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January 7, 2021

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VIA EMAIL *(luly.massaro@puc.ri.gov)*
WITH HARD COPIES VIA FEDERAL EXPRESS

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

Re: In re Dry Bridge Solar 1, LLC, Dry Bridge Solar 2, LLC, Dry Bridge Solar 3, LLC, and Dry Bridge Solar 4, LLC, Petitioners

Dear Ms. Massaro:

On behalf of the above-referenced Petitioners, enclosed is a Petition for Dispute Resolution for filing with the Public Utilities Commission. I am sending the exhibits in a second email, due to the size of the file. Please kindly confirm receipt. Thank you. An original Petition and five copies are being sent to you via overnight delivery.

We are filing Miscellaneous Petitions with the Rhode Island Supreme Court for admission of Attorneys Mark C. Kalpin and Christopher E. Duffy pro hac vice. I will forward any communication in that regard received from the Supreme Court upon receipt.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely yours,

HOLLAND & KNIGHT LLP

Michelle Ruberto Fonseca

Michelle Ruberto Fonseca
RI Bar No. 4580
(401) 474-1176

cc: Service List *(via email)*

#78225531_v1

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I, Michelle Ruberto Fonseca, hereby certify that true copies of the within Petition for Dispute Resolution were electronically transmitted to the individuals listed above on January 7, 2021.

Michelle Ruberto Fonseca

Michelle Ruberto Fonseca, Esq.

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

In re:	:	
DRY BRIDGE SOLAR 1, LLC, DRY BRIDGE SOLAR 2, LLC, DRY BRIDGE SOLAR 3, LLC, and DRY BRIDGE SOLAR 4, LLC,	:	Docket No. _____
Petitioners.	:	

PETITION OF DRY BRIDGE SOLAR 1, LLC,
DRY BRIDGE SOLAR 2, LLC, DRY BRIDGE SOLAR 3, LLC,
AND DRY BRIDGE SOLAR 4, LLC FOR DISPUTE RESOLUTION

Petitioners Dry Bridge Solar 1, LLC, Dry Bridge Solar 2, LLC, Dry Bridge Solar 3, LLC and Dry Bridge Solar 4, LLC (collectively, "Petitioners" or "Dry Bridge Solar") respectfully submit this petition for dispute resolution (the "Petition") pursuant to Rule 1.10(a) of the Rules and Regulations of the State of Rhode Island Public Utilities Commission (the "Commission"), Section 9.2(a) and Exhibit H of the tariff titled "The Narragansett Electric Company Standards for Connecting Distributed Generation," R.I.P.U.C. No. 2180, effective as of September 6, 2018 (the "Interconnection Tariff"), and the Commission's Report and Order approving the Interconnection Tariff issued on January 4, 2019 in Docket No. 4763.

INTRODUCTION

This Petition is about the sanctity of contracts previously presented to this Commission for approval, and the improper efforts of The Narragansett Electric Company ("Narragansett") to breach those contracts in a way that will frustrate the continued growth of renewable energy in Rhode Island.

The Petitioners are the owners of four renewable energy projects in North Kingston, Rhode Island (the "Projects"). The Projects will advance the Governor's public initiative to reduce carbon emissions by adding at least 1,000 megawatts of clean renewable generation to the state's energy portfolio.[1] They will transform an industrial gravel pit in North Kingston into a solar array that will generate clean energy for Brown University, one of the state's largest employers, as part of Brown's laudable commitment to offset all carbon emissions from its on-campus electricity use.

The site of the Projects previously generated significant pollution from the industrial activities and heavy truck traffic that took place there. That same plot of real estate will become a long-term source of clean energy generation for Rhode Islanders, and will include a new 200 acre wildflower habitat for pollinators when fully completed and reseeded. The completion of the Projects will help realize the goals of Rhode Island Executive Order 20-01, which declared one year ago that "a clean, affordable, and reliable electric grid is paramount if Rhode Island is to effectively reduce greenhouse gas emissions across *all* sectors of the economy, including heating and transportation." (Emphasis in original.)

But now, the Projects' viability is under threat because of the improper actions of Narragansett, the state-regulated gas and electric monopoly. Petitioners seek the intervention of the Commission because of Narragansett's improper attempt to change the terms of its contracts with Petitioners in order to impose more than $23 million of direct assignment facility charges ("DAF Charges") that were not disclosed when the parties signed their contracts, and that lack any legal justification irrespective of the timing of their disclosure.

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[1] *See* Brown University, Office of University Communications, "Solar and wind energy projects expected to offset 100 percent of Brown's on-campus electricity use" (Jan. 17, 2019) (available at https://www.brown.edu/news/2019-01-17/renewable). A true and correct copy of this document is attached hereto as Exhibit A.

The contracts at issue are four substantially identical Interconnection Service Agreements ("ISAs") that each Petitioner signed with Narragansett in November 2019. To operate, the Projects must interconnect with Narragansett's electric power system at the Wickford Junction substation in North Kingston. The ISAs set forth the terms of the required interconnections, including the requirement that Petitioners pay approximately $21.6 million to reimburse Narragansett for capital expenditures that Narragansett says are necessary to interconnect the Projects to its system. Petitioners have already paid Narragansett more than $14 million of those charges pursuant to the payment schedule in the ISAs, and this Petition does not challenge any of those fees.

The ISAs were signed prior to the completion of regional impact studies regarding the potential impact of the Projects on neighboring electric power systems. The ISAs classify the owners of those potentially affected neighboring power systems as "Affected System Operators," or "ASOs." The ISAs left open the possibility that Petitioners might need to pay for modifications to those neighboring power systems to ensure that the Projects could safely operate. The ISAs defined these potential third-party modifications as "ASO Upgrades."

Thus, while the necessary modifications to ***Narragansett's*** electric system were known and quantified when the ISAs were signed, the potential for modifications at the ***ASO*** level (*i.e.*, to neighboring electric systems) remained uncertain as of November 2019. That uncertainty was resolved in May 2020, when the completed regional impact studies were ratified by the Reliability Committee of ISO New England, Inc. ("ISO-NE"), the non-profit regional transmission organization that serves Rhode Island and other New England states. ISO-NE's Reliability Committee concluded that the Projects would not cause any adverse impact to any ASO, meaning that the Petitioners would not need to incur any additional costs for ASO Upgrades. ISO-NE's conclusion confirmed the prior written guidance issued by Narragansett in April 2020 upon the

conclusion of the regional impact studies, which stated that the ***"four Dry Bridge Solar, LLC and Exeter Renewables, LLC projects are not responsible for any transmission level modifications."***[2]

By August 2020, the parties had been performing under the ISAs for nine months, and Petitioners had made millions of dollars of investments in reliance on them. But then Narragansett took the improper action that has necessitated the filing of this Petition. Specifically, on August 12, 2020, Narragansett asked Petitioners to replace the existing ISAs with new interconnection agreements. The new interconnection agreements did not propose to add any new equipment or any new work beyond what was identified in the original ISAs, but they did reclassify about $16 million of the total interconnection costs from the "System Modifications" category (*i.e.*, modifications to Narragansett's power system) to the "ASO Upgrades" category (*i.e.*, modifications to a non-Narragansett power system). Narragansett said that the ASO supposedly incurring these costs was New England Power, the sister company of Narragansett that is located in the same three-story office building in Waltham, Massachusetts.

In many respects, Narragansett and New England Power operate as a single organization. Beyond their shared real estate, they are both owned by National Grid plc (a publicly traded company with a market capitalization of more than $40 billion), and they both share services and employees—including management, administrative, financial, accounting and legal services—provided by National Grid USA Service Company, Inc. through a service agreement to which Narragansett and New England Power are both parties.

To increase the overall financial revenues of its broader corporate family, Narragansett proposes in the new interconnection agreements to shift a portion of the Projects' interconnection

[2] Emphasis added. A true and correct copy of the April 24, 2020, email from Narragansett containing this statement is attached hereto as Exhibit B.

upgrade costs from Narragansett to New England Power, ostensibly because that shift will allow Narragansett to impose more than $23 million of DAF Charges on the Projects, on top of the $21.6 million that Petitioners agreed to pay when they signed the ISAs.

According to Narragansett, transmission-level costs incurred by an ASO like New England Power are subject to the collection of annual DAF Charges in the amount of 5.21% of the total gross plant investment made by the ASO. In contrast, costs incurred by Narragansett are not subject to DAF Charges, as Narragansett concedes. According to Narragansett, the movement of $16 million of the total interconnection costs to New England Power will enable Narragansett to collect an additional $835,000 per year, every year, for the estimated 35-year life of the Projects.[3] These charges would amount to approximately $23.4 million over those 35 years, and would more than double the total agreed-upon interconnection costs identified in the ISAs. ***In other words, Narragansett has tried to double the price that the Projects must pay for interconnection, after the binding ISAs were already signed.*** These improper DAF Charges would destroy the Petitioners' economic rationale for moving forward with the Projects, which they did in justified reliance on the signed ISAs that Narragansett is now trying to re-write.

Narragansett knows that it cannot impose these charges under the original (and correct) classifications of the interconnection costs in the ISAs, which is why it asked Petitioners to sign replacement agreements. The Petitioners appropriately rejected that request, because they have the right do business in Rhode Island with the certainty that contracts will be enforced as written, including the four contracts they already signed with Narragansett. To enforce that fundamental

[3] Narragansett seeks to impose approximately $668,000 of the annual DAF Charges on Petitioners, and approximately $167,000 on a separate project owned by Exeter Renewables 1, LLC ("Exeter Renewables"), which has filed a separate petition before the Commission based on the same issues. *See In re Exeter Renewables 1, LLC*, R.I.P.U.C. No. 5090 (Petition dated Nov. 18, 2020).

right, Petitioners hereby seek the Commission's intervention to reject Narragansett's efforts to re-write the ISAs, and hold Narragansett to the plain terms of the contracts that it signed in November 2019.

JURISDICTION

The Commission has jurisdiction pursuant to Section 9 of the Interconnection Tariff, and pursuant to Section 25 of each ISA, which states that, unless the parties agree otherwise, "all disputes arising under this Agreement shall be resolved pursuant to the Dispute Resolution Process set forth in the Interconnection Tariff," consistent with Section 25 of Exhibit H to the Interconnection Tariff.

STATEMENT OF FACTS

A. Background of the Projects

1. Petitioners are the owners of the Projects, which are four related solar distributed generation projects being built in North Kingstown, Rhode Island.

2. Brown University, one of Rhode Island's largest employers, has agreed to purchase the power generated by the Projects as part of its institutional commitment to achieve net-zero carbon emissions.

3. The Rhode Island State Energy Commission has voiced strong support for the Projects, observing that "Brown should be commended for siting its Rhode Island solar array in a thoughtful and responsible manner."[4] Energy Commissioner Carol Grant noted that the Projects "will contribute to the governor's goal to reach 1,000 megawatts of clean energy by 2020 and help our state continue to reduce its carbon emissions."[5]

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[4] *See* Exhibit A hereto.

[5] *Id.*

B. <u>The Signing of the Interconnection Agreements in November 2019</u>

4. To become operational and serve the purpose for which they were intended, the Projects must interconnect with the electric power system owned and operated by Narragansett at its Wickford Junction substation in North Kingstown.

5. Pursuant to that planned interconnection, each of the four Petitioners entered into separate but substantially identical Interconnection Services Agreements with Narragansett in November 2019. True and correct copies of each of the four ISAs are attached hereto as Exhibits C, D, E and F.

6. Prior to being signed, Narragansett presented the ISAs to the Commission for approval. On October 18, 2019, the Commission found that the ISAs, including the aforementioned provision, were "not inconsistent with the standards for connecting distributed generation." Chairperson Curran commented that it was "appropriate that the regulations and this Commission doesn't stand in the way of business decisions that are reached by the parties," or "in the way of business that's being conducted clearly in furtherance of a clear state policy." A true and correct copy of the transcript of the hearing held on October 18, 2019, before the Commission in Docket 4956 is attached hereto as Exhibit G, with the quoted portions appearing at pages 4 and 6.

7. As executed, the ISAs reflect all costs that Narragansett will incur in making the upgrades to its own electric power system that were needed to interconnect with the Projects. Those upgrades and associated costs are listed on Attachments 2 and 3 to each ISA as "System Modifications." As defined in Section 1.2 of the Interconnection Tariff (the definitions of which are incorporated by reference into the ISAs), System Modifications are "[m]odifications or additions ***to Company facilities*** that are integrated with the Company EPS [*i.e.*, electrical power

system] for the benefit of the Interconnecting Customer." (Emphasis added.) And it defines "Company" to mean "Narragansett Electric Company d/b/a National Grid."

8. Section 5 of the ISAs made clear that, upon their signing, the Projects still required additional studies to evaluate the impact of the interconnection on other, non-Narragansett power systems, and to determine if there were any ASO Upgrades that would be needed as a result. If there were, then Petitioners could incur additional costs.

9. A Commission staff report on the ISAs for these Projects explained that this provision "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***." (Emphasis added.) A true and correct copy of the Proposed Staff Report and Recommendation dated August 8, 2019, in Docket No. 4956 is attached hereto as Exhibit H.

10. Thus, Section 5 of each ISA permits Narragansett to amend an ISA only to "incorporate the results of any final Impact Study, Detailed Study, ISRDG and/or ASO study." Section 5 also makes clear that any amendment to the ISA would be subject to Petitioners' approval right under Section 14 of the ISAs, which provides that any amendment is binding only to the extent that it is "in writing and duly executed by both Parties."[6]

C. <u>The Absence of Any Impact on Affected System Operators</u>

11. Here, there were no "results of any final Impact Study Detailed Study, ISRDG and/or ASO study" that justified any amendment under Section 5 of the ISA. To the contrary, as a Narragansett representative confirmed in an email message on April 24, 2020: "The four Dry

[6] Remarkably, Narragansett has tried to take back this approval right by deleting it from Section 5 of the proposed replacement agreements that it sent to Petitioners in August 2020. But the signed ISAs all include it.

Bridge Solar, LLC and Exeter Renewables, LLC projects are not responsible for any transmission level modifications. Until National Grid receives written approval from ISO-NE this is subject to change." *See* Exhibit B hereto.

12. The written approval from ISO-New England arrived a few weeks later, when it ratified the results of the studies confirming that the Projects "will not have a significant adverse effect upon the reliability or operating characteristics of the Transmission Owner's transmission facilities, the transmission facilities of another Transmission Owner, or the system of a Market Participant." In other words, interconnecting the Projects would not require any ASO Upgrades. A true and correct copy of the ISO-New England determination, as reflected in correspondence directed to New England Power, is attached hereto as Exhibit I.

13. The same point was affirmed ten days later, on June 12, 2020, in a report branded with the National Grid logo titled "Summary of Western RI Area ASO Study Results." That report provided the results of the study completed in April 2020 that evaluated whether a cluster of planned distributed generation projects in Western Rhode Island, including Petitioners' Projects, "created any adverse impacts on the reliability, stability, and operating characteristics of the New England Power transmission facilities, the facilities of any other transmission owner, or the system of any market participants." ***It expressly found that the Projects would have "no adverse impacts" on New England Power or any other transmission owners.*** A true and correct copy of this report is attached hereto as Exhibit J.

14. ISO-New England communicated the results to New England Power again in four letters dated July 8, 2020, each of which confirmed (again) that ISO-New England "did not identify a significant adverse effect on the reliability or operating characteristics of the transmission facilities of New England Power Company, the transmission facilities of another Transmission

Owner or the system of any other Market Participant." True and correct copies of these letters are attached hereto as Exhibits K, L, M and N.

15. With the certainty provided by these studies, reports and letters, Petitioners justifiably moved forward with the Projects the basis of the fully executed ISAs, which expressly labeled all work to be done at the Wickford Junction substation as "System Modifications" to Narragansett's own system, and which made no mention of any potential DAF Charges.

16. To date, Petitioners have made more than $14 million of milestone payments to Narragansett, and have arranged to maintain a letter of credit valued at more than $16 million, among other substantial investments in the Projects.

D. <u>Narragansett's Improper Effort to Re-Write the Interconnection Service Agreements</u>

17. Notwithstanding the justified expectations of Petitioners in accordance with the plain terms of the ISAs, on August 12, 2020, Narragansett sent proposed "Final Interconnection Services Agreements" (the "Proposed Revised ISAs") to Petitioners that purported to impose DAF Charges on the Projects for the first time, amounting to approximately $23.4 million of additional purported costs. True and correct copies of each of the four Proposed Revised ISAs are attached hereto as Exhibits O, P, Q and R.

18. Each of the Proposed Revised ISAs includes a new "Attachment 2b," which was not part of the ISAs signed by Narragansett and Petitioners. This new Attachment 2b lists certain items under the heading "Description and specific requirements of ASO (Affected System Operator) upgrades (transmission),") as shown in the excerpt below:

Attachment 2b: Description and specific requirements of ASO (Affected System Operator) upgrades (transmission)

- Installation of 115kV loop tap off the L190 to new Wickford Substation, consisting of breaking the L190 line at structure #143 and installing two new spans of wire between the existing transmission line and the substation busses.
- Installtion of new steel three pole structures on concrete caisson foundation
- Structure #123 on the adjacent 34.5kV, 3311 line will need to be replaced to support the L190 construction.
- Installation of 115kV four (4) breaker ring bus including breakers, disconnect switches, bus, bus insulators and wave trap; and associated site-work, grounding, foundations, structures, and associated protection and control.

19. The items listed under that heading are the basis for which Narragansett now seeks to impose DAF Charges. But every item on that list was expressly categorized in the ***signed*** ISAs as "National Grid System Modifications," *i.e.*, upgrades to the ***Narragansett*** electric power system, which Narragansett acknowledged had been "identified in the impact studies" that were completed before the ISAs were executed in November 2019.

20. Narragansett previously classified these exact same items in the executed ISAs as follows:

Attachment 2: Description of System Modifications

National Grid System Modifications required for the interconnection of 10,000 kW (AC) as identified in the impact studies are as follows:

At the Company's Substation:

- Installation of 115kV loop tap off the L190 to new Wickford Substation, consisting of breaking the L190 line at structure #143 and installing two new spans of wire between the existing transmission line and the substation busses. New steel three pole structures on concrete caisson foundation will be required. Structure #123 on the adjacent 34.5kV, 3311 line will need to be replaced to support the L190 construction.
- Installation of 115kV four (4) breaker ring bus including breakers, disconnect switches, bus, bus insulators and wave trap; and associated site-work, grounding, foundations, structures, and associated protection and control.
- Installation of two (2) 33/44/55 MVA Wye-Wye transformer and two (2) 34.5kV feeders with protection and control, including but not limited to site work, grounding, conduits, fencing and driveway from the street.

21. In other words, Narragansett has already agreed, in four signed contracts, that each item listed on the new Attachment 2b is a "System Modification," and thus cannot be an ASO Upgrade.

22. Consistent with that agreed-upon classification, Attachment 3 to each of the signed ISAs shows that all costs for these items are "Costs of System Modification," and not costs of ASO Upgrades. In the signed ISAs, the total cost of "required common system modifications" shown in

Attachment 3 is $19,651,973. The Proposed Revised ISAs purport to reduce the cost of "required common system modifications" to $3,611,479, while shifting the remainder of the prior amount ($16,040,494) to a new "ASO Upgrades" category listed on yet another new attachment, Attachment 3b. Narragansett has tried to make this change because it wants to extract more than $835,000 in annual DAF Charges from Petitioners every year for the life of the Projects.

23. National Grid knows that it cannot do this under the original (and correct) classifications in the signed ISAs. As Narragansett recognized in the signed ISAs (and even in the Proposed Revised ISAs), items that are classified as System Modifications do not give rise to DAF Charges. And Narragansett has already agreed in the signed ISAs that all of the items listed on new Attachments 2b and 3b are System Modifications, and not ASO Upgrades. Thus, they cannot be the basis for DAF Charges.

24. The proposed DAF Charges are improper and constitute a wrongful effort by Narragansett to extract significant additional annual payments from Petitioners, in violation of the express terms of the already-executed ISAs. They are a significant, material and unauthorized departure from the terms of those contracts, and lack any legal or factual justification, as made clear by the outcomes of the exhaustive system impact studies conducted on the Projects, discussed above.

25. While Attachment 3 of the signed ISAs did leave open the possibility that there could be potential "additional system upgrade costs" that were not specifically listed in the ISAs, this did not come to fruition: ***Narragansett has not subsequently identified <u>any</u> necessary work beyond what was already listed on Attachments 2 and 3 to the signed ISAs.***

26. Indeed, as mentioned above, ISO-NE determined after the ISAs were signed that the Projects "will not have a significant adverse effect upon the reliability or operating

characteristics of the Transmission Owner's transmission facilities, the transmission facilities of another Transmission Owner, or the system of a Market Participant."

27. As Exeter Renewables 1 LLC ("Exeter Renewables") explained in the petition it recently filed before this Commission:

> Section 2.0 of the Interconnection Tariff expressly provides that *"[u]nless otherwise specified, the Company will build **and own**, as part of the Company EPS, **all** facilities necessary to interconnect the Company EPS with the [Project] up to and including terminations at the PCC."* (Emphasis added). Section 1.2 of the Interconnection Tariff defines "Company EPS" as the "electric power system owned, controlled or operated by the Company used to provide distribution service to its Customers." … Therefore, as a matter of law under the Interconnection Tariff, all of the System Modifications are Company EPS that is not subject to DAF charges.[7]

28. Moreover, even putting aside the crucial fact that Narragansett has already bound itself to the classifications in the signed ISAs, the fact that the upgrades will not be owned by New England Power, nor built pursuant to the ISO-NE Open Access Transmission Tariff (the "ISO-NE OATT"), means that there can be no basis under the ISO-NE OATT for New England Power to impose DAF Charges for those upgrades.

29. In its response to Exeter Renewables' recent petition, Narragansett conceded that all upgrades identified in the interconnection agreement for that project will indeed be owned by Narragansett. It nevertheless tried to defend its position by asserting that New England Power "*operates* all transmission assets owned by [Narragansett]."[8] This is irrelevant. Even if New England Power nominally "operates" any Narragansett-owned transmission assets at the Wickford

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[7] *See In re Exeter Renewables 1, LLC*, R.I.P.U.C. No. 5090, Petition, dated Nov. 18, 2020, at 15-16.

[8] *See In re Exeter Renewables 1, LLC*, R.I.P.U.C. No. 5090, Narragansett Response to Petition, dated Dec. 3, 2020, at ¶ 24 (emphasis added).

Junction substation, Narragansett has no right to impose DAF Charges on Petitioners, because it signed contracts agreeing that the "System Modifications" category includes ***all*** upgrades at Wickford Junction. If those upgrades are System Modifications (*i.e.*, modifications to Narragansett's own system), then by definition they cannot be ASO Upgrades. And if they are not ASO Upgrades, then they cannot be the basis for DAF Charges.

30. In any event, it is the identity of the ***owner*** of transmission-level assets, not the ***operator*** of those assets, that is determinative of whether the assets are part of a third-party "affected system." Here, the owner is Narragansett, which means that the assets in question fall outside the scope of an "affected system." Indeed, Narragansett's most recent set of audited financial statements, issued on July 9, 2020, confirms that Narragansett "owns an electric transmission system in Rhode Island," and explains that "[t]ransmission systems generally include overhead lines, underground cables, and substations, connecting generation and interconnectors to the distribution system."[9] The same set of financial statements disclosed that New England Power pays Narragansett's "actual monthly transmission costs," based on a return-on-equity calculation that is set by the ISO-NE OATT.[10] According to the filing, Narragansett received more than $140 million from New England Power under that arrangement in the most recent fiscal year.[11] Against this backdrop, Narragansett's argument that it must pay DAF Charges to New England Power ***for***

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[9] A true and correct copy of Narragansett's audited financial statements, dated July 9, 2020, is attached hereto as Exhibit S. The quoted language appears at page 16. *See also* Letter from National Grid USA to FERC, July 24, 2014, at 2 ("Pursuant to state law, Narragansett owns all National Grid transmission facilities located in Rhode Island."), *available at* https://www.transmissionhub.com/wp-content/uploads/2018/12/New-England-JUL-24-2014-Block-Island-LGIA.pdf). A true and correct copy of this letter, excluding its internal attachments, is attached hereto as Exhibit T.

[10] *See* Exhibit S hereto at p. 20.

[11] *Id.*

assets undisputedly owned by Narragansett, and can purportedly pass those charges through to Petitioners, makes no sense.

31. Ultimately, this is a simple case about enforcing the plain terms of ISAs that were presented to the Commission for approval in 2019. To resolve the Petition, the Commission does not need to wade into the nuances of whether upgrades are "transmission level" or "distribution level." In either case, the upgrades are modifications to a power system owned by Narragansett. And Narragansett-level System Modifications do not give rise to DAF Charges—a conclusion to which Narragansett contractually bound itself when it signed the ISAs.

32. Whether the various items on the ISAs qualify as distribution or transmission assets is not material to the question of whether Petitioners are entitled to have the ISAs enforced as written and signed, with the entirety of the $21.6 million of capital expenditures categorized as "System Modifications" that are not subject to DAF Charges. That is what Narragansett agreed to in writing, and it is the bargain to which the Commission now must hold Narragansett under the law.

E. <u>The Parties' Impasse, and the Need for this Petition</u>

33. Petitioners rightly rejected Narragansett's request to sign the Proposed Revised ISAs, and have continued to operate under the existing ISAs that were signed in November 2019.

34. On September 2, 2020, Petitioners initiated a dispute resolution process under Section 9.1 of the Interconnection Tariff. Since then, Petitioners' representatives have met with Narragansett's representatives on several occasions to determine whether they could resolve their dispute without the need of the Commission's intervention. The parties were unable to do so.

35. Even after the dispute arose, Petitioners made a payment of more than $8 million to Narragansett, in furtherance of Petitioners' commitment to the success of the Projects and their

confidence that the Commission will reject Narragansett's misguided effort to impose DAF Charges in contravention of the ISAs. Petitioners have now paid Narragansett approximately 65% of the total System Modification costs identified in the ISAs. Imposing DAF Charges would mean that, instead of having paid 65% of the total interconnection costs by now (the percentage expressly provided in the ISAs), Petitioners would only be about 30% of the way there. The Commission should reject this improper disruption of Petitioners' reasonable contract-based expectations of their interconnection costs.

36. The dispute is now ripe for further proceedings before the Commission, and an ultimate decision on Petitioners' request for the relief sought herein.

PRAYER FOR RELIEF

For the reasons set forth herein, and additional reasons that Petitioners will explain during the course of this proceeding, Petitioners respectfully request that the Commission issue a declaration:

(1) Declaring that the Interconnection Service Agreements are valid and binding contracts that remain in full force and effect;

(2) Declaring that Petitioners have no obligation to execute updated contracts with Narragansett that would supersede or otherwise change the terms of the Interconnection Service Agreements;

(3) Declaring that Narragansett's effort to force Petitioners to sign new contracts is in breach of Narragansett's contractual obligations under the existing Interconnection Service Agreements, and under its duty of good faith and fair dealing;

(4) Rejecting the interpretation of the Interconnection Services Agreements proffered by Narragansett in connection with the Projects;

(5) Declaring that Narragansett is barred from characterizing any item listed on Attachment 3 of those Interconnection Service Agreements as an Affected System Operator Upgrade;

(6) Declaring that, for purposes of the Interconnection Services Agreements between Narragansett and Petitioners at issue in this dispute resolution process,

Narragansett and its affiliates, including without limitation New England Power, are barred from imposing direct assignment facility charges on Petitioners, or any of Petitioners' successors and assigns, for any item listed on Attachment 3 of the Interconnection Service Agreements;

(7) Awarding Petitioners their attorneys' fees and expenses incurred in connection with disputing Narragansett's efforts to impose direct assignment facility charges on Petitioners, including without limitation the attorneys' fees and expenses incurred in pursuing the relief sought by this Petition; and

(8) Awarding such other relief to Petitioners as the Commission deems just and proper.

Dated: January 7, 2021

Respectfully submitted,

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