HANDY LAW LLC

Memorandum

From: Seth Handy for Green Development, LLC
To: The Public Utilities Commission
Date: January 26, 2021
Regarding: Docket 5088 Comments re Proposed Renewable Energy Growth Program Ceiling Prices

Green Development appreciates the opportunity to provide public comment in this docket regarding the approval of ceiling prices for the renewable energy program.

1. Procedural Concerns

The Commission has denied Green Development's intervention in this docket without a hearing. At its open meeting on our motion, the Commission decided that Green had not moved for intervention with sufficient indication of its interests in the outcome of these proceedings and that the Division of Public Utilities and Carriers adequately represents Green's interests and the Public interest in this process. We received notification of that decision in an email from Commission counsel, Cynthia Wilson Frias, without any order from the Commission. When asked when the Commission will issue its final order, Ms. Wilson Frias responded that the Commission typically issues such orders with the final decision in the docket. The Commission has scheduled a hearing and invites written public comment filed by today. It is not at all clear how Green could appeal the Commission's decision on intervention and influence the outcome of the 2021 ceiling price approval process. Not knowing how else to appeal to a greater sense of reason and fairness, Green files these public comments.

Green has never felt that its interests in the REG ceiling prices have been adequately accounted for by OER's consultants, represented by OER or the DPUC, or adjudicated by the Commission. While the focal point of these comments will be proper accounting for interconnection charges associated with alleged transmission system impacts and the valuation of the federal tax incentive, the REG ceiling price has long been unresponsive on a wide range of issues. For more history on that see Green and its predecessor Wind Energy Development's comments in prior dockets on the subject. Those comments have addressed issues ranging from mistaken capacity factor, interconnection costs, construction costs, tax credit value, property tax costs, lease rates and more. It has been so rare that Green's comments have been accommodated by the consultant, informed by DPUC testimony or adjudicated by the Commission, that Green's participation in these processes has had frustratingly little substantive impact. Thus, Green had given up on the investment of significant resources in the ceiling price development process. Net metering policy allowed developers to benefit from the proceeds of our capacity to produce power well below the market cost of electricity

imported from non-renewable (and expensive) fuels across very costly transmission lines. Given the declined participation by developers over the years of REG program administration, Green does not appear to be alone in its feeling that frustrated investment in this process was just not worth it.

However, developers of local renewable energy are now faced with more and more restricted options for getting value out of the electricity they produce in RI. There is only net metering and REG. Few facilities offer much opportunity for on-site net metering. Remote net metering is limited to a class of eligible public interest facilities, which "off-takers" are getting much harder to find. At the same time OER has issued cost benefit studies in the evaluation of the expansion of community net metering and for the strategy for RI to reach 100% by 2030 that do not consider the benefits local renewable energy projects produce for the electrical system. Those studies, also conducted without meaningful opportunity for stakeholder input and impact, have resulted in unfounded conclusions that net metering customers are subsidized by other ratepayers and should receive less compensation. Such conclusions are totally inconsistent with a wealth of studies that prove otherwise, but OER has not responded to comments pleading that it properly consider all factors necessary to conduct full and accurate cost benefit studies. Nor has OER provided stakeholders the transparency that is needed for any accurate cost benefit assessment. Net metering projects on the planning board right now have to account for RI's removal of the distribution charge from the net metering rate as of 2050, impacting long term financial projections. Given such constricting alternatives, it's now become much more important to advocate for getting the REG ceiling prices right and holding this administrative process accountable for fundamental issues of due process, transparency and responsiveness.

2. Substantive Concerns

The REG statute requires that "[t]he 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 recently reported and forecast information on the cost of capital and the cost of generation equipment. The calculation of the reasonable rate of return for a project shall include, where applicable, any state or federal incentives, including, but not limited to, tax incentives." R.I. Gen. Laws §39-26.6-3(2). The failure to properly account for National Grid's assessment of transmission system improvement costs and the operating and maintenance cost of those improvements (the DAF charge) and to hold proper process to accurately account for changes in value of the federal tax incentive undermines the purpose of our REG program.

a. You Have Ignored the Real and Substantial Cost of Transmission System Upgrade Charges and Associated Operating and Maintenance Fees (aka DAF Charges)

Narragansett Electric now holds renewable energy projects under 5 MW accountable for the cost of transmission system upgrades that are purportedly necessary

and authorized for the interconnection of projects eligible for the REG program. In docket 4981, the DPUC supported those charges and the Commission authorized them.[1] Narragansett has also recently started to charge REG-eligible renewable energy projects added ongoing annual operating and maintenance charges associated with those transmission upgrades. They have issued interconnection service agreements classifying such O&M charges as "Direct Assignment Facility" charges as (purportedly) addressed in ISO-NE Open Access Transmission Tariff (OATT). These O&M charges were also disputed in docket 4981. They were supported by DPUC and authorized by the Commission's final order in that docket. These charges, newly authorized by the Commission, were not taken into consideration by OER's consultants. They are not addressed in the DPUC's comments on the proposed ceiling prices. Given the denial of Green's intervention, they are now staged to be ignored by the Commission, and thus not accounted for by this faulty administrative and adjudicative process for the REG ceiling prices.[2]

Narragansett Electric objected to Green's motion to intervene saying that "Green Development's . . . real intent in seeking to intervene in this docket is to challenge the assessment of DAF Charges to its projects." (emphasis added) But both Narragansett Electric and the Commission know very well that the Commission's decision to authorize such charges in docket 4981 is not at issue in this docket addressing the approval of proposed REG ceiling prices. The Commission's Order in docket 4981 is on appeal to the RI Supreme Court and is currently under reconsideration by the Commission by order of that Court. The DAF charges are also contested in at least two interconnection disputes, Commission dockets 5090 and 5103. Since the Commission has already approved such charges, the question in docket 5088, is whether they must be accounted for in the ceiling prices to ensure that they meet the statute's intent to "allow a private owner to invest in a given project at a reasonable rate of return." Of course they should. Green's "real intent" here is simply to ensure that the ceiling prices approved for the 2021 Renewable Energy Growth program reflect all costs of interconnecting a distributed energy project.

b. You Have Provided no Process Related to Proper Valuation of the Tax Incentive.

For the second year in a row the consultant has proposed a significant increase in the valuation of the federal tax credit incentive and the DPUC has agreed with that recommended adjustment without any public comment, process or accountability. The Commission's refusal to allow Green's intervention means that the development community's input on that very important indicator of the economics of renewable

[1] The Commission refused jurisdiction over the question of whether such charges are authorized under federal law and tariffs and did not require or provide any consideration of the many benefits distributed generation provide to the transmission system, despite the mandate for such considerations issued in PUC docket 4600. These comments are not about whether that decision, which is currently under reconsideration by the Commission by order of the RI Supreme Court, was appropriate.

[2] The plain and simple fact that these DAF charges are not at all authorized by the OATT is also not the subject of these comments or the ceiling price setting process.

energy projects eligible for this REG program will go unheard. Yet, as the purpose of the REG statute clearly states, a private owner cannot invest in a given project at a reasonable rate of return, based on inaccurate assessment of the tax incentives.

c. The DPUC Does not Represent Green's Interests or the Public Interest.

The Division objected to Green's intervention claiming that it adequately represents Green's interests and the interest of the public. That's plainly wrong. The Division claims to be the "ratepayer advocate." But, the DPUC has sadly and completely forgotten and overlooked the many benefits that distributed generation provide to the electric system, despite all of the elaboration on those benefits in docket 4600. In its zealous advocacy for low rates, the DPUC regularly and negligently overlooks the net value that local renewable energy produces by, among other things, reducing the need for investment in our distribution and transmission systems. This is tragic, because the DPUC supported the development of the recommendations that issued in docket 4600.

Green is not at all like the DPUC. It is a renewable energy developer. It knows the security, economic and environmental benefits of local renewable energy. It has first-hand experience with the economics of delivering such projects and the substantial impact of transmission system charges and overcounted tax incentives.

The Division said that it "represents the interests of the public, including renewable energy developers such as Green . . . ." But Green raised very substantive concerns with the ceiling price inputs throughout the consultant's price development process; the Division did not. Green's ignored interests are so significant that renewable energy projects will not be able to be developed for a reasonable rate of return on investment unless and until the interests are properly accounted for. The DPUC has such real interests. The DPUC makes light of Green's advocacy for real value like electric supply diversification, energy security and resilience, stable and reduced energy costs, job creation, and environmental benefit, dismissing such interests as "not directly relevant to this docket on ceiling price formation and tariff changes . . . ."
The DPUC makes evident its failure to understand that such impacts are directly aligned with the legislative purpose of the REG program,

> 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. It's hard to fathom how a regulatory agency that is meant to represent the public interest in a low cost, secure and environmentally sustainable energy

future and thus act as RI's "ratepayer advocate" could so brazenly overlook such purpose. One thing is crystal clear, the DPUC does not represent Green's interest.[3]

CONCLUSION

Green respectfully asks the Commission to restore the renewable energy industry's confidence in the administration of the REG program and its ceiling price setting process by ensuring proper consideration of transmission system charges and the federal tax incentive and by providing a price setting process in which we all can have confidence.

[3] The RI Supreme Court has ordered the Commission's reconsideration of docket 4981, on Narragansett Electric's authorization to impose transmission system charges on local renewable energy projects that do not use and reduce reliance on the transmission system, because the Division alleged that it had a "common interest" with Narragansett Electric (the utility it is supposed to regulate) and the record made clear that the DPUC had collaborated extensively with Narragansett Electric in producing its brief on the subject. A regulatory agency certainly cannot share a "common interest" with the utility on such matters while claiming it adequately represents renewable energy developers and the public interest.