, maintenance and replacement costs."[3] Again this is only a general statement about allocation of revenues from the fee, but does not point to any specific costs addressed with fee revenues. Other than these hortatory statements, the Company offers absolutely no justification for its proposed access fee or its amount.[4] The Company

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[1] R.I. Gen. Laws §39-3-12; United States v. Public Utilities Commission, 120 R.I. 959, 393 A.2d 1092 (1978) (Company must establish charge is necessary and nondiscriminatory); October 16, 2015 Tr., pg. 85 (burden remains with National Grid throughout the case).
[2] Zschokke & Lloyd Testimony, July 31, 2015 ("Company Testimony"), at p. 62.
[3] Id.
[4] Testimony of Karl Rabago ("Rabago") at p. 9 (citing Zschokke & Lloyd Testimony, July 31, 2015 ("Company Testimony"),

then continues its utter and entire failure to justify the fee when given many opportunities in response to data requests.[5] It seems to posit that energy transmitted for consumption over the distribution and transmission system and energy transmitted from generation are separate cost causers and cost drivers.[6] However, the theory that distributed generation customers impose any additional cost on the Company or ratepayers has no support in the record. [7] Therefore, the proposal cannot support approval and no reasonable fact-finder would approve it.

The Company's application for the fee must fail because it is not factually supported or supportable; it is false.[8] The distribution and transmission system is sized to serve current load from generators of all types and sizes. There is no incremental investment required for distributed generation customers that is not already recovered through interconnection and facility upgrade charges.[9] There can be no cost allocation in ratemaking without quantitative evidence of cost causation and proper allocation – that is the foundation of equitable rate design. The Company's rates recover the full cost of its system needed to serve all customers regardless of their generating suppliers, and National Grid provides no justification for the unprecedented double charge proposed on distributed generation.

National Grid also fails to meet its burden of production because its proposal does not meet the statutory standards in R.I. Gen. Laws §39-26.6-24(b)(6) and (7). No reasonable finder of fact could conclude that the fee is consistent with the purposes of the REG program, to facilitate and promote installation of grid-connected renewable-energy. Moreover, as addressed thoroughly in Mr. Rábago's testimony, National Grid neglected to produce any evidence that it had weighed the benefits distributed generation provide to the distribution system as required by R.I. Gen. Laws §39-26.6-

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at p. 62).
[5] Rabago, pp. 12-16.
[6] Id.
[7] Id. at 10.
[8] Id. at 9.
[9] Id.

24(b)(7).[10] Mr. Rábago points to more than one hundred studies that address the value of distributed generation.[11] National Grid's application includes no such consideration. Yet, the Company seeks to impose the access fee without any assessment of its value. No reasonable finder of fact could approve such a baseless proposal.

National Grid's rebuttal testimony attempts to salvage some support for its fee proposal. However, rebuttal testimony may only reply to new evidence offered by the opposing party. Hodosh v. Ford Motor, 477 A.2d 77, 80 (R.I. 1984). The party having the burden of proof must present all supporting evidence when establishing its case in chief. Id. (citing Labree v. Major, 306 A.2d 808, 819 (R.I. 1973). It would be unfair to allow National Grid to expand its case at this stage of this proceeding. Id.

Even if it were appropriate in scope, the rebuttal testimony only makes it clearer that National Grid's proposed fee disregards the General Assembly's standard for this proceeding. In rebuttal, the Company takes the position that the benefits of distributed generation should only be relevant to compensation issued to the developer under incentive programs and have no relevance to this proceeding regarding rates for distribution service.[12] They testify that "[r]egardless, the potential benefits of DG do not affect the Company's proposed rate designs in this docket."[13] Such an ill-considered proposal cannot meet the General Assembly's standard in section 24(b)(7).[14]

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[10] Id. pp. 17-41.
[11] Id. p. 10 (citing Clean Power Research, "Research Timeline" at https://www.cleanpower.com/research/research-timeline/.
[12] Zschokke, Lloyd & Roughan Rebuttal Testimony, December 16, 2015, p. 24. Although beyond the scope of this motion, in fact, none of Rhode Island's DG programs consider system benefits in setting their incentives – the DG and REG incentives are strictly based on development economics (the CREST model) and the net metering rate simply offsets the market cost of supply.
[13] Id.
[14] R.I. Gen. Laws §39-26.6-24(b)(7). Mr. Rabágo's testimony clearly establishes why it is essential to conduct a detailed study of the value of distributed generation to the distribution system before assessing any such fee or credit.

II. **The Access Fee is Illegal and Discriminatory as Applied to Net Metering Customers.**

The access fee violates the statutory premise of net metering. R.I. Gen. Laws §39-26.4-3(a)(5) says:

> 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 assessment of an access fee on public entity net metering projects (the only net metering projects permitted without associated load in Rhode Island) would violate the net metering statute by discounting the compensation due to net metering customers simply because they are net metering.

Moreover, the proposed fee is discriminatory as applied to REG and net metering customers. The Company's decision to allow REG customers to recover the proposed fee through a ceiling price adjustment has a discriminatory impact on net metering customers who have no such means to recover the fee.[15] This proposal to treat different classes of customers differently just because of the regulatory program in which they are enrolled (and not with the benefit of or because of any cost differential) is clearly discriminatory.

III. **The Access Fee Cannot Properly be Applied to DG and REG Customers and Counters the Intent of those Programs.**

The fee makes no sense in its proposed application to DG Standard Contract and REG customers. As a matter of record, those customers sell their electricity to National Grid on the customer side of their meters.[16] Therefore, DG and REG customers do not even use the distribution system they are alleged to have burdened. National Grid is, in fact, the user of the grid to distribute

[15] United States v. Public Utilities Commission, 120 R.I. 959, 393 A.2d 1092 (1978) (Company must establish charge is necessary and nondiscriminatory).

[16] Docket 4288, Contracts for Large and Small Distributed Generation Projects, §§1, 4.5 ("Delivery Point" is Facility's busbar on Seller's side of interconnection point with Buyer's distribution system); R.I. Gen. Laws § 39-26.6-18 (REG customers install their own meters to measure the output of their generation).

for sale (at the full retail rate) the power that it purchases from these generating customers to its consuming customers.

The proposal to impose an access fee on projects already enrolled under the DG and REG programs contravenes the purposes of those laws, which is to establish a fixed contract rate that generates a reasonable rate of return on investment.[17] The projects enrolled in these programs either accepted a fixed, 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 jeopardizes the economics of those projects, undermining the programs.

The proposed fee also clearly and severely conflicts with the Renewable Energy Growth Program's promise of permanence. R.I. Gen. Laws § 39-26.6-6 states that:

> 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.

This program replaced the fifteen-year, pre-negotiated DG contract with tariff enrollment. One condition of that change (which was proposed by National Grid to benefit their accounting for these obligations) was to ensure that National Grid would not change fundamental terms of enrollment in the midst of program implementation. The access fee effectively seeks to amend what would

[17] R.I. Gen. Laws §39-26.2-5

otherwise have been a fixed contract right in the midst of its implementation. That intent is directly antithetical to R.I. Gen. Laws §39-26.6-6.

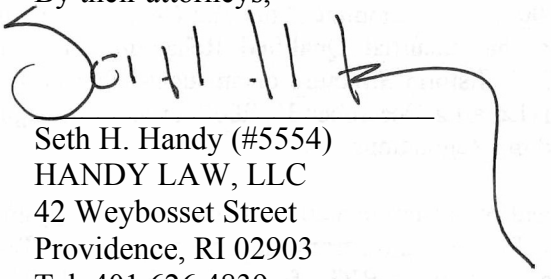
CONCLUSION

For these reasons and those argued in support of its first motion for summary disposition, WED respectfully requests summary disposition of the proposed access fee.

Respectfully submitted,

WIND ENERGY DEVELOPMENT, LLC

By their attorneys,



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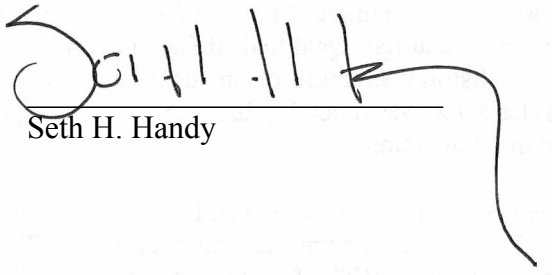
CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2015, I delivered a true copy of the foregoing document to the parties by electronic mail.



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