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April 4, 2017

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

Re: Docket No. 4688
In Re: Block Island Power Company's Petition for Declaratory Judgment

Dear Luly:

Enclosed for filing are an original and nine copies of Block Island Power Company's Reply Memorandum.

If you have any questions, please feel free to call.

Very truly yours,

Michael R. McElroy

Docket No. 4688 – Block Island Power Co. - Petition for Declaratory Judgment Service List as of 2/27/17

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STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND POWER COMPANY'S PETITION FOR DECLARATORY JUDGMENT	: : :	DOCKET NO. 4688

BLOCK ISLAND POWER COMPANY'S REPLY MEMORANDUM

Block Island Power Company ("BIPCo") has asked the Commission to issue a declaratory judgment that all interconnection costs and the standby transformer costs associated with the Town of New Shoreham Project ("Project") must be socialized to all Rhode Island electric ratepayers pursuant to R.I.G.L. § 39-26.1-7 which authorized the Project ("Enabling Act"). BIPCo hereby submits its Reply to National Grid's Objection (filed March 15, 2017) and to the Division's Reply Memorandum (filed March 20, 2017).

All parties agree that, under the Enabling Act, National Grid must socialize the "costs associated with the purchase of the transmission cable and related facilities." R.I.G.L. § 39-26.1-7(f). The Legislature purposefully included interconnection to Block Island as an integral part of the Project. R.I.G.L. § 39-26.1-7(a). Therefore, Block Island's interconnection and standby transformer are "related facilities" as anticipated by the Enabling Act.

The Division argues that the Enabling Act does not reference interconnection. This is simply untrue. The Division also points out that the Enabling Act does not include the specific phrase "interconnection costs of BIPCo [and] a backup transformer." Division Reply, at 9. The Division argues that absent such specific language, the Commission must infer that the General Assembly purposely meant to exclude these costs. This argument fails. This kind of negative implication depends on context, such as where a statute includes a very precise list and the item at issue is not included. The Enabling Act includes no such list.

The Division also argues that the Enabling Act does not compel BIPCo to interconnect to the new undersea cable. To the contrary, the Enabling Act requires that the Project include an electrical connection from the mainland to the Town. BIPCo is the only electricity distributor for the Town. The only way for the Town to be connected to the mainland is through an interconnection with BIPCo.

National Grid hopes the Commission will ignore the public policy and legislative mandate set forth in the Enabling Act. National Grid endeavored to complicate the issues by discussing the ISO New England Inc. Transmission, Markets and Services Tariff ("Tariff"). The Tariff cannot override the Enabling Act. The Enabling Act plainly anticipates interconnecting the mainland to Block Island as an essential part of the Project.

National Grid also argues that the costs associated with the standby transformer should be charged solely to BIPCo because the transformer is unique and has no other use in National Grid's system. The transformer is essential to allow Block Island to interconnect with the mainland, as required by the Enabling Act. BIPCo agrees that the transformer is unique. In the event of a transformer failure, Block Island's ability to receive electricity distribution from the mainland would cease. Obtaining a replacement transformer of this type could take six months or more. This is why a standby transformer is necessary.

The issue here is simple: Does the phrase "related facilities" as used by the General Assembly in the Enabling Act include interconnection to BIPCo and the standby transformer associated with the Project? If yes, then the costs associated with each must be socialized to all Rhode Island ratepayers.

APPLICABLE LAW

When construing a statute under Rhode Island law, it is proper to "adhere to the basic proposition of establishing and effectuating the intent of the Legislature." *Howard Union of Teachers v. State*, 478 A.2d 563, 565 (R.I. 1984) (*citing Gott v. Norberg*, 417 A.2d 1352, 1356 (R.I. 1980). The Rhode Island Supreme Court has found that this is "accomplished from an examination of the language, nature, and object of the statute." *Howard Union of Teachers*, at 565 (*citing Berthiaume v. School Committee of Woonsocket*, 387 A.2d 889, 892 (R.I. 1979). "A statute is to be construed with reference to its intended scope in order to carry out the apparent objects and purposes of the legislature. Whenever the language is susceptible of more than one reasonable interpretation, such reasonable interpretation will be adopted as will best carry out the evident purposes of the statute." *Easton v. Fessenden*, 14 A.2d 508, 510 (R.I. 1940).

The Supreme Court has also held that when the "language of the statute is clear and unambiguous, it is our responsibility to give the words of the enactment their plain and ordinary meaning." *Mendes v. Factor*, 41 A.3d 994, 1002 (R.I. 2012) (*citing Kulawas v. R.I. Hospital*, 994 A.2d 649, 652 (R.I. 2010); *see also Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012) (*citing Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009). Even so, it is proper to "consider the statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." *Id.* (*citing Sorenson v. Colibri Corp.*, 650 A.2d 125, 128 (R.I. 1994). Furthermore, statutes "should not be construed to achieve meaningless or absurd results." *Berthiaume*, at 892.

ARGUMENT

A. BIPCo's interconnections and standby transformer are "related facilities" under the Enabling Act.

It is undisputed that the Enabling Act requires National Grid to socialize the "costs associated with the purchase of the transmission cable **and related facilities**." R.I.G.L. § 39-26.1-7(f) (emphasis added). The question before the Commission is whether Block Island's interconnections and backup transformer are "related facilities" under the Enabling Act.[1] If BIPCo's interconnections and back-up transformer are deemed "related facilites", then Grid is required under the Enabling Act to socialize the costs.

The General Assembly did not define "related facilities" within the Enabling Act. Therefore, the Commission should give the words their plain and ordinary meaning. The term "related" is an adjective that means "connected by reason of an established or discoverable relation." [2] The term "facilities" is a noun that means (1) "something that makes an action, operation, or course of conduct easier – usually used in plural," or (2) "something ... that is built, installed, or established to serve a particular purpose." [3]

The phrase "related facilities" is frequently used by the General Assembly. It is a broad-based, all-encompassing term. When the legislature wishes to denote a narrowly-defined application in a statute, it does not choose the comprehensive phrase "related facilities."[4]

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[1] National Grid agrees that the "legislature found that it was appropriate to socialize the costs of the transmission cable and the related facilities to all customers in Rhode Island." Grid Objection, at 10.

[2] https://www.merriam-webster.com/dictionary/related

[3] https://www.merriam-webster.com/dictionary/facility

[4] Examples of the phrase "related facilities" within existing statutes include:

- R.I.G.L. § 7-6-4 (6): "Providing housing and related facilities and services for elderly persons."
- R.I.G.L. § 23-19-5 (13): "...and residue disposal from waste processing facilities and any other related facilities and services."
- R.I.G.L. § 23-28.1-5 (7): "...which shall include sanctuaries, gathering halls, meeting rooms and offices and related facilities of the congregation..."
- R.I.G.L. § 37-6-13.1: "...including parking areas required therefor, and other related facilities within that parcel of real estate..."

It is obvious by looking at the facilities in question that they are "related." The BIPCo interconnection facilities include, among other things, wooden poles, overhead lines, a switch, and a circuit breaker. As can be seen in BIPCo Exhibit 1.2.1 (attached), the BIPCo interconnection facilities are simply an extension of the National Grid poles and wires that connect the National Grid substation to the BIPCo substation. Both BIPCo's and National Grid's interconnection facilities serve the same purpose, operate at the same voltage and are rated the same capacity. As a practical matter, there is no difference between these related facilities. They are virtually indistinguishable. In fact, when looking at the photo in BIPCo Exhibit 1.2.1 without labels, one cannot tell the difference between National Grid's and BIPCo's facilities.

The Division argues that "interconnection costs of BIPCo [and] a backup transformer" are "conspicuously devoid" from the Enabling Act, and from that the Division concludes that the legislature purposely excluded those costs from the Project. Division Reply, at 9. The Division is implicitly encouraging the Commission to apply the interpretive canon, *expression unius est exclusio alterius* ("the expression of one thing is the exclusion of another"). Black's Law Dictionary (9th ed. 2009).

However, the U.S. Supreme Court has held that the "*expressio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded." *Nat'l Labor Rel. Board v. SW General, Inc.*, 580 U.S. ___, ___ (2017) (No. 15-1251) (*quoting Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 81 (2002) ("The force of any negative implication, however, depends on context."). Similarly, the Rhode Island Supreme

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- R.I.G.L. § 42-64-3 (2): "...and other real or personal property necessary, convenient, or desirable ... for the accommodation, use or convenience of passengers or the carriers or their employees (including related facilities and accommodations..."
- R.I.G.L. § 45-2-35.2(b): "...the repair and/or replacement of the bulkhead and related facilities..."
- R.I.G.L. § 45-34-4: "The agreements may also provide for furnishings and equipment and other related facilities..."

Court has held that *expression unius* applies where a statute or ordinance includes an "explicit," "limited and very specific" list. *Ryan v. City of Providence*, 11 A.3d 68 (R.I. 2011) ("The city council included in the ordinance an explicit list of activities that constitute a crime related to one's employment...") Since the activity at issue did not appear in the ordinance, the Court determined that the negative implication was that the city intended for the item to be excluded.

In contrast, the portion of the Enabling Act the Division references includes only two items: transmission cable and related facilities. The circumstances do not support the Division's argument that the legislature purposely excluded BIPCo's costs related to interconnection and the back-up transformer. In fact, as previously discussed, the opposite is true. The legislature's use of the broad phrase "related facilities" results in an all-inclusive interpretation instead.

National Grid makes the conclusory assertion that the General Assembly meant to limit the phrase "related facilities" to exclusively include facilities necessary to interconnect *both* Deepwater Wind Block Island, LLC and BIPCo to existing National Grid facilities. Grid Objection, at 8. There is no support in the law for this allegation, and Grid offers no legal support for its contention.

Instead, National Grid contends that interconnection facilities and standby transformer costs could qualify as Direct Assignment Facilities ("DAF") under the Tariff. While this may be true under the Tariff, the Tariff must be interpreted in accordance with the Enabling Act. National Grid hopes that the Commission will ignore the Enabling Act and focus on the Tariff instead. However, the Enabling Act neither refers to the Tariff, nor places such limits on the phrase "related facilities" in relation to the Project. Therefore, even if the interconnection facilities and standby transformer costs would qualify as DAFs under the Tariff in other

circumstances, this does not preclude them from being "related facilities" for the purposes of the Project. The entire argument is a distraction. The Tariff cannot override the Enabling Act.

The Division argues that there is "simply no reference to interconnection" in the Enabling Act, and therefore "the term should not be read into an otherwise clear and unambiguous statutory section." Division Reply, at 8. This claim is simply untrue. The term "interconnection" appears in paragraph (c) of the Enabling Act:

> The commission shall review the amended power purchase agreement taking into account **the state's policy intention** to facilitate the development of a small offshore wind project in Rhode Island waters, **while at the same time interconnecting Block Island to the mainland.**

R.I.G.L. § 39-26.1-7(c) (emphasis added). [5] BIPCo is the only electricity distributor for Block Island. Therefore, in order to interconnect Block Island to the mainland, it is necessary to interconnect BIPCo to the new undersea cable. Otherwise, the requirement of paragraph (c) of the Enabling Act cannot be accomplished.

B. Interconnection to BIPCo and installation of a standby transformer are necessary to fulfill the policy goals of the Enabling Act.

National Grid argues that it objects to BIPCo's petition "on the grounds that the statutory intent of [the Enabling Act] did not contemplate socialization of the costs related to BIPCo's interconnection facilities and spare transformer." Grid Objection, at 4. Other than this unsupported allegation, National Grid offered nothing to buttress their argument that the General

[5] The Supreme Court also recognized that the Project required that the undersea cable must interconnect Block Island to the mainland. *In re Review of Proposed Town of New Shoreham Project*, 25 A.3d 482, note 19 (R.I. 2011) ("This Court notes that the Town of New Shoreham Project necessarily contemplates two cables. One cable tranverses between the wind turbines and the delivery point on Block Island. The other cable, the "transmission cable," connects the delivery point on Block Island to the mainland. While the revised LTC statute (and the 2009 LTC statute) refer to "the transmission cable," this term means the cable between the mainland and Block Island. *See* § 39-26.1-7(a) (referring to an "undersea transmission cable that **interconnects** Block Island to the mainland"); § 39-26.1-7(f) (requiring the Project to "include a transmission cable between the Town of New Shoreham and the mainland of the state").") (emphasis added).

Assembly specifically intended to exclude costs related to BIPCo's interconnection and backup transformer.[6]

Within the Enabling Act itself, the General Assembly set forth the state's goals for the Project:

> "The general assembly finds it is in the public interest for the state to facilitate the construction of a small scale offshore wind demonstration project off the coast of Block Island, including an undersea transmission cable that **interconnects** Block Island to the mainland in order to: position the state to take advantage of the economic development benefits of the emerging offshore wind industry; promote the development of renewable energy sources that increase the nation's energy independence from foreign sources of fossil fuels; **reduce the adverse environmental and health impacts of traditional fossil fuel energy sources; and provide the Town of New Shoreham with an electrical connection to the mainland.**

R.I.G.L. § 39-26.1-7(a) (emphasis added). The legislature identifies these findings as "policy goals." R.I.G.L. § 39-26.1-7(c)(iv).[7] It is therefore the stated policy of the General Assembly that it is in the public interest to both reduce the adverse impacts of traditional fossil fuel energy sources, as well as to provide the Town with an electrical connection to the mainland. Therefore, the "Legislature has spoken unequivocally and precisely" with regard to the purpose and goals underlying the Enabling Act. *Vaudreuil v. Nelson Engineering and Construction Co.*, 399 A.2d 1220, 1222 (R.I. 1979).

The Rhode Island Supreme Court has also found that it is the goal of the Project to provide an electrical connection from Block Island to the mainland. *In re Review of Proposed Town of New Shoreham Project*, 25 A.3d 482, 510 (R.I. 2011) ("Assuredly, this language

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[6] National Grid attempts to blur the issue by referring to the Tariff. However, the Tariff was neither written by, nor approved by, the Rhode Island legislature. The contents of the Tariff offer no evidentiary support regarding our legislature's intent when enacting the Enabling Act.

[7] National Grid agrees that, in enacting the Enabling Act, "the legislature expressly found that it was in the public interest to construct an offshore wind demonstration project off the coast of Block Island, which included an undersea transmission cable and identified several state policy objectives, among which was to connect the Town of New Shoreham to the mainland of the state." Grid Objection, at 7.

emphasizes the General Assembly's desire for a transmission cable… § 39-26.1-7(a)'s policy intention for a transmission cable **and specific goal of interconnecting Block Island** were directed at the "Town of New Shoreham Project"…) (emphasis added).

The Division argues that BIPCo has no legal obligation under the Enabling Act to interconnect to the new undersea cable. Division Reply, at 7. This requires a reading of the Enabling Act that is simply absurd. The Enabling Act requires that the Project must include an electrical connection from the mainland to the Town. As discussed above, BIPCo is the only electricity distributor for the Town. In order to meet the goal of providing the Town with an electrical connection to the mainland, the BIPCo interconnection is essential. The Enabling Act also requires reduction of adverse impacts of fossil fuel energy sources. For the Town and its residents to benefit from the policy goal of reducing oil emissions by shutting down BIPCo's diesel engines, it is absolutely necessary for BIPCo to interconnect its substation to the cable.

Once BIPCo, and therefore the Town, is interconnected and receiving power from the mainland via National Grid's cable, BIPCo will no longer run its diesel generators except in emergencies. This will implement the policy goal of reducing the adverse environmental and health impacts of traditional fossil fuel energy sources, as set forth by the General Assembly in the Enabling Act.

This Commission has also previously found that because "the transmission cable between Block Island and the mainland, another required part of the Town of New Shoreham Project, would eliminate Block Island's reliance on its diesel generators," this connection would result in a reduction of carbon emissions, resulting in environmental benefits. *In re Review of Proposed Town of New Shoreham Project*, at 500 (*quoting* PUC Order from Docket 4185, dated August 11, 2010).

Interconnection is therefore required in order for the purposes of the Enabling Act to be met. For the Division to argue that the Enabling Act does not anticipate interconnection to BIPCo makes no sense.

In order to make use of the power supplied by National Grid via the cable, a specialized transformer is required. The necessary transformer is a rare unit due to its voltage and winding configuration. Therefore, in the event of a transformer failure, if no backup transformer were available it would likely take approximately six months or more to receive a replacement.

Transformer failures are not uncommon, and can be caused by internal or external faults associated with common occurrences such as animal contacts, lightning impulses, weather-related damage, manufacturing defects or infant mortality (early failure). While transformer failures are common for all electric utilities, such failures are rarely big news, because utilities maintain back-up transformers in their inventory to ensure electric service can be promptly restored whenever a failure occurs. Therefore, due to the long lead time associated with rebuilding or replacing this transformer and the critical nature of its role in supplying Block Island with a connection to the mainland power grid, a back-up transformer is essential to ensure service can be restored in a timely manner to the Town.

National Grid argues that the costs associated with a back-up transformer should be the "charged to BIPCo (and, in turn, its customers) and should not be socialized" to all of National Grid's customers. National Grid argues that the transformer needed by BIPCo would be "unique" and there "would be no other possible purpose for such a transformer anywhere else on National Grid's system in the New England control area." Grid's Objection, at 6-7. BIPCo agrees that the transformer in question is unique which is the precise reason why BIPCo believes a spare transformer is necessary.

In the event of a transformer failure, BIPCo would be required to turn to its diesel generators to provide power to the residents of the Town for six months or more. Returning to traditional fossil fuel energy sources, especially for such an extended period of time, directly conflicts with the stated policy goal of the Enabling Act of reducing the adverse impacts of using such energy sources.[8]

Finally, although National Grid currently claims the interconnection and transformer are not "related facilities," National Grid ignores that Section 3.4 of Grid's RFP for this Project required that:

> The generating facility **must be interconnected with the facilities of the Block Island Power Company** in the Town of New Shoreham. The interconnection facilities must also be electrically integrated with a new cable system which will connect New Shoreham to the facilities of National Grid on the mainland of Rhode Island.

Grid Exhibit 1 in PUC Docket 4111, at 3 (emphasis added).

It therefore was the clear intent of the Legislature to include the interconnection at issue as an integral part of the Town of New Shoreham Project. The Legislature intended to socialize these costs – including the transmission cable, the Block Island substation, the standby transformer and all costs to interconnect the National Grid and BIPCo substations.

[8] Additionally, National Grid would have a loss of revenue from wheeling to BIPCo during the outage.

CONCLUSION

BIPCo respectfully requests that the Commission issue a judgment declaring that all costs for interconnection and a standby transformer must be socialized by National Grid to all Rhode Island electric ratepayers, and not levied solely on BIPCo and its ratepayers.

Respectfully submitted,
BLOCK ISLAND POWER COMPANY,
By its attorneys

Dated: April 4, 2017

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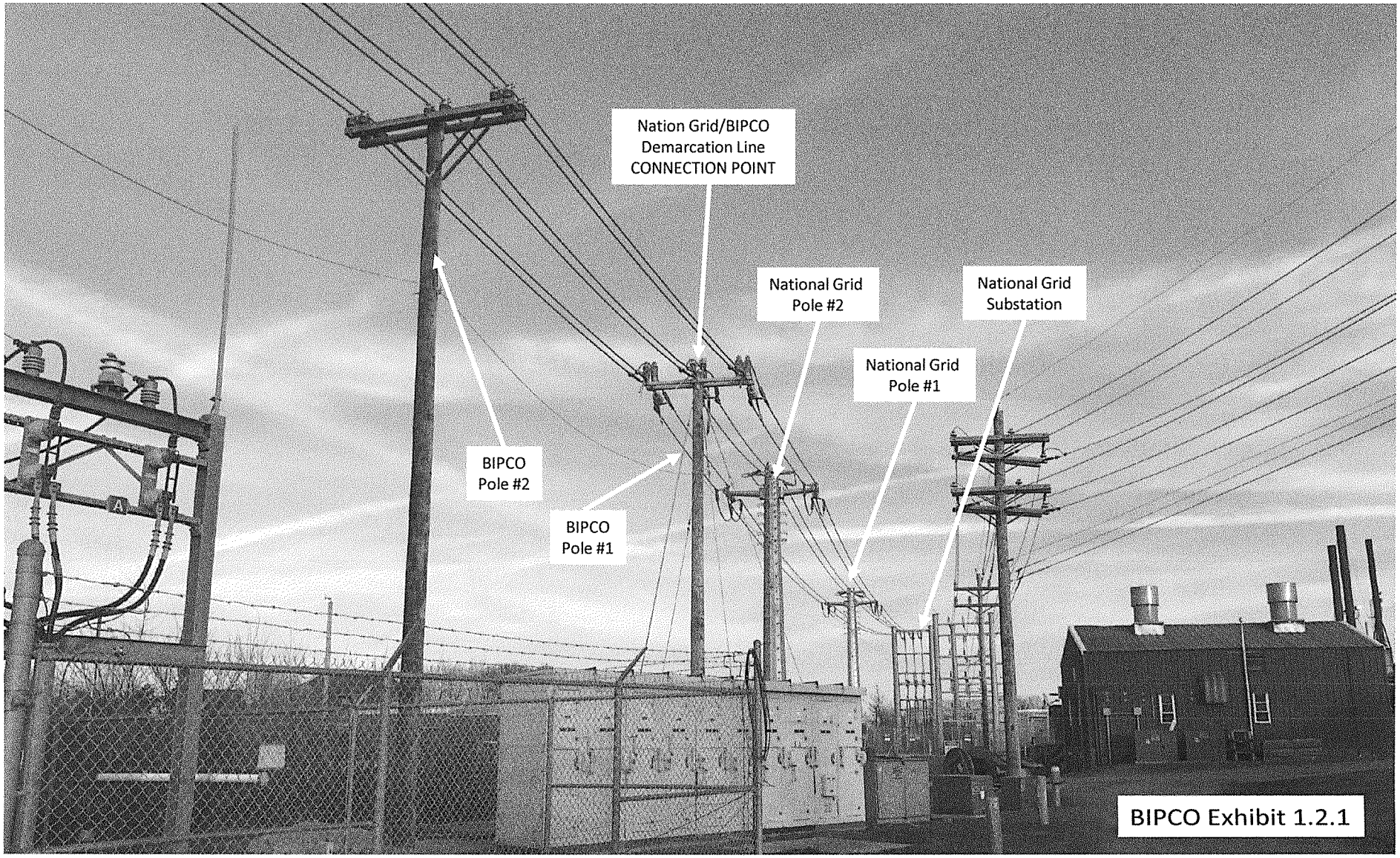
CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2017, I sent a true copy of the foregoing to the attached service list.

Michael R. McElroy, Esq.


Nation Grid/BIPCO
Demarcation Line
CONNECTION POINT
National Grid
Pole #2
National Grid
Substation
National Grid
Pole #1
BIPCO
Pole #2
BIPCO
Pole #1
BIPCO Exhibit 1.2.1