

KEEGAN WERLIN LLP

ATTORNEYS AT LAW

99 HIGH STREET, Suite 2900

BOSTON, MASSACHUSETTS 02110

(617) 951-1400

TELECOPIER:

(617) 951- 1354

August 30, 2021

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

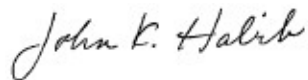
Re: Green Development LLC, et al. Petition for Dispute Resolution – Docket No. _____

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company d/b/a National Grid (the Company), enclosed is the Company's Response to the Petition for Dispute Resolution filed by Green Development LLC (Green Development) on August 13, 2021, in the above-referenced matter. This response does not address Green Development's August 26, 2021, request to proceed with the formal third-party/mediation process provided for in Sections 9.2(c)-(l) of the Company's approved Standards for Interconnection Tariff, R.I.P.U.C. 2180. The Company will await instructions from the Rhode Island Public Utilities Commission before responding to Green's August 26, 2021 request.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



John K. Habib, Esq.

Enclosures

cc: Michael P. Robinson, Esq.
Cindy Wilson-Frias, Esq.
John Isberg
John Kennedy
Timothy Roughan
Michael Porcaro

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

)	
Petition of Green Development, LLC; GD)	
Richmond Beaver River I, LLC; GD West)	Docket No. _____
Greenwich Nooseneck I, LLC; GD West)	
Greenwich Nooseneck II, LLC for Dispute)	
Resolution Pursuant To R.I.P.U.C. No. 2180)	
)	

**THE NARRAGANSETT ELECTRIC COMPANY’S RESPONSE TO PETITION FOR
DISPUTE RESOLUTION**

The Narragansett Electric Company d/b/a National Grid (National Grid or Company), pursuant to Section 9.2 of the Standards for Connecting Distributed Generation, R.I.P.U.C. No. 2180 (the Tariff), hereby responds to the Petition for Dispute Resolution (Petition) filed by Green Development, LLC, GD Richmond Beaver River I, LLC, GD West Greenwich Nooseneck I, LLC, and GD West Greenwich Nooseneck II, LLC (together, Green Development or Customer) in the above-captioned matter.¹

I. INTRODUCTION

Green Development’s dispute centers on the timeline for Green Development to make payments for distribution system modifications and transmission system needed for nine projects studied together at a total size of 58,080 kW, referred to by Green Development as the “Exeter Projects.” Petition at 2. Green Development’s payment schedule is set out in fully executed Interconnection Service Agreements (ISAs) for each of the Exeter Projects. Under Section 5.5. of the Tariff, and the unambiguous Payment Terms in Attachment 3 of the ISAs, Green

¹ Section 9.2(a) of the Tariff provides that “within ten business days after the written request to the Commission for dispute resolution, the other party shall also submit a summary of the situation to the Commission and provide a copy of the summary to the Requesting Party.” For organizational purposes, TNEC has set forth its specific response to each of the factual allegations stated in the Petition.

Development's payment schedule is tied to National Grid's schedule for design, ordering long lead time equipment, and commencing construction, with milestones for both parties. As established in the Tariff, all costs must be collected from Green Development prior to National Grid making expenditures for each phase of construction including ordering equipment. National Grid is not required to initiate any work for which advanced payment has not been received. Despite these clear terms in the Tariff and executed ISAs, Green Development is requesting to delay its payments until closer in time to its interconnection date – essentially asking for National Grid and/or other customers to finance the cost of upgrades that are necessary to interconnect Green Development's Exeter Projects. As discussed further herein, the payment schedule agreed to by Green Development in the ISAs is consistent with the Tariff, R.I. Gen. Laws § 39-26.3-4.1(c), and is necessary for National Grid to order long-lead-time equipment. It is also necessary to maintain progress on construction of these projects in a timely manner to allow for efficient queue management as more and more projects seek interconnection to the Company's electric distribution system.

Green Development's Petition also challenges the allocation of transmission system upgrade costs identified in the Western Rhode Island Area ASO #1 Study, as allocated to its projects in accordance with Green Development's request. Green Development requested to voluntarily include more of its projects in the ASO #1 study costs to spread out Green Development's costs across a larger pool of its projects. Petition at 5-6. Green Development appears to have misunderstood the impacts of its voluntary request to assume additional costs and now regrets its decision. Contrary to Green Development's argument in its Petition, Green Development's apparent misunderstanding in no way establishes evidence of discriminatory conduct by National Grid. Petition at 14-16.

II. DISCUSSION

A. The Payment Schedule In The ISA Is Consistent With Rhode Island Statutes and The Tariff.

Green Development argues that the payment schedule it agreed to in the executed ISAs for the Exeter Projects violates R.I. Gen. Laws § 39-26.3-4.1(c) and the Tariff with respect to: (1) Green Development's share of costs associated with construction of the Wickford Junction Substation; and (2) Green Development's responsibility for the costs for a new breaker and a half ring bus at the West Kingston substation (West Kingston Ring Bus Upgrades). Petition at 3-4. Green Development argues that the West Kingston Ring Bus Upgrade has delayed the commercial operation date of the Exeter Projects to June 30, 2023, and, therefore, claims it should not be required to make payment now, years in advance of its expected operation. Green Development advances these arguments now despite expressly agreeing to the payment terms and schedule when it executed the Exeter Project ISAs effective July 13, 2021.²

1. Wickford Junction Substation Costs.

Green Development objects to the schedule for paying its share of costs for the Wickford Substation, claiming that National Grid "moved forward with the construction of the Wickford Substation for the sole purpose of accommodating another interconnection customer who has or will have funded the full cost of the Wickford Substation well in advance of the earliest anticipated interconnection date for Green Development's Exeter Projects." Petition at 3. Green Development does not dispute that it is responsible for its share of the Wickford Junction Substation, but claims that the schedule for its payment obligations violates R.I. Gen. Laws § 39-26.3-4.1(c).

² Pursuant to Section 19 of the ISAs, the ISAs and any attachments or appendices are entered into pursuant to the Interconnection Tariff. "Together the Agreement and the Interconnection Tariff represent the entire understanding between the Parties, their agents, and employees as to the subject matter of this Agreement." ISAs, Section 19.

R.I. Gen. Laws § 39-26.3-4.1(c) establishes a 10-year look back for subsequent interconnecting customers to make a contribution for System Modifications costs if they later rely on system modifications paid for by other customers. The statute provides as follows:

If an interconnecting, renewable energy customer is required to pay for system modifications and a subsequent renewable energy or commercial customer relies on those modifications to connect to the distribution system within ten (10) years of the earlier interconnecting, renewable energy customer's payment, the subsequent customer will make a prorated contribution toward the cost of the system modifications that will be credited to the earlier interconnecting, renewable energy customer as determined by the public utilities commission.

R.I. Gen. Laws § 39-26.3-4.1(c).

Green Development interprets this provision as not requiring contribution until after its Exeter Projects are actually interconnected, operating and using the Wickford Junction Substation. Petition at 9. Green Development's interpretation is illogical and impractical for several reasons.

First, this is not a case where Green Development just happens to be subsequently relying on a System Modification that was designed for another customer. Rather, Green Development's 58 MW Exeter Projects were studied in coordination with another 50 MW of proposed solar projects in the area. The Wickford Junction Substation was specifically designed to serve all 108 MW of both the Exeter Projects and the projects proposed by the other developers. It is known, certain and undisputed that the Exeter Projects will rely on the Wickford Junction Substation upgrades. Accordingly, the Wickford Junction Substation is an upgrade that is directly needed to serve Green Development's Exeter Projects, the costs for which should be collected through Green Development's ISAs consistent with normal practice.

Second, § 39-26.3-4.1(c) is consistent with the terms of the Tariff and does not modify the normal payment procedure under Section 5.5 of the Tariff. The text of the statute is repeated in Section 5.3 of the Tariff. Section 5.5 of the Tariff then provides:

All application, study fees, and System Modification costs (except as noted below) **are due in full prior to the execution of the work as outlined in this Interconnection Tariff.** If the anticipated costs exceed \$25,000, the Interconnecting Customer is eligible for a payment plan, including a payment and construction schedule with milestones for both parties. At the request of the Interconnecting Customer, the Company will break the costs into phases in which the **costs will be collected prior to Company expenditures for each phase of the study and/or construction including ordering equipment.** The payment plan will be attached as an exhibit to the ISA or relevant study agreements. **The Company will not be required to initiate any work for which advanced payment has not been received.** [...]

Section § 39-26.3-4.1(c) does not set a different payment timeline or payment procedure for subsequent cost sharing than what is found in Section 5.5 of the Tariff.

In accordance with Section 5.5 of the Tariff, the Exeter Project ISAs include a phased payment plan with five incremental payments:

Distribution system modification payment schedule

- First payment of five (5) percent due at time of executing the ISAs.
- Second payment of 30 percent due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than September 1, 2021.
- Third payment of 30 percent due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than January 1, 2022.
- Fourth payment of 20 percent due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than March 1, 2022.
- Fifth and final payment of 15 percent due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than June 1, 2022.

Affected System Operator Transmission system modification payment schedule

- First payment of five (5) percent due at time of executing the ISAs.
- Second payment of 30 percent due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than August 1, 2021.

- Third payment of 30 percent due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than October 1, 2021.
- Fourth payment of 20 percent within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than December 1, 2021.
- Fifth and final payment due within 15 business days of invoice, to be issued when long-lead time material items are ready to be ordered or construction ready to start, or no later than February 2, 2022.

Even though construction of the Wickford Junction substation has already commenced under funding from another developer, National Grid has still set out a reasonable phased payment schedule for Green Development's share of all system modifications that is tied to the overall construction schedule, which includes additional construction aside from the common Wickford Junction Substation upgrades.³ The transmission payment schedule is specifically aligned to pay for all three required upgrades and the ordering of long lead items for the G185 and K189 line reconductoring, the West Kingstown ring bus, and the Wickford Junction Substation upgrades.⁴

Lastly, requiring payment for the Wickford Junction Substation upgrades prior to the Exeter Projects interconnecting is consistent with National Grid's normal payment procedures and ensures consistent and equitable treatment with the other customers that are contributing to the Wickford Junction Substation costs. The other customers were required to pay for the full cost of the Wickford Junction Substation prior to interconnection so that National Grid could proceed with construction. Requiring timely payment from Green Development will facilitate the equitable

³ Attachments 2a and 3a of the ISAs identify the distribution System Modifications. Attachments 2b and 3b identify the ASO transmission upgrades. The costs associated with ASO transmission upgrades are being passed through to Green Development in these ISAs in accordance with Section 5.4 of the Tariff ("Interconnecting Customers shall be directly responsible to any Affected System operator for the costs of any system modifications necessary to the Affected Systems.") and the Commission's decision in Petition of Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs and Related "Affected System Operator" Studies, Docket 4981, Order 23811 (2020).

⁴ The ISAs also make clear that "physical construction of system modifications will not commence until full payment is received. ... Funds received may be immediately expended or committed as determined by the Company in its sole discretion." ISAs, Attachment 3.

sharing of costs between all 108 MW of projects that will benefit from the Wickford Junction Substation. Delaying payment until 2023, as Green Development requests, will significantly prolong the period of time for which other developers are carrying the full cost of the Wickford Junction Substation and would essentially result in another developer financing the construction while giving Green Development substantial time to develop its projects without paying interconnection costs.⁵

Reasonable payment timelines also serve an important role in the overall queue management of DER projects, particularly as the electric power system becomes more saturated and increasingly restrictive and costly to interconnect new projects. Timely financial commitments are an indicator of project viability and commitment. See, e.g., Distributed Generation Interconnection, D.P.U. 19-55-D, at 33 (2020). Earlier payment commitments can be an indicator of project commitment and leads to a fairer and more accurate interconnection queue of projects that are more likely to actually proceed to interconnection. Id. at 33-35 (approving a maximum system modification payment timeline of 60 business days for the first 25 percent of costs, and 120 business days from the first payment to make the remaining 75 percent, with automatic termination of the Interconnection Service Agreement if the customer fails to meet the timelines). Holding projects to reasonable payment timelines and removing immature or non-viable projects on a timely basis ensures that valuable system capacity will be deployed efficiently.

⁵ In fact, one of the other developers sharing the costs of the Wickford Junction Substation, Exeter Renewables 1 LLC, has recently filed a petition for declaratory judgment arguing that cost sharing for the Wickford Junction Substation should begin immediately now that Green Development has executed ISAs for its Exeter Projects. See In Re Exeter Renewables 1 LLC, Docket 5183, Petition for Declaratory Judgment (Aug. 13, 2021).

2. West Kingston Ring Bus Upgrades.

Green Development claims that National Grid is violating the Tariff by requiring Green Development to “prepay” the costs of the West Kingston Ring Bus Upgrades in advance of commencing construction of those assets. In making this argument, Green Development ignores the language in Section 5.5 of the Tariff that states “costs will be collected prior to Company expenditures for each phase of the study and/or construction **including ordering equipment.**” Tariff, Section 5.5 (emphasis added).

The material for the West Kingston Ring Bus Upgrades has a long lead time to obtain. National Grid needs to receive payment for this equipment before placing the order. The design and purchase of this material has already commenced. The payment schedule in Attachment 3a and Attachment 3b of the ISAs is aligned with the long lead time for ordering necessary equipment. National Grid cannot extend the payment schedule without adversely impacting the overall construction schedule.

B. Initiation Of Dispute Resolution Under Section 9 Of The Tariff Does Not Automatically Stay Payment Obligations In Executed ISAs.

Green Development argues that its refusal to pay a disputed bill does not constitute “An Event of Default” under the ISA, and therefore claims that National Grid “may not suspend its performance under the ISAs while Green Development disputes the amount and/or due date for any applicable payments.” Petition at 13. Green Development goes so far as to say that “if NEC refuses to perform under the ISAs solely because Green Development refuses to pay the *disputed bills*, NEC itself will be in Default of the ISAs ... and Green Development reserves the right to seek any and all damages caused by any breach or unlawful attempt of NEC to retaliate against Green Development for disputing such bills.” Petition at 14 (emphasis in original). This is an astonishing statement. Green Development is suggesting that it can sign an ISA expressly

committing to pay specified system modification costs, then refuse to pay the amounts it expressly agreed to when it signed the ISA, and National Grid has no recourse and must continue to perform under the contract without payment. There is no reasonable basis for this position. Green Development cannot dispute a system modification cost that it knew and expressly agreed to pay when it executed the ISAs. Failure to pay an amount itemized in the ISA executed by the customer is An Event of Default.

Moreover, the Dispute Resolution Process in Section 9 of the Tariff does not include any provision to automatically suspend payment obligations in an ISA if a dispute is brought. Once an ISA is executed by both parties, a dispute concerning the terms of the ISA does not automatically put the associated interconnection process on hold. This position is in accord with guidance the Company has received in Massachusetts applying similar terms from the Massachusetts interconnection tariff. Based on National Grid's view of the ISAs and dispute resolution process, it did not "threaten" to withdraw the Exeter Projects, but instead informed Green Development of National Grid's legal rights under the ISAs and the consequences for non-payment.

C. National Grid's Allocation Of ASO Upgrade Costs Is Not Discriminatory.

Green Development argues that National Grid violated R.I. Gen. Laws §§ 39-2-2(a) and 39-2-3(a) by employing a pattern of discriminatory administration of the Tariff that disadvantages Green Development relative to substantially similar interconnecting customers. Petition at 14. There is no basis to Green Development's allegation.

The root of Green Development's claim is its allegation that National Grid "incorrectly assigned the entire \$2.6 million cost for the Kent County-Drumrock Upgrades to Green Development's projects alone." Petition at 15. The Kent County-Drumrock Upgrades were

identified in the Western RI Area ASO Study. As explained in National Grid's June 12, 2020 Summary of Western RI Area ASO Study Results,⁶ the Western RI Area ASO Study included 228 MW of proposed distributed energy resources (DER). The results indicated that 132 MW of the DER projects studied can connect to the transmission system without triggering any transmission system modifications, but the remaining 96 MW of DER seeking to connect south of Drumrock Substation require transmission system modifications. The modifications required are to reconductor the G-185N line and to increase the K-189 line ground clearances. National Grid clearly communicated these results to all study participants.

Green Development had multiple projects included in the Western RI Area ASO Study. Some projects were included in the 132 MW of DER projects that did not require transmission upgrades, while some were included in the 96 MW of DER interconnecting south of Drumrock Substation requiring modifications to the G-185N line and K-189 line. As Green Development readily admits in its Petition, it *voluntarily requested* to move its projects from the pool of 132 MW not requiring upgrades into the pool of 96 MW requiring upgrades, with the intention of spreading costs across more of its projects. Petition at 5-6, 15. This was a business decision by Green Development in an attempt to manipulate the cost allocation of the transmission upgrades. It is apparent from Green Development's Petition that it expected this request to result in the transmission upgrades being split between 152.32 MW of DER instead of 96 MW of projects, with 80.72 MW belonging to Green Development. Petition at 5. However, Green Development did not make that intention clear at the time of its request, and its intention is inconsistent with the queueing process for the upgrades at issue. Because the Western RI Area ASO Study Results established a threshold of 132 MW of projects that could interconnect without triggering

⁶ Available at <https://ngus.force.com/servlet/servlet.FileDownload?file=0150W00000FKnve>.

transmission upgrades, the actual result of Green Development's voluntary request to move its projects out of the non-transmission-upgrade pool was that other projects with later queue positions took the place of Green Development's projects to use the available capacity. Any adverse cost responsibility impacts to Green Development are the results of Green Development's own voluntary request and intent to manipulate the process, not any deliberate discriminatory action from National Grid. Green Development has not provided any evidence to suggest that National Grid discriminated against Green Development in this case, or intentionally provided an advantage to other customers. Rather, Green Development was trying to manipulate the cost allocation and simply miscalculated in executing its own strategy.

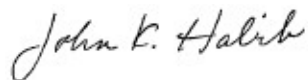
III. CONCLUSION

For the reasons stated herein, National Grid has not violated any terms of the Tariff, Rhode Island statutes, or Commission rules. National Grid looks forward to exploring mutually agreeable resolution with Green Development through this process.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC
COMPANY d/b/a NATIONAL GRID**

By its attorney,



John K. Habib
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400

Dated: August 30, 2021