

April 19, 2017

BY HAND DELIVERY AND ELECTRONIC MAIL

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

**RE: Docket 4694 – Southern Sky Renewable Energy RI, LLC
Petition for Declaratory Judgment Relating to § 39-26.4
National Grid's Motion to Intervene and Response**

Dear Ms. Massaro:

On behalf of National Grid,¹ I have enclosed National Grid's Motion to Intervene and Response to Southern Sky Renewable Energy LLC's Petition for Declaratory Judgment in the above-referenced docket.

Thank you for your attention to this filing. If you have any questions, please contact me at 781-907-2121.

Very truly yours,



Raquel J. Webster

Enclosures

cc: Docket 4694 Service List
Jon Hagopian, 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.

The 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

April 19, 2017

Date

Docket No. 4694– Southern Sky Renewable Energy RI – Petition for Declaratory Judgment

Service List updated 3/21/17

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

**IN RE: IN RE: PETITION FOR
DECLARATORY
JUDGMENT FILED BY SOUTHERN SKY
RENEWABLE ENERGY RHODE ISLAND, LLC**

Docket No. 4694

**NATIONAL GRID’S¹ MOTION TO INTERVENE AND RESPONSE TO
SOUTHERN SKY RENEWABLE ENERGY RHODE ISLAND LLC’S PETITION
FOR DECLARATORY JUDGMENT**

Pursuant to Rule 1.13 of the Rhode Island Public Utilities Commission’s (PUC) Rules of Practice and Procedure, National Grid submits this motion to intervene in the above-captioned docket. As grounds for this motion, National Grid states as follows:

1. On March 13, 2017, Southern Sky Renewable Energy Rhode Island, LLC (Petitioner), a solar developer, filed a Petition for Declaratory Judgment with the PUC (Petition). In its Petition, the Petitioner seeks a determination from the PUC that, for the purpose of entering into a Public Entity Net Metering Financing Arrangement as defined in the Rhode Island Net Metering statute, R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Law), the requirement that an eligible net metering resource be located on property “owned or controlled” by the public entity or municipality is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar

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

developer, or (b) an easement agreement in which the public entity or municipality has control over the property.

2. National Grid's interest is directly affected by the Petitioner's request because Petitioners seek clarification on certain requirements of the Rhode Island Net Metering Law, which governs the Company's net metering program. Therefore, National Grid will be bound by the PUC's ruling on the Petitioner's Petition in this docket.
3. Petitioner is a private party who will not adequately represent National Grid's interests in this proceeding.
4. National Grid's interests in this proceeding are in the public interest because its customers pay for the net metering program to which the Petitioner seeks access.
5. National Grid has no objection to the Petitioner's request for declaratory judgment. The Petitioner is correct that the Net Metering Law, R.I. Gen. Laws § 39-26.4-2(16), provides that, in order for a solar developer to enter into a Public Entity Net Metering Financing Arrangement, the eligible net metering resource must be located on property owned or controlled by the public entity or one of the municipalities.
6. National Grid acknowledges that the requirement that an eligible net metering resource be located on property "owned or controlled" by the public entity or municipality may be satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property. This is because, as reflected in the case law cited on page three of the Petition, lease agreements and easement agreements

have long been recognized as enforceable interests in real estate. See Sharp v. Silva Realty Corp., 134 A.2d 131,136 (R.I. 1957) (emphasis added) (“It is well established that where the easement is created by grant *and is not limited in its extent or scope by the terms of the grant*, it is available for the reasonable uses to which the dominant estate may be devoted. . . It has been held that the rights of the owner of the easement are paramount, *to the extent of the grant*, to those of the owner of the soil, and it is an established principle that the unrestricted grant of an easement gives the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.”). Therefore, the express terms of the lease or easement agreement will determine whether the ownership or control requirement of the net metering law is satisfied.

7. Accordingly, National Grid respectfully requests that any order from the PUC on Petitioner’s Petition expressly clarify that all net metering applications would still be subject to the Company’s review.
8. Counsel for National Grid has discussed this Motion to Intervene and National Grid’s position with counsel for the Petitioner.

WHEREFORE, National Grid respectfully requests the following:

1. That the PUC grant National Grid's request to intervene in this docket;
2. That any PUC order on Petitioner's Petition clarify that that all net metering applications would still be subject to the Company's review;
3. Any other relief the PUC deems reasonable and appropriate.

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

By its attorney,



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Date: April 19, 2017