HANDY LAW LLC

42 Weybosset Street | Providence | RI 02903
401 626 4839
401 753 6306 fax

November 26, 2019

Ms. Luly Massaro, Clerk
RI Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

RE: Docket 4983 The Proposed Renewable Energy Growth Program for 2020

Dear Ms. Massaro,

I write on behalf of Green Development, LLC (Green) to provide comment on the Distributed Generation Board's October 2nd filing.

1) Proposed Allocations: Green objects to the last-minute shift of wind generation capacity to other classes, which has made it virtually impossible for wind to participate in the REG program to any meaningful extent. The 2019 allocation for wind was 6 MW. The first draft of 2020 was 4.5 MW, but OER then recommended only 3 MW to the DG Board, despite Green's comments asking that the allocation remain at 6 MW. This is a renewable energy growth program, not a solar growth program. This substantial reduction was made largely without any chance for stakeholders to contest it. Nevertheless, during the process Green had commented that the prior allocations remained sensible and was unaware of any comments to the contrary. The sudden shift without explanation and dialogue is not justified. For those reasons, Green asks the PUC to restore the wind allocation to 6MW.

2) Real estate taxation: The RI Supreme Court recently held that renewable energy generating systems are manufacturing equipment exempt from taxation under R.I. Gen. Law §§44-3-3(22)(i); 44-3-3(20)(i). See Depasquale v. Cweik, 129 A.3d 72, 76-77 (R.I. 2016). After winning that case, Green worked with a stakeholder group that included the RI League of Cities and Towns to establish a consistent, foreseeable and equitable methodology to allow municipalities to tax renewables as a tangible asset, despite the exemption. That change was passed into law through revisions to R.I. Gen. Law §§44-5-3(c). Additionally, the statute implementing the farm forest and open space tax program was amended to expressly reference the fact that nothing in its terms is meant to alter the tax treatment of renewable energy as a tangible asset per R.I. Gen. Law §§44-5-3(c). R.I. Gen. Law §§44-27-10.1. Green subsequently worked with stakeholders to develop regulations needed to implement that statutory provision, which provided that, despite the exemption, municipalities could tax renewable energy only through an ordinance adopting the tangible tax formula developed by the state. Despite all that, many municipalities still now seek to also reassess the real estate hosting renewable energy projects with a special solar use classification to add what amounts to a supplemental renewable energy tax on the real property. OER was asked to address this problem and sent a letter to the League of Cities & Towns for distribution to the municipalities indicating that renewable energy could only be taxed according to

42 Weybosset Street | Providence | RI 02903
401 626 4839
401 753 6306 fax

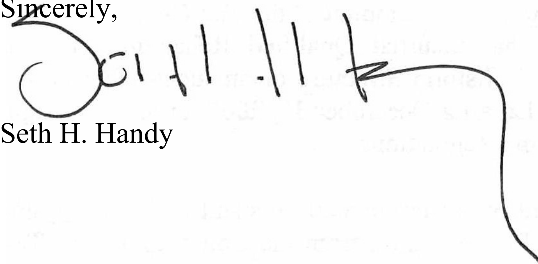
the regulations setting a tangible tax formula. Nevertheless, at a summary judgment hearing on September 23, 2019, appealing such a municipal renewable energy tax on real estate, a Superior Court judge held that the state tax rules only relate to taxing renewable energy as a tangible asset and municipalities may still also change the tax treatment of the underlying real estate. That current change in law (which is still contested), currently costs one of Green's projects under appeal more than $17,000 per year and $600,000 over the projected 35-year life of the project, in addition to the $22,500 in tangible taxes the Town can legally charge the project. That puts the total at nearly $40,000 in annual taxes on a 4.5 MW solar project. To accurately reflect operating cost, the REG ceiling price must now be revised to account for that additional tax liability.

3) Transmission costs: As the Board is presumably aware, National Grid has very recently changed its practice to require renewable energy developers interconnecting projects between 1 and 5 megawatts to fund the cost of transmission system impact studies that can then result in the assessment of transmission system upgrade costs. While the authority for such assessments (and delays) is currently contested, NGrid's present practice is to assess these costs. The REG ceiling prices should be revised to accurately reflect these added study and development costs. The Board has long advised 2 sets of ceiling prices contingent on whether a project uses federal tax credits. Perhaps we need a similar contingency solution here.

4) Performance bond: Many projects that bid into the REG program are not getting built, leaving other viable projects ineligible for enrollment. Failed projects are a detriment to the REG program and a huge cost to ratepayers. The DG Contracts Program's last open enrollment was forced to pay large solar projects at the ceiling price (nearly double the $/kWh of previous enrollments) due to the unallocated capacity remaining in the program after failed projects capacity went back into open enrollment. It is time for the DG Board and the Commission to reevaluate how to enhance program eligibility by weeding out non-viable projects.

Thank you for your consideration.

Sincerely,



Seth H. Handy