

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

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IN RE: GREEN DEVELOPMENT, LLC d/b/a)	
GDIM 1, LLC, GDIM 2, LLC, GDIM 3, LLC)	
and GDIM 4, LLC INTERCONNECTION)	
DISPUTE)	Docket No.
)	
)	

PETITION

Green Development, LLC (“Green”), and its affiliated entities GDIM 1, LLC, GDIM 2, LLC, GDIM 3, LLC, and GDIM 4, LLC (each a “Project Entity” and collectively the “Project Entities”), bring this petition under Section 9 of The Narragansett Electric Company Standards for Connecting Distributed Generation R.I.P.U.C. No. 2180 (the “RI Tariff”).

New England Power (“NEP”) and the Narragansett Electric Company (“NEC”) have unlawfully assessed Direct Assignment Facility (“DAF”) charges to these solar projects because ISO-NE’s Tariff does not authorize the DAF charges. Rather than passing through properly incurred FERC-jurisdictional costs to the projects in state-jurisdictional ISAs, NEP/NEC are effectively *originating and assessing* FERC jurisdictional costs pursuant to the state-jurisdictional tariffs and interconnection service agreements (“ISA”). NEP’s/NEC’s actions have resulted in unjust and unreasonable wholesale rates for Green because such charges are not authorized under the ISO-NE Tariff. NEC may not originate and assess FERC jurisdictional charges pursuant to a state ISA without any FERC authorization, and their actions are accordingly preempted.

Green must initiate this dispute at the Rhode Island Public Utilities Commission (“RIPUC”) per the terms of Section 9 of the RI Tariff. However, since these are federal

questions over which RIPUC has disclaimed jurisdiction, Green stays this petition pending its resolution at the Federal Energy Regulatory Commission (“FERC”). See RIPUC Docket 4981, Order No. 23811, at 6-7, 26 (2020).

FACTS

On June 5, 2018, Green Development, LLC (“Green”), through its affiliated entities GDIM 1, LLC, GDIM 2, LLC, GDIM 3, LLC, and GDIM 4, LLC, applied to NEC to interconnect four 9,600 kW solar facilities (38,400 kW in the aggregate) (the “Projects”) to NEC’s distribution system under the RI Tariff. The Projects are all located at 1115 Iron Mine Hill Road, North Smithfield, RI 02896. NEC assigned the Projects interconnection application numbers RI-26600221, RI-26795176, RI-26600263, and RI- 26630077.

The Projects will convey their electricity solely to NEC under Rhode Island’s net metering and regrowth programs. The Projects are each Qualifying Facilities. The Projects will not participate in federal markets. The Projects are not ISO-NE Market Participants. Neither Green nor any Project Entity ever sought to interconnect any Project with ISO-NE.

Upon preliminary evaluations of the Projects, on September 10, 2018, NEC provided a system feasibility study to Green with two alternatives for the interconnection: it could either pay for the installation of a new transformer position at the *existing* West Farnum substation and run a 34.5 kV express feeder 1.2 miles to the project site, or pay for the construction of a new substation to be located on the project site containing the transformer position. Under the provided Option Considerations and Comparisons NEC noted that the option to install the new transformer position at the West Farnum substation would be subject to many delays including but not limited to: construction delays due to a new ISO project ahead in the queue of this interconnection, swamp matt requirements, permitting, and civil or environmental related work

due to poor fill material in the existing 115 kV yard at the West Farnum Substation. Neither option contemplated that any expansions to the existing 115 kV line, or new transmission lines or Transmission Facilities were needed to interconnect the Projects to NEC's distribution system. Neither NEC, Green Development, nor any Project Entity requested any Transmission Service of NEP or ISO-NE in order to accommodate the Projects' interconnection to NEC's distribution system or to facilitate the Upgrades. Green selected the option to install a new substation to be located on the project site.

On or about October 7, 2019, NEC sent Green a final interconnection system impact study for the Projects. The impact study anticipated transmission system upgrades would be required for the Projects but did not anticipate any DAF charges to operate or maintain those transmission system upgrades.

On or about October 9, 2019, NEP submitted a Proposed Plan Applications ("PPA") to ISO-NE for its review and determination of whether or not the Projects have a "significant adverse effect" on the FERC jurisdictional transmission system pursuant to ISO-NE OATT Section 1.3.9. ISO-NE Section 1.3.9 Review of Market Participant's Proposed Plan. *See*, Proposed Plan Application IDs: NEP-19-G21; NEP-19-G22; NEP-19-G23; NEP-19-G24; NEP-19-G25; NEP-19-G26; NEP-19-G27; NEP-19-G28; NEP-19-G29; and NEP-19-T08, Available at <https://www.iso-ne.com/system-planning/transmission-planning/proposed-plan-applications/>.

On or about November 12, 2019, ISO-NE notified NEP that the Projects had "no adverse effect on the reliability or operating characteristics of the transmission facilities of NEP, the transmission facilities of any other Transmission owner or the system of any other Market Participant." *See*, Iron Mine Hill Road Solar Generation and Transmission Project – Proposed Plan Application (PPAs) NEP-19-G21 through NEP19-T08, Available at: <https://www.iso->

ne.com/static-

assets/documents/2019/11/iron_mine_hill_road_solar_generation_and_transmission_i_3_9.pdf.

On or about December 2019, Green began project construction on the project site based on the information provided in the Final Impact Study (V1 – 10/07/19) that the costs +/-25% as stated in section 10 accurately identified the cost risk to Green for the interconnection. Green subsequently requested the ISAs from NEC.

On or about February 14, 2020, NEC provided Green with Draft ISA for review of, among others, the proposed total cost of each of the projects as well as payment terms associated with the longer construction schedule. The February 2020 ISAs made no mention of DAF costs and Green continued with construction activities with the expectation that an executable version of the ISAs would follow soon thereafter.

On April 14, 2020, RIPUC decided *In Re: Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs & Related “Affected System Operator” Studies (“Diocese”)*.¹ The Episcopal Diocese of Rhode Island petitioned RIPUC to declare that NEC lacked the statutory authority to impose transmission capital and operating and maintenance costs to its solar facility. The Petition was filed with RIPUC under section 9 of the RI Tariff, which outlines a process for distribution system interconnection disputes that must culminate in a petition to RIPUC. The Diocese project, like the Projects at issue here, was 1) interconnecting to NEC’s distribution system, 2) was not interconnecting pursuant to ISO-NE’s transmission rules, and 3) would not be participating in ISO-NE’s markets. The petitioner claimed that the proposed transmission charges were unauthorized under state and federal law, including ISO-NE’s OATT. The RIPUC’s Order held that:

¹ 2020 WL 2486927 (RIPUC Apr. 14, 2020) (attached hereto as Attachment []).

The wholesale rate recovery of transmission costs, as with wholesale rate recover of any other cost, is subject to FERC review. *The PUC is prohibited from reviewing the propriety of FERC-approved rates.* It must allow Narragansett full recovery of costs properly assessed by New England Power or ISO-NE to Narragansett under FERC-approved tariffs. FERC has the jurisdiction over transmission tariffs while the PUC has jurisdiction over the retail rate recovery of costs incurred under FERC-approved transmission tariffs.²

The RIPUC Order concludes that “[t]he PUC is required to treat these [FERC-jurisdictional] costs as just and reasonable, if appropriately charged to Narragansett by New England Power Company.”³ RIPUC never addressed whether the charges were authorized under ISO-NE’s OATT. That is an issue over which FERC has exclusive jurisdiction.⁴

On or about July 24, 2020, NEC issued executable ISAs for the Projects. Attachment 1 of each ISA states that “Facilities will interconnect to the Company’s electric system via the Iron Mine Substation, 34.5 kV distribution feeder (“Point of Interconnection” or “POI”).” Section 5.1 of the ISAs states that “the Interconnecting Customer shall be responsible for the actual Affected System operator costs, including operation and maintenance costs, and any additional Company costs necessitated as a result of the Affected System operator requirements, none of which shall be subject to any cost caps or limitations.” Attachment 2b describes the specific requirements for Affected System Operator (“ASO”) upgrades (transmission) to include:

- Build a new 115-34.5kV substation adjacent to ASO’s Transmission ROW near structure 11 on the H17 line with equipment including 115kV Disconnect Switches, 115kV Circuit Breakers, CCVT Instrument Transformers, Transmission

² *Id.* at 6-7 (citations omitted) (emphasis added).

³ *See id.* at 7.

⁴ *See, e.g.,* FPA § 201(b)(1) (“The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy.”); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 31,781 (1996) (“[T]he provision of transmission in interstate commerce . . . is exclusively within the jurisdiction of the Commission.”) (quotations omitted); *id.* (“[S]ection 201 of the FPA, on its face, gives the Commission jurisdiction over transmission in interstate commerce (by public utilities) without qualification. Unlike our jurisdiction over sales of electric energy, which section 201 of the FPA specifically limits to sales at wholesale, the statute does not limit our transmission jurisdiction over public utilities to wholesale transmission.”) (citation omitted).

Structures, Communication Equipment, Protection Equipment, Foundations, Civil Work, and other required equipment;

- Extend the H17 line around structure 11 to accommodate a new substation and new three-ring bus including other required equipment;
- Install DTT from Iron Mine Sub to West Farnum Substation-Remote terminal upgrade, new line protection OPG splicing associated with the re-wiring, testing and communication; and
- Install DTT from Iron Mine Hill Substation to Riverside Substation-Remote terminal upgrade, new line protection OPG splicing associated with the re-wiring, testing and communication.

In Attachment 3a of the ISAs, NEC estimates the total System Modification costs associated with improving NEC's distribution system for these four facilities at \$9,023,104. In Attachment 3b, NEC quotes the cost of ASO upgrades (transmission) for the Projects at \$11,206,661, including: common line upgrades at the transmission side of the NEW Substation (capital, removal, and O&M costs) of \$2,774,089; common upgrades at the substation site of the NEW Substation (capital, removal, and O&M costs) of \$7,105,714; and a tax gross-up adder on capital costs of \$331,714. Finally, and additionally, in Attachment 3b to the ISAs, NEC proposes to assess the application for the carrying charges for the ASO upgrades (transmission), Direct Assignment Facilities ("DAF") Charge calculated pursuant to ISO-NE OATT Schedule 21-NEP, quoted at \$514,740 per year (Attachment 3b) split between the four projects. If left to stand, the DAF Charges will total *approximately \$18 million over the lifetime of the Projects*, a net present value of approximately \$7 million.

The DAF charges were not estimated, assessed or known to Green before the receipt of the ISAs. NEC delivered its final ISA's far beyond the timeline required under Rhode Island law. NEC never allowed Green to reconsider the option of building a new substation based on the newly imposed DAF charges, which made the transformer alternative more economical.

NEC's Financial Statements for the years ended March 31, 2020, 2019, and 2018, state that:

NEP operates the pooled transmission facilities of MECO, the Company, and NEP as a single integrated system (“NEPOOL”) under NEP’s Tariff No. 1. These transmission services are regulated by both ISO-NE and by the FERC. NEP charges ISO-NE for these transmission services. As NEP is the sole operator of NEPOOL assets, ISO-NE revenues are remitted from NEP to the Company representing the substantial portion of the affiliated accounts receivable due from NEP. In turn, ISO-NE charges the Company for regional network services (“RNS”) with some of those charges being associated with the Company-owned transmission assets in the NEPOOL. As of March 31, 2020 and March 31, 2019, \$17.2 million and \$17.6 million of the unpaid charges from ISO-NE to the Company have been presented as an affiliated payable to NEP related to these Company-owned transmission assets, respectively. Additionally, NEP also charges the Company local network service (“LNS”) rates. Amounts paid to NEP for LNS for the years ended March 31, 2020, 2019 and 2018 were \$57.4 million, \$46.5 million and \$47.3 million, respectively. These amounts are presented within operations and maintenance expense within the accompanying statements of income.” p. 43.

NEC is not registered as a transmission owner, regulated by ISO-NE. Nor are any of the Project Entities or Green “Transmission Customers” under Schedule 21. Neither the Project Entities nor Green are required to have a Transmission Service Agreement. Neither NEC, Green Development, nor any Project Entity requested any Transmission Service of NEP or ISO-NE in order to accommodate the Projects’ interconnection to NEC’s distribution system or to facilitate the Upgrades. At no time did NEC inform Green Development of a need to take Transmission Service from NEP or ISO-NE pursuant to any provision of the ISO-NE Tariff in order to interconnect the Projects. Nor do any of the Projects intend to enter into wholesale energy sales subject to Federal jurisdiction.

Neither the Projects nor the ASO Upgrades were ever specified as DAFs in a separate agreement among the ISO, an Interconnection Customer and a Transmission Customer, as applicable, and the Transmission Owner. No agreement identifies these ASO Upgrades as DAF or Transmission Facilities. If there had been any such agreement, Green was not a party to it. Green is not an Interconnection Customer, and Green has not sought to participate in ISO-NE’s

markets. The proposed ASO Upgrades do not provide any “Transmission Services” or “Ancillary Services,” nor are the ASO Upgrades classified as “Transmission Facilities.” No costs associated with the Projects were ever directly assigned by NEP or ISO-NE to NEC, nor were any charges authorized under any other provision of Schedule 21 or the OATT generally.

Section 25 of the ISAs requires that all dispute resolution will be governed by Section 9 of the RI Tariff. Green first raised its concern about authorization for these charges to NEC in August 2020 and has since tried in good faith to resolve this dispute. The parties had a call on August 18, 2020, in which they exchanged their positions and NEC and NEP insisted the charges were authorized. On November 10, 2020, Green sent a letter to NEC requesting elevation of the case to senior management per section 9.2 of the RI Tariff. On December 1, 2020, the parties had another call to go over their positions regarding authorization for the charges in more detail, and NEC and NEP offered to reconsider their position. On December 18, 2020, Green had another call with NEC and NEP to receive their final position; NEC and NEP maintained that the charges are authorized. Green now petitions the RIPUC per section 9 of the RI Tariff, but stays this petition pending resolution of questions of federal law at FERC.

ARGUMENT

These transmission system improvements are not DAFs. DAFs are facilities or portions of facilities that are constructed for the sole use/benefit of a particular Transmission Customer or Interconnection Customer requesting transmission service under the ISO-NE OATT. “Direct Assignment Facilities shall be specified in a separate agreement among the ISO, Interconnection Customer and Transmission Customer, as applicable, and the Transmission Owner whose transmission system is to be modified to include and/or interconnect with the Direct Assignment Facilities, shall be subject to applicable Commission requirements, and shall be paid for by the

Customer in accordance with the applicable agreement and the Tariff.” *See* ISO-NE Tariff Definitions. Neither the Projects nor these ASO Upgrades were ever specified as DAFs in a “separate agreement among the ISO, Interconnection Customer and Transmission Customer, as applicable, and the Transmission Owner.” There is no agreement that identifies these ASO Upgrades as DAF. Green was not a party to any such agreement. Green is not even an Interconnection Customer under the ISO-NE Tariff. The Projects will not participate in ISO-NE’s markets.

NEC’s allocation of \$514,740 per year in costs to Green is unauthorized, unjust, and unreasonable. NEC assesses this charge under the ISAs to recover costs that were never properly assessed to NEC as a Transmission Customer by either NEP or ISO-NE pursuant to the ISO-NE Tariff. This results in over-recovery from ratepayers. The DAF charges NEC has assessed to the Projects will total over \$18 million over the lifetime of the Projects that represents value taken directly from Green by NEP and NEC without any proper authorization.

FERC has exclusive jurisdiction over all facilities used to transmit power in interstate commerce, as well as the allocation of costs associated with such facilities. NEC has determined, without any authorization from FERC or ISO-NE, that the substation upgrades should be deemed transmission, and has allocated FERC-jurisdictional charges to the Projects even though ISO-NE (the FERC-jurisdictional entity) does not authorize any such allocation. State actions are preempted when they “den[y] full effect to the rates set by FERC, even though [the state] did not seek to tamper with the actual terms of an interstate transaction.” *See PPL Energyplus, LLC v. Nazarian*, 753 F.3d 467, 476 (4th Cir. 2014); *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288 (2016) (discussing *Mississippi Power & Light Co. v. Mississippi ex rel.*

Moore, 487 U.S. 354, 373 (1988)). Here, FERC has not allocated any transmission-level costs to the Projects.

NEC has effectively established a different wholesale rate than that set by FERC, in violation of *Nantahala Power and Light Co. v. Thornburg*. *Nantahala* establishes that a state cannot utilize its authority under state law to override a FERC-jurisdictional rate. 476 U.S. 953, 970 (1986). In *Hughes v. Talen*, the U.S. Supreme Court stated that “*Mississippi Power & Light* and *Nantahala* make clear that States interfere with FERC’s authority by disregarding interstate wholesale rates FERC has deemed just and reasonable, even when States exercise their traditional authority over retail rates.” 136 S. Ct. at 1299. Here, NEC has disregarded FERC’s wholesale rates by assessing and allocating costs for transmission-level impacts where none were actually assessed or allocated by ISO-NE.

Improper integration and commingling of separately regulated entities are at issue here where NEC, a state regulated distribution company, claims state authorization to impose charges purportedly issuing from NEP, its federally regulated transmission affiliate, that are completely unauthorized under federal law. NEC’s publicly available financial statements for the fiscal years ended March 31, 2020, 2019, and 2018, report that NEC owns Transmission Facilities, and that revenues associated with such Transmission Facility ownership are ultimately remitted to NEC. But NEC is not a signatory to the Transmission Operator Agreement, and thus is not a Transmission Owner in ISO-NE. NEC is a Transmission Customer of NEP, a Transmission Owner. Respondents intentionally commingle their distribution and transmission system assets and the independent regulatory regimes associated with each. NEC’s RI Tariff requires primary state jurisdiction over distribution system interconnection disputes. NEC confounds its state regulators about federal authorization of purportedly filed rates in order to leverage more

compensation from projects seeking interconnection to the distribution system that do not intend to use the transmission system or participate in federal wholesale markets. This fundamentally deceptive conduct delays, costs, and threatens local renewable energy projects. Green Development will seek appropriate relief at FERC.

STAY

In RIPUC Docket No. 4981, RIPUC refused to exercise jurisdiction over these questions arising under federal law, and condoned the charges. *See* RIPUC Docket 4981, Order No. 23811, at 6-7, 26 (2020). That Order held that:

The wholesale rate recovery of transmission costs, as with wholesale rate recover of any other cost, is subject to FERC review. *The PUC is prohibited from reviewing the propriety of FERC-approved rates.* It must allow Narragansett full recovery of costs properly assessed by New England Power or ISO-NE to Narragansett under FERC-approved tariffs. FERC has the jurisdiction over transmission tariffs while the PUC has jurisdiction over the retail rate recovery of costs incurred under FERC-approved transmission tariffs.⁵

In Docket 4981, RIPUC concluded that “[t]he PUC is required to treat these [FERC-jurisdictional] costs as just and reasonable, if appropriately charged to Narragansett by New England Power Company.”⁶ RIPUC assumed that the charges were properly assessed under the applicable provisions of the ISO-NE Tariff, never addressing whether the charges were authorized under ISO-NE’s OATT. That is an issue over which the FERC has exclusive jurisdiction.⁷

In Docket 5090, Exeter Renewables I, LLC, the petitioner raises contract-based disputes regarding improper, unilateral revision of its ISA to add DAF charges on a state-jurisdictional

⁵ *Id.* at 6-7 (citations omitted) (emphasis added).

⁶ *See id.* at 7.

⁷ *See e.g.*, Federal Power Act § 201(b)(1), 16 U.S.C. § 824(b)(1) (2018); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 31,781 (1996) (“the provision of transmission in interstate commerce . . . is exclusively within the jurisdiction of the Commission.”) (quotations omitted).

interconnection customer for distribution-level upgrades associated. In response, NEC argues that “[t]his FERC-approved charge [the DAF Charge] *must* be considered just and reasonable by the PUC, and the PUC *must* allow TNEC full recovery of those costs.”⁸ NEC relies on the RIPUC Order 23811 in support of its position that the RIPUC cannot stop NEC from charging the DAF Charges to the interconnecting customer. NEC defends its DAF Charges to state-jurisdictional distribution projects by claiming that they are authorized under the ISO-NE Tariff, and that, therefore, RIPUC may not overrule them. However, neither NEP nor NEC can justify why such distribution system level improvements are properly considered DAF under the ISO-NE Tariff. Respondents claim authorization without any. FERC will properly exercise its jurisdiction to address and resolve these injustices.⁹

Given RIPUC’s decision not to exercise jurisdiction over whether federal law authorizes such transmission system charges, Green stays this petition pending resolution of this dispute at FERC.

REQUESTED RELIEF

Green stays this petition pending FERC’s decision. Once FERC issues its decision, Green may ask RIPUC for any further relief if/as warranted by FERC’s ruling, including


⁸ The Narragansett Electric Company’s Response to Petition, RIPUC Docket 5090, at 16 (emphasis added).

⁹ *Cent. Iowa Power Coop.*, 108 FERC ¶ 61,282, at P 10 (2004) (rejecting an attempt to “argu[e] to the Commission that . . . dispute . . . should be resolved in state fora, and then arguing in state fora that [federal law] preempted the state legislature” because doing so was an “attempt[] to create a situation where the [generation owners] would have no forum in which to bring their concerns”)

elimination and prohibition of unauthorized transmission system charges.

**GREEN DEVELOPMENT, LLC,
GDIM 1, LLC, GDIM 2, LLC,
GDIM 3, LLC, and GDIM 4, LLC**

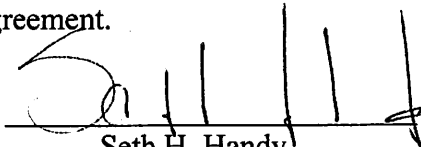
By their attorneys,
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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2021, I delivered a true copy of the foregoing document to National Grid by electronic mail, by agreement.



Seth H. Handy