



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
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Chairperson Margaret E. Curran
Commissioner Marion S. Gold
Commissioner Abigail Anthony

MEMORANDUM

To: Chairperson Curran, Commissioner Gold, and Commissioner Anthony
From: Cynthia Wilson-Frias, Chief of Legal Services
Date: August 8, 2019
Re: Docket No. 4956 – Energy Development Partners, LLC and The Narragansett Electric Company d/b/a National Grid Dispute Resolution Pursuant to Section 9.2 of RIPUC No. 2180 – **Proposed Staff Report and Recommendation**

I. Background

On July 17, 2019, The Narragansett Electric Company d/b/a National Grid (National Grid), together with Energy Development Partners, LLC (EDP) submitted to the Public Utilities Commission (PUC or Commission) a request for Commission Staff dispute resolution assistance pursuant to Section 9.2 of the Standards for Connecting Distributed Generation (Tariff). The matter was assigned Docket No. 4956 and a meeting with the parties was scheduled for July 30, 2019. After reviewing the filing, I sent the parties a list of questions for discussion at the July 30 meeting. The meeting was productive, particularly given that the parties had agreed to a resolution of most of the issues prior to making the July 17, 2019 filing, and it appears the final point of disagreement can be resolved by the Commission.

In 2017, EDP filed applications for the interconnection of five solar projects, four in North Kingstown and one in Exeter. In early 2019, National Grid advised EDP that it could not provide EDP with an Interconnection Services Agreement (ISA) until the completion of a Transmission Planning Study. According to National Grid, the date to provide a completed ISA was not known

because it was dependent upon the completion of that study.¹ EDP disputed National Grid's position that it could not issue an executable ISA for the subject projects prior to the completion of the Transmission Planning Study.²

On March 21, 2019, EDP initiated the formal dispute resolution process set forth in Section 9.1 of the Tariff. Within four months, EDP and National Grid had agreed on a modified ISA that would allow EDP's project to move forward in the construction phase while awaiting the final details and final cost estimates of any additional required system modifications to Affected Systems³ or to the distribution system. This modified or "Conditional ISA" was included in the July 17, 2019 filing to the Commission.

The Conditional ISA is conditioned upon the completion of all studies and development of all upgrades needed to the distribution and/or transmission system. The Costs of System Modifications and Payment Terms are set forth in Attachment 3 to each ISA executed between National Grid and an Interconnecting Customer.⁴ The difference here is that the Attachment 3 is subject to amendment per the terms of the Conditional ISA. The Conditional ISA becomes final once Attachment 3 is amended to "include additional terms and conditions associated with [National Grid's] and, if applicable, Affected System operator costs and payment terms."⁵ This will occur when, "[u]pon request of the Interconnecting Customer, [National Grid] shall amend the [Conditional ISA] and any attachments to incorporate the results of any final Impact Study,

¹ The EDP project is in the same vicinity as the area being studied for the Ørsted offshore wind project. Information recently provided to the Commission through other forums has indicated that, although the study of state level projects like EDP's can continue, such studies cannot be finalized until the "FERC jurisdictional" study is completed. This has been causing significant delays to several projects, not just EDP's.

² Filing Letter at 1.

³ Affected Systems are defined as "any neighboring transmission or distribution [electric power system] not under the control of [National Grid] (e.g., a municipal utility, or other regulated distribution or transmission utility, which may include Affiliates, or ISO-NE)." Tariff at Section 1.2. In this case, National Grid has identified New England Power, ISO-NE, and Eversource (CT) as the Affected Systems Operators.

⁴ National Grid provided a template Attachment 3 which included amended language agreed to by EDP. The amendment provides a paragraph for identifying the Affected System Operators.

⁵ Conditional ISA at Section 5.

Detailed Study, [Impact Study for Renewable Distribution Generation] and/or [Affected System Operator] study.”⁶

II. Issue in Dispute

The one remaining issue in dispute is whether the Conditional ISA needs approval from the Commission before it can be executed. National Grid’s position is that Commission approval of the Conditional ISA is required before it may be binding on the parties. Specifically, National Grid has indicated that because the approved Tariff includes an approved form ISA, differences such as those included in the modified ISA also need Commission approval. EDP’s position is that the agreement may be implemented without the Commission approving the changes.⁷

III. Staff Recommendations

First, because of the scope of changes to the form ISA that is both referenced in the Tariff and included as an Attachment to the approved Tariff, I believe such substantive modifications to the tariff language should be reviewed by the Commission. I may not reach the same conclusion for non-substantive or process changes if they do not shift the balance of risk from the customer to ratepayers.

Second, I recommend the Commission approve the Conditional ISA because after a review of it, together with a discussion with the parties, it appears that the modifications are neither inconsistent with the Distributed Generation Act nor the Tariff. It also does not appear they shift the risk from the customer to ratepayers as compared to the form ISA contained in the Tariff as Attachment H. In fact, it appears the developer (interconnecting customer) has taken on additional risk in the form of unknown costs.

⁶ *Id.*

⁷ Filing Letter at 2.

IV. Discussion

A. The modifications being proposed are substantively different from the Form ISA, but not inconsistent. Substantive differences to the Form ISA should be reviewed by the Commission prior to execution.

I approached the question of whether the modified ISA needed to be approved by the Commission by considering whether the proposed changes are procedural or substantive. Because I have determined them to be substantive, I recommend the Commission find that its review is needed prior to execution of the modified ISA.

The first proposed change addresses the fact that EDP is requesting an ISA prior to the completion of all Affected System studies.⁸ The Affected System studies could result in additional distribution system modifications and associated costs.⁹ The Conditional Tariff allows for the execution of an ISA contingent upon completion of the Affected System Studies and inclusion of those study costs and additional system modifications costs, if any, in a final ISA.¹⁰ Additionally, the Conditional Tariff provides for an agreement between the parties to extend the commencement of construction deadlines set forth in R.I. Gen. Laws § 39-26.3-4.1(d) for the System Modifications.¹¹ Finally, the Conditional Tariff includes amendments to the Limitation of Liability section as it relates to Affected Systems.¹²

i. Cost Responsibility

First, Section 3.4.c (Standard Process) in the Tariff makes clear that an Interconnecting Customer is responsible directly to Affected Systems for their respective study costs.¹³ Section 5.4 of the Tariff provides that “Interconnecting Customers shall be directly responsible to any

⁸ Conditional ISA at Section 2.

⁹ *Id.* at Section 2 and Section 5.

¹⁰ *Id.*

¹¹ *Id.* at Section 2.

¹² *Id.* at Section 13.

¹³ It is important to remember that the Standards for Connecting Distributed Generation Tariff is a state-jurisdictional tariff governing the relationship between the distribution company and its customers. As a practical matter, if there are upgrades required by Affected System Operators and those are not completed, interconnection cannot happen. The Conditional ISA addresses that.

Affected System operator for the costs of any system modifications necessary to the Affected Systems.” Section 5 of the form ISA includes the same language. However, neither the Tariff nor the form ISA address additional distribution system modifications that may become necessary as a result of Affected System studies not completed at the time of executing an ISA, and the form ISA lacks specificity regarding the collection of costs for Affected System studies or system modifications unknown at the time of executing the ISA.

The form ISA includes a 10% cap on customer responsibilities for costs in excess of those included in an executed ISA.¹⁴ Therefore, National Grid has taken the position that it cannot issue an executable ISA until all distribution system modification costs are known. If additional distribution system modifications are required after completion of the Affected System studies, and those costs exceed 10%, National Grid has a concern that an Interconnecting Customer may argue that those costs cannot be recovered from the Interconnecting Customer under the form ISA if those costs exceed 10% of the estimate included in an executed ISA. Three of the modifications agreed to by EDP and National Grid address this concern by clarifying the costs for which Interconnecting Customer will be responsible, allowing the cost estimates in Attachment 3 to the ISA to be amended, and by modifying the applicability of the 10% cap.

The Conditional ISA adds to the General Payment Terms that are contained in the form ISA (Section 5). The amendments make clear that the Interconnecting Customer is responsible for (1) National Grid’s System Modifications costs; (2) Affected System study costs; (3) resulting Affected System modifications and operation and maintenance costs; and (4) any costs for modified or additional National Grid studies and/or System Modifications necessitated as a result of the Affected System operator requirements.¹⁵ The Conditional ISA also applies the 10% cap only to those System Modification costs contained in Attachment 3 as of the date of execution of

¹⁴ Tariff at Attachment H, Section 5.1.

¹⁵ Conditional ISA at Section 5.

the Conditional ISA.¹⁶ Attachment 3 can be amended after receipt of the final Affected System studies and any additional National Grid studies resulting from the Affected System studies.¹⁷

These provisions appear sufficient to provide clarity on responsibility for Affected System Operator studies and costs as well as continuing cost responsibility for additional distribution company System Modification costs. It appears to preserve the 10% cap on currently known costs included in Attachment 3 prior to any amendments but lifts the cap on currently unknown System Modification costs that arise from the results of Affected System Operator studies.¹⁸ This appropriately balances the interest of the Interconnecting Customer in cost controls over currently known System Modifications while protecting National Grid and its ratepayers from increased costs that arise in the future due to other entities' studies.

ii. Extension of Time under R.I. Gen. Laws § 39-26.3-4.1(d)

The General Assembly has included strict timelines for interconnection activity in R.I. Gen. Laws § 39-26.3-4.1(d). The law provides for certain penalties if the deadlines are not met. Relevant to the discussion herein, is the following:

... All electric distribution company system modifications must be completed by the date which is the later of: (1) No longer than two hundred seventy (270) calendar days, or three hundred sixty (360) calendar days if substation work is necessary, from the date of the electric distribution company's receipt of the interconnecting, renewable-energy customer's executed interconnection service agreement; or (2) **The interconnecting, renewable-energy customer's agreed upon extension of the time between the execution of the interconnection service agreement and interconnection as set forth in writing...**The deadlines for completion of system modifications will be extended only to the extent of events that are clearly not under the control of the electric distribution company, such as extended prohibitive weather, union work stoppage or force majeure, or third-party delays, including, without limitation, delays due to ISO-NE requirements not attributable to electric distribution company actions, and which cannot be resolved despite commercially reasonable efforts.¹⁹

¹⁶ *Id.* at Section 5.1.

¹⁷ *Id.* at Section 5.

¹⁸ It will be important for National Grid to provide clear post-construction itemized costs in the Final Accounting to account for the 10% cap on current cost estimates.

¹⁹ R.I. Gen. Laws § 39-26.3-4.1(d) (emphasis added).

Section 2 of the Conditional ISA does not attempt to waive the statutory timelines, but includes a written agreement to extend the timelines. It states, in relevant part:

the Interconnecting Customer agrees to the extension of all System Modification construction timelines...such that all applicable System Modification timelines set forth in R.I. Gen. Laws § 39-26.3-4.1(d) shall commence after receipt of all completed Affected System operator(s) studies and approvals, any modified or additional [National Grid] studies necessitated as a result of the Affected System operator requirements, execution of any necessitated amendments to the [Conditional ISA], and payment of all costs in accordance with this [Conditional ISA].

This language appears to provide a clear written agreement of the extension of the deadlines but still preserves National Grid's responsibilities and EDP's recourse commencing upon execution of a final ISA. I recommend the Commission find that the language in the Conditional ISA is consistent with the language of the Distributed Generation Interconnection Act.

iii. Limitation on Liability

Affected System Operators are not parties to ISAs between National Grid and Interconnecting Customers. National Grid attempts to coordinate with those Affected System Operators but is not responsible for their actions. National Grid also often acts as a conduit between the Affected System Operators and the Interconnecting Customer regarding billing but does not directly assess the costs assigned to the interconnecting project by Affected System Operators. However, National Grid's System Modifications and associated costs may be affected by the results of studies completed by Affected System Operators. Therefore, as noted above, National Grid has taken the position that it cannot execute an ISA until all studies are completed.

Section 13 of the Conditional ISA addresses this issue by expanding the Limitation of Liability Section to make clear that while National Grid will coordinate with the Affected System Operators to facilitate interconnection with National Grid's electric power system, it is not responsible for the actions of those Affected System Operators. The parties have agreed to the language and it appears to clarify responsibility where finalization of the ISA is reliant on actions

by non-signatories to the agreement between the parties. Whether this should be standard language in any ISA is likely going to be a subject for PUC consideration in the future. It appears preferable to provide certainty, particularly in this instance where an ISA is being executed prior to the completion of all necessary studies.

One challenge with the Tariff and the Affected System studies is that the Tariff only directly governs the relationship between National Grid and its customers as that relationship relates to the distribution system. The PUC only has jurisdiction over the distribution system tariffs. While one might attempt to argue that the distribution tariff either should not or cannot reference studies and costs not directly charged by National Grid, such arguments ignore the fact that Affected System studies may result in additional distribution system modifications unknown to National Grid at the time the Distributed Generation Interconnection Act contemplates the delivery of an executable ISA. Such arguments also ignore the fact that National Grid is a Participating Transmission Owner and is obligated by the terms of ISO-NE's tariffs, the Transmission Operating Agreement, and ISO-NE Planning Procedures to notify ISO-NE of certain proposed generation resources that may have a significant effect on the stability reliability, or operating characteristics of transmission facilities or National Grid's system and take necessary actions to avoid adverse effects.²⁰ Therefore, references to Affected System Operators in this section and to the other sections in the Tariff appear reasonable to allow the project to move forward while clarifying the expectations of the parties.

²⁰ See Section I.3.9. of The ISO New England Transmission, Markets, and Services Tariff, available at <https://www.iso-ne.com/participate/rules-procedures/tariff>; Article 3.09 of the Transmission Operating Agreement available at https://www.iso-ne.com/static-assets/documents/regulatory/toa/v1_er07_1289_000_toa_composite.pdf; and ISO-NE Planning Procedure No. 5-1 available at: https://www.iso-ne.com/static-assets/documents/rules_proceeds/isonne_plan/pp05_1/pp5_1.pdf.

B. The modifications being proposed do not inappropriately shift cost risk from the developer/customer to ratepayers.

The PUC has previously found that the approved Tariff is consistent with the language of the relevant law. Further, the role of the Commission in all matters is to determine whether rates, tariffs, and terms and conditions appropriately balance the interests of the utility and its ratepayers or customers. In reviewing the Conditional ISA, I began with the premise that the Tariff balances the interests of National Grid, the Interconnecting Customer, and all ratepayers while following the mandates set forth in state law. The question then was whether the modifications to the form ISA that are incorporated into the Conditional ISA inappropriately shift costs risk from the Interconnecting Customer to National Grid and other ratepayers.

The Conditional ISA does not appear to shift cost risk from the Interconnecting Customer to National Grid and other ratepayers. In this case, the Interconnecting Customer would be executing an ISA prior to knowing all cost exposure related to system modifications. The 10% cost cap is limited only to the costs known at the time of execution of the Conditional ISA. Finally, the liability section makes clear that the Interconnecting Customer is responsible for all Affected System Operator related costs.

C. Approval of the Conditional ISA should resolve the parties' dispute with two additional actions agreed to at the July 30 meeting.

i. Approval of the Conditional ISA will allow for execution of an ISA

EDP argued that once the Interconnecting Customer/developer is comfortable with the language in the Conditional ISA and the amended Attachment 3, it should be able to make a business decision to sign a contract with the utility as it would with any other third-party agreement. National Grid argued that because the Conditional ISA differs substantively from the form ISA included in the Tariff, it could not execute the Conditional ISA unless it had approval

from the PUC. A PUC finding that the Conditional ISA is not inconsistent with the law and Tariff would resolve the issue of whether National Grid can deliver an executable ISA to EDP.

ii. Other issues were addressed at the July 30 meeting, but are not relevant to approval of the Conditional ISA

During the July 30 meeting, two issues arose, both of which are important to EDP, but neither of which is relevant to a Commission decision on the Conditional ISA. There is another developer with a set of projects in Exeter. National Grid initially studied all of the projects together in an effort to find engineering and cost efficiencies and to allocate costs to multiple projects. Unfortunately, because of the hold on all of the projects resulting from the additional Affected System Operator studies, while EDP is ready to proceed, it is unclear at this time whether the other developer is ready, willing, or able to proceed with commencing system modifications.

This raises two concerns for EDP: (1) the costs that will be contained in the Attachment 3; and (2) how long it will take National Grid to provide EDP with an executable Conditional ISA with an Attachment 3, current to date. EDP is ready to move forward with construction with or without the other developer. If, however, the other developer does not proceed at this time, National Grid will have to revise the system modification requirements and cost estimates to separate the projects completely.

At the meeting, National Grid represented that the other developer had been provided with a copy of the Conditional ISA. At the meeting, the parties agreed that the other developer would be given a date certain to respond with a decision on whether to sign the Conditional ISA. In the meantime, National Grid will begin the process of revising the studies for EDP to move forward without the other project. National Grid expects to have completed the revised distribution system impact study by August 16, 2019.

After EDP receives the revised distribution system impact study which is incorporated into the Attachment 3, it will have to make a decision of whether the costs appear reasonable and decide

whether to continue forward with the project. This is no different from what happens when the form ISA is used. Thus, while important to the parties, it is not relevant to approval of a new form Conditional ISA.

V. Conclusion

The Conditional ISA represents a commercial solution to a problem. The instrument of this solution should be subject to regulatory review, but the regulatory process should not impede the commercial solution in the absence of additional risk on ratepayers. Therefore, the PUC should review this matter expeditiously and if it agrees with my conclusions, approve the modified ISA and require National Grid to file a Tariff Advice to include it as an option for other developers who may be in the same position as EDP.