



## **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.”

## **ARGUMENT**

The proposed access fee should be rejected as a matter of law because there is no genuine issue of fact material to summary disposition. The fee is inconsistent with the statutory directive under which it is proposed, R.I. Gen. Laws §39-26.6 -24. It is an unjust, unreasonable and illegal charge from which the Commission is directed to protect its customers. Finally, the access fee conflicts with the purposes of the Renewable Energy Growth Program and does not consider many benefits of distributed generation, which the Commission must consider as an element of this rate review proceeding.

## **UNDISPUTED FACTS**

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

1. National Grid proposes to assess distributed generation (DG) facilities that are directly connected to the distribution system but have no on-site load a fee 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. National Grid provides the availability capacity factor for solar based on a February 2015 ISO meeting but has yet to provide that factor for other technologies, stating that it will be provided at a later date. *Id.* at 61.
4. 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

5. No generating sources of electricity are currently charged any such fee for access to the distribution system. *R.I.P.U.C. Tariff No. 2095.*
6. If this access fee is accepted and implemented, National Grid proposes that subsequent enrollees in the Renewable Energy Growth Program would recover the fee through ceiling prices that would be adjusted accordingly. *National Grid Testimony at Technical Session, September 17, 2015.*
7. National Grid has not notified existing or planned projects of the proposed imposition of this access fee. *Id.*

## **ARGUMENT**

### **I. The Access Fee is Inconsistent with the Statutory Directive.**

The proposed access fee is contrary to the statutory mandate for this proceeding. R.I. Gen. Laws §39-26.6 -24 requires the “electric-distribution 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. . . establishing a fair rate structure. . . designed for each proposed rate class in accordance with industry-standard, cost allocation principles.” R.I. Gen. Laws §39-26.6 -24(a) and (b)(7). While the Commission must consider National Grid’s proposal, there is no legal requirement that the Commission approve any or all of it. The Commission is directed 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. The statute does not authorize the electric-distribution company to propose or the Commission to accept a new access fee for stand-alone DG

facilities. The proposal to institute a charge on certain DG customers cannot be construed as a “rate proposal for all customers in each rate class” or a “fair rate structure designed for each proposed rate class.” It is simply an additional interconnection and/or back-up service charge that impedes universal and equitable access to distribution service.

## **II. The Access Fee is an Unjust, Unreasonable and Illegal Charge.**

The Commission’s mission is, in part, to protect customers against unjust, unreasonable and illegal charges. In the Report and Order for Docket 4065, the Commission outlined the following general standards for its work.

The Rhode Island General Assembly has declared that it is the policy of the state to provide fair regulation of public utilities and carriers in the interest of the public, to promote availability of adequate, efficient and economical energy, communication and transportation services and water supplies to the inhabitants of the state, to provide just and reasonable rates and charges for such services and supplies, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices . . . .R.I. Gen. Laws § 39-1-1 (utility rates and charges must be “reasonable and just”); R.I. Gen. Laws §39-2-2 (prohibiting rate discrimination). . .

Pursuant to R.I. Gen. Laws §39-3-12, NGrid alone, and not the Division, bears the burden of proving that its requested rate increase is necessary in order to obtain just and reasonable compensation for the services it renders. R.I. Gen. Laws §39-3-12; Michaelson v. New England Telephone and Telegraph Company, 121 R.I. 722, 404 A.2d 799 (1979). The Commission is not bound by a specific formula in determining what is just and reasonable but has discretion to select a measurement approach that is supported by the record. Providence Gas Co. v. Burman, 119 R.I. 78, 376 A.2d 687 (1977). . .

As cogently articulated by the United States Court of Appeals for the Second Circuit, although in reference to the Federal Power Commission, the Commission’s execution of its duties “does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.” Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 620 (2nd Cir. 1965) (emphasis supplied).

The Commission could not approve the access fee while upholding these standards, because the access fee is unjust and unreasonable and violates Rhode Island and federal law.

The proposed fee is discriminatory and is an unreasonable preference and prejudice pursuant to R.I. Gen. Laws §§39-2-2, 39-2-3. Those laws provide in pertinent part:

**§ 39-2-3 Rate discrimination.** – (a) If any public utility or any agent or officer of a public utility, as defined in chapter 1 of this title, shall directly or indirectly by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting, or relating to the . . . distribution of electricity. . .or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions, the public utility shall be guilty of unjust discrimination which is hereby prohibited and declared to be unlawful and, upon conviction thereof, shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each offense; and the agent or officer so offending shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) for each offense.

**§ 39-2-3 Unreasonable preferences or prejudices.** – (a) If any public utility shall make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or shall subject any particular person, firm, or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, the public utility shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each offense.

The access fee violates these provisions in at least the following ways. First, it charges DG customers to access the distribution grid while not charging any other generation customers for such service. As proposed, it also discriminates between distributed generation customers by: 1) applying only to stand-alone DG facilities and not DG facilities with associated load; 2) proposing that future enrollees in the renewable energy growth program be entitled to recover the proposed access fee in the ceiling price while denying past enrollees that benefit; and 3) allowing future enrollees in the renewable energy growth program to recover the fee in ceiling prices while denying public entity net metering customers any relief from the fee. The Commission may not approve such discriminatory and prejudicial charges, as a matter of law.

The access fee also violates federal law. Congress passed the Public Utilities Regulatory Policies Act (PURPA) to encourage development of small power production facilities. American Paper Institute, Inc. v America Electric Power Service Corp, et al., 461 US 402, 404-5 (1983). They “believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels and recognized that electric utilities had traditionally been reluctant to purchase power from, and sell power to, the nontraditional facilities.” *Id.* Congress also believed that a “Decrease in utilities’ reliance on fossil fuels may result in reduction of the prices of those fuels to levels lower than would have been the case with higher demand.” *Id.* at 405, fn. 10 (citing 45 Fed. Reg. 12222). PURPA was designed to resolve three problems, one of which was that “some utilities charged discriminatorily high rates for back up service to small power production facilities.” *Small Power Production and Cogeneration Facilities—Qualifying Status, FERC Statutes and Regulations, Regulations Preambles* (1977–81) ¶ 30,134, at ¶ 30,932 (C.C.H.1980) (cited in Liquid Carbonic Inds. Corp. v Federal Energy Regulatory Comm., 29 F.3d 697, 699 (D.C.Cir.1994)). PURPA recognizes “the primary responsibility of the State with respect to electric utility rates, but it places certain Federal responsibilities and obligations on the State commissions in the exercise of their responsibilities....” 1978 U.S.Code Cong. & Ad.News 7659, 7801. The regulations implementing PURPA require utilities to make interconnections with Qualifying Facilities as necessary to accomplish the purchase and sale of their electricity. 16 U.S.C. §§824(i), 824(k); 18 CFR §292.303. The rates established for the purchase and sale of electricity “may not discriminate against small power production facilities.” 16 U.S.C. §§824a-3(b)(2); 824d(b); 18 CFR §§292.304, 292.305. FERC rules state that a qualifying facility must “pay any interconnection costs which the State regulatory authority. . .or nonregulated electric utility may assess against the qualifying facility on a nondiscriminatory basis.” 18 CFR §292.306(a). This proposed access fee clearly is not associated

with any cost of accessing the distribution system for qualifying facilities since those costs are already fully recoverable under the Company's interconnection tariff. The proposed access fee on one kind of DG customer violates PURPA and its implementing regulations because it discourages development of such small power production facilities by layering a discriminatory surcharge on interconnection.

FERC regulations also require utilities to provide back-up and supplementary power to qualifying facilities and set specific standards for back-up rates. see 18 CFR §§292.305(b)-(c) (may not assume simultaneous forced outages or during system's peak demand and must coordinate with outages of utility facilities to extent possible). On page 25 of its testimony, National Grid explains how its distribution system is sized and built to "accommodate maximum customer demand during greatest demand periods, such that neither energy efficiency nor distributed generation can reduce fixed system size or distribution costs." Again on page 40, they testify that rates should not be designed to provide a subsidy – they should simply reflect the fixed cost of service based on maximum system demand. If the access fee is characterized as a fee for back-up service rather than an interconnection adder, then it is illegal under PURPA rules because it refuses service to qualifying facilities on the same terms offered other facilities and assumes simultaneous, maximum load during peak demand.

The imposition of this fee is also unjust because it 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 wholly 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 fixed, 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 entire purpose and structure of the Distributed Generation Standard Contract Act.

The access fee violates the purpose of the Renewable Energy Growth Program in the same way. In that program, the board is directed to “use the same standards for setting ceiling prices as set forth in § 39-26.2-5.” R.I. Gen. Laws §39-26.6-5(d). The first enrollment has already been conducted for 2015 and none of those enrollees anticipated the access fee or would receive a reasonable rate of return if it were imposed. Moreover, the 2016 ceiling prices that have already been proposed and are currently under consideration for approval in February 2016 do not contemplate an access fee, and such a fee would therefore undermine the statutory purpose for all 2016 enrollees. 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 19, and those ceiling prices will not include the access fee. National Grid never informed the Board’s consultant Sustainable Energy Advantage (SEA) of the proposed access fee, despite requests for ceiling price data (including cost inputs), the issuance of two price proposals, and two Board presentations. National Grid has not even notified existing enrollees of its proposed access fee. Therefore, the access fee is unjust and unreasonable as a procedural matter.

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.

National Grid's proposed access fee violates the legislature's prohibition against alteration of tariff terms by drastically changing the economic playing field for enrollees in the midst of tariff implementation and enrollment.

Next, the access fee would violate the premise and requirements for net metering. R.I. Gen.

Laws §39-26.4-3 says:

**Net metering (a)(5)** 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 (which are the only net metering projects permitted without associated load in Rhode Island) would upend the intent of the net metering statute by discounting the compensation due to net metering customers simply because they are net metering.

The access fee should be dismissed as a matter of law because it is inconsistent with the Commission's regulatory mandate and with Rhode Island and federal law.

**III. The Commission Could Not Approve This Fee Under the Criteria Set in R.I. Gen. Laws § 39-26.6-24(b).**

The Commission cannot approve the proposed access fee under R.I. Gen. Laws § 39-26.6-24(b), or at least not without substantially more diligence and input on a balanced rate calculation. The fee is clearly contrary to the purposes of the Renewable Energy Growth Program (criterion (b)(6)) and its proposal gives no consideration to the benefits of distributed generation (criterion (b)(1)). If the Commission were to continue with the consideration of this proposed fee, it would, at the very least, need to provide the means and assurance that the benefits of distributed generation would be thoroughly studied, considered and balanced against its cost to the distribution system as an essential part of any resulting rate structure.

*a. The Fee Would Frustrate the Purposes of the Renewable Energy Growth Program.*

As a clear matter of law, the access fee does not serve the purposes of the Renewable Energy Growth Statute and thus cannot be approved per R.I. Gen. Laws § 39-26.6-24(b)(6). Indeed, it is very clearly antithetical to those purposes. The purposes are:

to facilitate and promote installation of grid-connected generation of renewable-energy; support and encourage development of distributed renewable energy generation systems; reduce environmental impacts; reduce carbon emissions that contribute to climate change by encouraging the siting of renewable energy projects in the load zone of the electric distribution company; diversify the energy generation sources within the load zone of the electric distribution company; stimulate economic development; improve distribution system resilience and reliability within the load zone of the electric distribution company; and reduce distribution system costs.

R.I. Gen. Laws § 39-26.6-1. National Grid's filing contains little to no consideration of these purposes or explanation or evidence of consistency. Pages 17-19 of the testimony simply say that the

distribution grid provides back-up service to these projects and that it would be much more expensive for distributed generation customers to provide such service themselves. The testimony concludes that a “properly funded” distribution system is essential to allow for the interconnection of distributed generation in a safe and reliable manner and thus serves the purposes of the Act.” p. 19. The proposed imposition of added fees on one class of DG customers clearly does not facilitate or promote distributed generation.<sup>1</sup>

Moreover, that logic fails to account for most of the purposes of the Renewable Energy Growth Program. Will the access fee reduce environmental impacts and reduce carbon emissions that contribute to climate change by encouraging the siting of renewable energy projects 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 within the load zone of the electric distribution company? Will it reduce distribution system costs? Presumably, the testimony failed to consider those questions because the Company understood that its proposed fee would undermine them. Regardless, the failed consideration makes the fee proposal defective as a matter of law.

The most interesting and significant oversight is the nature of the Company’s consideration of the Renewable Energy Growth Program’s goal of reducing distribution system costs. Rather than agreeing with the General Assembly’s conclusion that the Renewable Energy Growth Program will reduce distribution system costs, National Grid’s proposal actually and consistently contests it. Instead, the filing repeatedly speaks of how distributed generation increases the cost of operating the distribution system, and the access fee is founded on that supposed increase. On page 25, the

---

<sup>1</sup> “Imposing a fixed charge solely for the privilege of being a customer is not common in other economic sectors from supermarkets to hotels and airlines, that have similarly significant fixed costs to those of utilities. Allowing utilities to impose high fixed monthly charges is an exercise of monopoly power and impedes the longstanding goal of universal service in the United States.” *Smart Rate Design*, Regulatory Assistance Project, July 2015, p. 19.

testimony explains how the distribution system is sized and built to accommodate maximum customer demand during greatest demand periods, such that neither energy efficiency nor distributed generation can reduce fixed system size or distribution costs. The Company concedes that “rates must not be designed to discourage distributed generation” but insists that rates should not be designed to provide a subsidy either – they should simply reflect that fixed cost of service based on maximum system demand. p. 40. National Grid testifies that its revenue losses will continue to grow after the Renewable Energy Growth Program concludes and those customers are presumably converted to net metering and “absent this rate reform, non-distributed generation customers will need to pick up that cost.” pp. 40-41 The Company insists that the current method of billing stand-alone distributed generation facilities does not provide adequate contribution toward the cost caused by DG’s use of system and that proper cost allocation must consider demand from inflows and outflows of energy. p. 62. Finally, the Company observes that the C-06 rate currently used for these facilities does not recover the cost of interval metering required for these facilities to settle at ISO. pp. 62-63.

WED concedes that disputing National Grid’s outlook on the added system costs imposed by distributed generation is a factual exercise, and therefore not appropriate ground for summary disposition.<sup>2</sup> However, the failure to weigh all of the statutory purposes and the presumptuous and unbalanced conclusion that distributed generation costs the distribution system, despite the General Assembly’s conclusion to the contrary, make it clear that the access fee was not designed to serve the purposes of the Renewable Energy Growth Program.

---

<sup>2</sup> But, the Regulatory Assistance Project’s *Smart Rate Design* report says that distributed generation only puts additional service strain on the distribution system at extremely high penetration rates and that even then those costs are more than offset by reduced generation, distribution and transmission costs. “In truth, at any given point in time, only those customers that are taking energy from the distribution system are using that system. When injecting energy into the system, DG customers are not using the system any more than a remote central-station generator is using the system – that is, not at all. In fact, when energy is injected into the distribution system at the customer’s location, energy losses in that system actually go down and the net impact is a negative cost – i.e., a benefit – from the presence of the DG.” *Smart Rate Design*, Regulatory Assistance Project, July 2015, p. 43.

*b. The Proposal for the Fee Does not Consider the Benefits of Distributed Generation.*

There is no evidence that National Grid considered the benefits of distributed generation to the distribution grid in proposing the access fee, so the Commission must either reject the proposal or provide assurance that such benefits will be weighed properly before finalizing any new rate structure pursuant to R.I. Gen. Laws § 39-26.6-24(b)(6). Pursuant to R.I. Gen. Laws §39-3-12, NGrid alone, and not the Division, bears the burden of proving that its requested rate increase is necessary in order to obtain just and reasonable compensation for the services it renders. R.I. Gen. Laws §39-3-12; Michaelson v. New England Telephone and Telegraph Company, 121 R.I. 722, 404 A.2d 799 (1979). This proposed rate increase cannot be considered “necessary” until the alleged costs DG puts on the distribution system are properly weighed against its benefits. WED is not the expert on this subject, nor did WED anticipate the need to provide a counter-proposal based on well-balanced consideration of such benefits. This proceeding cannot reach the statutorily required result unless the Commission will provide the expertise and process necessary to properly balance any benefits DG contributes to the distribution grid.

National Grid’s meek contemplation of the benefits that DG may offer to the distribution grid is the following statement beginning on page 39 of its testimony:

DG has the potential to provide capacity relief in local areas having distribution system constraints. Therefore, any compensation for the benefits that DG might bring to the Company and its customers is specific to the condition that is causing the constraint and the time over which distribution system investment can be deferred. As part of the RE Growth Program annual filing requirement in 2016, the Company will be evaluating the use of localized credits in 2016 for location where DG would be helpful. . . however, although there are potential benefits of DG, there is also a cost that DG imposes by virtue of connecting to the system.

According to the filing, the benefits of DG are undetermined, strictly local and evidently not relevant to this proceeding, despite the statutory mandate that they must be considered. National Grid’s response to WED’s data request 1-2 admits that the Company does not even understand either the

costs or the benefits of DG: “Once the cost and benefits of DG are clearly understood, the Company will be able to move towards a pricing for services model to compensate DG that provides the services to the distribution grid when and where necessary.” Either this filing is premature or it evidently requires substantially more work before it will be eligible for approval. Even a cursory review of expert writings on the subject reveal a long list of potential benefits of distributed generation to the distribution grid that just were not even considered in National Grid’s proposal.

They include, but may not be limited to, the following:

- ✓ peak shaving?
- ✓ voltage regulation impact?
- ✓ power factor control?
- ✓ frequency control?
- ✓ spinning reserves?
- ✓ reduced line losses? (greater benefit than any cost imposed per RAP)
- ✓ load reduction - reduces load on equipment & risk of failure & outages (resilience)?
- ✓ deferred/avoided distribution investments (overall system)?
- ✓ deferred/avoided transmission investments?
- ✓ alleviated fuel supply risks?
- ✓ back-up power?
- ✓ hedge against volatile fuel prices?
- ✓ health impacts?
- ✓ environmental impacts?

The Commission cannot rightly approve this proposed access fee without thoroughly investigating and balancing such possible benefits. If the access fee is not dismissed on other grounds provided herein, WED respectfully requests that the Commission consider and design a process to thoroughly examine and balance such benefits before issuing any order in this docket.

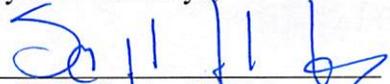
**CONCLUSION**

For these reasons, WED respectfully requests summary disposition of the proposed access fee.

Respectfully submitted,

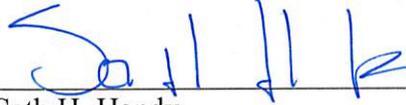
WIND ENERGY DEVELOPMENT, LLC

By their attorneys,

  
\_\_\_\_\_  
Seth H. Handy (#5554)  
HANDY LAW, LLC  
42 Weybosset Street  
Providence, RI 02903  
Tel. 401.626.4839  
E-mail [seth@handylawllc.com](mailto:seth@handylawllc.com)

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2015, I delivered a true copy of the foregoing document to the parties by electronic mail.

  
\_\_\_\_\_  
Seth H. Handy