

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

IN RE: COMPLAINT OF BENJAMIN :
RIGGS RELATING TO : **DOCKET No. D-10-126**
TOWN OF PORTSMOUTH GENERATOR :
FACILITY- NET METERING :

THE ADVOCACY SECTION OF THE
DIVISION OF PUBLIC UTILITIES AND CARRIERS
MEMORANDUM RELATING TO THE COMPLAINT OF BENJAMIN RIGGS AND
THE TOWN OF PORTSMOUTH GENERATOR FACILITY

On May 24, 2010, Benjamin Riggs (“Riggs”) filed a complaint (the “Complaint”) with the Division of Public Utilities and Carriers in relation to the operation of the Town of Portsmouth Wind Generator Facility (the “Facility”). Riggs claim is that the Town of Portsmouth (“Portsmouth”) is receiving an excessive rate for the output it sells to the Narragansett Electric Company d/b/a National Grid (“National Grid”) generated by the Facility by reason of a 2009 agreement between the parties. This transaction purports to be a net metering arrangement between Portsmouth and National Grid. Now comes the Advocacy Section of the Division of Public Utilities and Carriers (the “Advocacy Section”) and hereby submits the following memorandum discussing the issues set forth by the hearing officer in the context of the established procedural schedule for this docket.

The issues for discussion are as follows:

- i. Whether the Town of Portsmouth is receiving a rate for the output it sells back to National Grid which comports with the applicable tariff?
- ii. Whether the Town of Portsmouth's Wind Generator Facility is a net metering configuration or a wholesale generator according to state and federal law?¹

I. FACTS

On May 5, 2011 the Advocacy Section, National Grid, and Portsmouth filed an agreed-upon statement of facts with the Division. The more salient facts are as follows. On June 6, 2008, National Grid received an interconnection application from Portsmouth for the installation of a 1.5 MW wind turbine in Portsmouth. The initial site plan issued on September 4, 2008 indicated that the new primary metering was to encompass three existing electric accounts, the high school, gym and tennis courts and the new wind turbine service, all of which would be behind the new primary meter. This particular configuration would require National Grid to sell certain distribution assets (including poles, wires, transformers and underground cables) on the customer side to Portsmouth. On October 9, 2008, National Grid received a new

1. The issues as they were originally framed, set-forth in the Advocacy Section's initial Memorandum Relating to the Complaint of Benjamin Riggs and the Town of Portsmouth Generator Facility filed February 2, 2011 are a direct result of the allegations in the Complaint. These issues could be argued in a manner beyond the scope of the Division's Jurisdiction. The Advocacy Section, mindful of its jurisdiction and recognizing this possibility, alerted the parties thereof at the pre-hearing conference in this matter on April 12, 2011 to ensure clarity such that the Division could retain those parts of the issues for determination that are within its jurisdiction, transfer those parts of the issues outside of its jurisdiction to the proper authority if it deemed it appropriate, or simply decline to address those issues. Those issues are as follows:

- (i) Whether the Town receives an excessive rate for output it sells back to National Grid;
- (ii) Whether the Facility is a net metering configuration or a wholesale generator according to federal law.

Further, although these issues are referred to in the Advocacy Section's Memorandum Relating to the Complaint of Benjamin Riggs and the Town of Portsmouth Generator Facility, the Advocacy Section does not seek the Division to go beyond deciding whether National Grid is applying this transaction to the proper rate category under its tariff and any other tariff compliance issue deemed appropriate.

site diagram that changed the requested point of service to a side-tap from existing National Grid overhead distribution facilities on the property. This configuration would allow National Grid to maintain ownership of most of its distribution assets and allow the facility to have its own meter and be on a separate electric account. In December 2008, Portsmouth and National Grid signed an interconnection agreement. On February 13, 2009, Portsmouth and National Grid signed the form agreement provided in Schedule B of National Grid's approved tariff, filed RIPUC No. 2010-A, acknowledging the intent to apply the renewable generation credits ("RGCs") from its wind turbine to five Portsmouth accounts. On February 19, 2009 the new service to the wind turbine was connected. Relay protection testing was conducted, and the Town of Portsmouth Wind Turbine came on-line and began commercial operation on March 18, 2009.

National Grid sent Portsmouth a letter on November 2, 2009, indicating that Portsmouth could either carry its renewable generation credits forward as a credit against their accounts for a one year billing cycle or receive a check for the renewable energy credits subject to any previous charges. On November 25, 2009, National Grid and Portsmouth signed a revised Schedule B providing that Portsmouth would receive a check for its renewable generation credits.

The Portsmouth Wind Generator Facility consumes energy at the turbine for station power use before sending the balance of its energy to the grid. On April 1, 2010, Gary Crosby, the Portsmouth Wind Turbine Coordinator stated in a letter that "Portsmouth's wind turbine is not a 'behind-the-meter' facility. Every kWh that the turbine generates goes directly onto the grid."

National Grid proposed a Tariff, R.I.P.U.C. No. 2035 (the “Tariff”), approved in Rhode Island Public Utilities Commission Docket 4079, which governs its purchase of electrical output from net metering facilities or qualifying facilities (“QF”) as defined in the Tariff.²

The Tariff provides that for QFs employing wind technology which is 3.5 MW or less and are entirely owned by cities and towns, National Grid will permit a Net Metering Facility, (“NMF”) to deliver electricity to National Grid according to specified terms that:

The customer’s usage and generation will be netted for a twelve-month period beginning on January of each year. If the electricity generated by the NMF during a billing period exceeds the customer’s kWh usage during the billing period, the customer shall be billed for zero kilowatt hour usage and a renewable generation credit (which has the same meaning as defined in R.I. Gen. Laws §39-26-2 (22)) shall be applied to the customer’s account. Unless the customer requests otherwise, the customer will be compensated monthly by check for the RGC.

The Tariff also provides for a non-NMF rate for QFs. This tariffed QF rate per R.I.P.U.C No. 2035, Section III, Rates For Qualifying Facilities is equal to the payments received by National Grid for the sale of such QF’s output into the ISO-NE administered markets for the hours in which the QF generated electricity in excess of its requirements.

From April 2009 through March 2010 the Town of Portsmouth’s Wind Generator Facility had a total output of 3,712,800 kWhs. From March 2010 through February 2011 Portsmouth’s wind generating facility had a total output of 2,699,179 kWh. From April 2009 through March 2010, Portsmouth consumed 3,972,170 kWhs at more than forty accounts for Portsmouth, including the Portsmouth School Department accounts. From March 2010 through

² R.I.P.U.C. No. 2010-A was approved for effect 1/1/09 in Docket 3999. R.I.P.U.C. 2035 was approved for effect 9/14/09.

February 2011, Portsmouth consumed approximately 3,971,582kWh of electricity at more than forty accounts for Portsmouth, including the Portsmouth School Department accounts.

From April 2009 through March 2010, Portsmouth consumed approximately 967,120 kWhs at its site located at 120 Education Lane in Portsmouth, Rhode Island. They consumed approximately 972,240 kWhs at this site from April 2010 through March 2011. From March 2010 through February 2011, Portsmouth consumed 3,569,399 kWh at its ten largest accounts. National Grid has paid Portsmouth for the output of the Portsmouth Wind Generating Facility at the tariff based NMF rate. Portsmouth is presently paid a varying renewable generation credit for its power, as calculated under the net metering statute and Tariff.

Over the last six month period from August of 2010 through January of 2011, the RGC rate has averaged \$0.082 per kWh and over the year from February of 2010 through January of 2011 it averaged \$0.0875 per kWh. Over the same periods, National Grid has been compensated on average \$0.0536 and \$0.0547 from ISO-NE for the sale of kWh's from Portsmouth's wind turbine facility. The difference between the amount paid to Portsmouth by National Grid and the amount received by National Grid from ISO-NE has been or will be recovered from National Grid's customers through the standard offer rate, transmission rate, and distribution rate.

II. APPLICABLE LAW

A. Jurisdiction of the Division of Public Utilities and Carriers

As a preliminary matter, the Division of Public Utilities and Carriers (the "Division") has jurisdiction to dispose of the tariff compliance issue pursuant to R.I. Gen. Laws § 39-4-10. The statute states:

If...the division of public utilities and carriers shall find that any regulation, measurement, practice, act, or service of any public utility is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of chapters 1-5 of this title, or that any service of any such public utility is inadequate or that any service which can be reasonably demanded cannot be obtained, the division shall have power to substitute therefore such other regulations, measurements, practices, service, or acts, and to make such order respecting, and such changes in the regulations, measurements, practices, service, or acts, as shall be just and reasonable, and the power to order refunds as provided for in § 39-3-13.1.

The instant Complaint requires the Division's review to determine what issues are within in its jurisdiction. As the Advocacy Section has outlined, those issues are the tariff compliance issue and facility configuration issues that are set forth on page one here. They do not include the full breadth of the issues in the Complaint that are those that would require rate setting, a function within the jurisdiction of the Commission.

B. Statutory Interpretation

The following fundamental principles of statutory construction are dispositive of the issues presented here. The Rhode Island Supreme Court has held in construing a statute that the Court's "ultimate goal" is to give effect to the General Assembly's intent. State v. Menard, 888 A.2d 57, 60 (R.I. 2005). The primary indicia of the Legislature's intent "can be found in the plain language used in the statute." Martone v. Johnston School Committee, 824 A.2d 426, 431 (R.I. 2003). The language of a statute must be given its "plain and ordinary meaning[]." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). The Supreme Court of Rhode Island has cautioned however, under no circumstance will the Court construe a statute to produce a meaningless or absurd result. Tidewater Realty, LLC v. State of Rhode Island, 942 A.2d 986, 992 (R.I. 2008). Finally, the Rhode Island Supreme Court has held

that in the event that the plain and ordinary meaning of a statute produces a meaningless or absurd result, it is "...not only the right but the duty..." of the Court to construe the statute so that "the purpose of the act may be effectively carried out." Kaya v. Partington, 681 A.2d 256, 262 (R.I. 1996). *See also* Town of North Kingstown v. North Kingstown Teachers Assoc., 297 A.2d 342, 346 (R.I. 1972); Capobianco v. United Wire & Supply Corp., 77 A.2d 534, 538 (R.I. 1950).

C. Net Metering Pursuant to Rhode Island Law and Industry Standard

R.I. Gen. Laws § 39-26-2(17) provides that "'Net metering" means the process of measuring the difference between electricity delivered by an electrical distribution company and electricity generated by a solar-net-metering facility or wind-net-metering facility, and fed back to the distribution company." To fully appreciate this term it is important to review the industry standard of net metering which further illustrates the makeup and attributes of such a configuration. The industry standard should not be ignored to arrive at a subjective result.

National Grid addressed the industry understanding of what is meant by the term net metering as referring to a scenario whereby an electric customer installs a generation unit behind the meter in order to receive a generation credit or monetary compensation for excess output generated by the unit during periods when its output is greater than the on-site load requirements of the customer.³ Similarly, the Federal Energy and Regulatory Commission (FERC) has interpreted the definition of net metering to describe circumstances whereby:

³ National Grid Response to Division Data Request 1-5.

Net metering allows a retail electric customer to produce and sell power onto the Transmission System without being subject to the Commission's jurisdiction. A participant in a net metering program must be a net consumer of electricity –but for portions of the day or portions of the billing cycle, it may produce more electricity than it can use itself. This electricity is sent back onto the Transmission System to be consumed by other end-users. Since the program participant is still a net consumer of electricity, it receives an electric bill at the end of the billing cycle that is reduced by the amount of energy it sold back to the utility. Essentially, the electric meter “runs backwards” during the portion of the billing cycle when the load produces more power than it needs, and runs normally when the load takes electricity off the system.⁴

The industry standard and regulatory interpretation are instructive as to the meaning of the term net metering and appear to be in harmony with the definition provided for in R.I. Gen. Laws § 39-26-2(17). Both the state statute and industry/FERC definitions of net metering refer to a process of netting electrical consumption where excess generation is produced by the consumer and sent or fed back to the grid for sale. Net metering contemplates use of the output when a retail electric customer is self generating power for his own use and is still a net consumer of electricity, not when the customer's facility power use is merely for such things as station power. Net metering is not a fiction to be gamed, manipulated or to be used as a pretext to set up a self standing generating unit developed for the sole purpose of making wholesale sales of generation.

⁴ See Sun Edison, LLC, 129 FERC ¶ 61,146, 61,620 (2009); see also, Pursuant to 16 U.S.C. § 2621(d) (11) “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

D. National Grid Tariff for Qualified Facilities Power Purchase Rate

As noted in the Advocacy Section's prior memorandum, the PUC approved changes to National Grid's QF tariff in 2008 and 2009 to comport with amendments made to the law in those legislative sessions.⁵

The specified rate for Renewable Generation Credits in R.I. Gen. Laws § 39-26-2(22) means a credit equal to the excess kWhs by the time of use billing period (if applicable) multiplied by the sum of the distribution company's:

- (i) Standard offer service kWh charge for the rate class applicable to the net metering customer;
- (ii) Distribution kWh charge;
- (iii) Transmission kWh charge; and
- (iv) Transition kWh charge

National Grid possesses a Tariff, R.I.P.U.C. No. 2035 (the "Tariff"), approved in Rhode Island Public Utilities Commission Docket 4079, which governs its purchase of electrical output from any qualifying facility as defined pursuant to PURPA. According to the terms of the Tariff, qualifying facilities include small power facilities producing 20 megawatts or less using biomass, waste, renewable resources, or any combination thereof for at least 75% of their total energy input.⁶

The Tariff includes rates for purchases by National Grid from a QF for its output.⁷ More particularly, the Tariff provides that for QF's employing wind technology which is 3.5 MW or

⁵ See RIPUC Order 19590 in Docket 3999 (issued 3/11/09) and Order 19821 in Docket 4079, (issued 11/4/09).

⁶ See, Tariff, R.I.P.U.C. No. 2035, Sheet 1.

⁷ Id. at Sheet 5.

less and are entirely owned by cities and towns, National Grid will permit a Net Metering Facility (“NMF”) to deliver electricity to National Grid according to specified terms among others that:

The customer’s usage and generation will be netted for a twelve-month period beginning on January of each year. If the electricity generated by the NMF during a billing period exceeds the customer’s kWh usage during the billing period, the customer shall be billed for zero kilowatt hour usage and a renewable generation credit⁸ shall be applied to the customer’s account...Unless otherwise requested by the customer, the customer shall be compensated monthly by a check from the Company for the Renewable Generation Credits.⁹

The power purchase terms in the Tariff are identical to the statutory provisions in Title 39 Chapter 27.

Section III of the Tariff entitled Rates for Purchase sets forth specific terms for payment to QF’s and NMF’s. Although an NMF may be a subset of the QF, there are distinct categories of payment for the generation and sale of the output of the two (QF’s & NMF’s).

Those categories within the Tariff that apply to the payment for the sale of the output are as follows:

III. Rates for Purchases

A. Rates for Qualifying Facilities

For qualifying facilities not exempted by the net metering provisions in section B below, the Company will pay rates equal to the payments received by the Company for the sale of such qualifying facilities’ output into the ISO-NE administered markets for the hours in which the qualifying facility generated electricity in excess of its requirements.

⁸ Which has the same meaning as defined in R.I. Gen. Laws §39-26-2(22).

⁹ Id. at Sheet 5-6

B. Net Metering Exemption for Certain Qualifying Facilities

For qualifying facilities which utilize solar or wind technology and (i) are 1.65 megawatt (MW) or less, or (ii) are 2.25 MW or less and are developed but not owned by cities or towns, but are located on city or town owned land and provide power solely to the city or town that the project is located in, or (iii) are 3.5 MW or less and are entirely owned by cities and towns of Rhode Island, state agencies and the Narragansett Bay Commission, the Company will permit the Net-Metering Facility (NMF) to deliver electricity to the Company through net metering as specified below:

(1) The customer's usage and generation will be netted for a twelve-month period beginning on January of each year¹⁰. If the electricity generated by the NMF during a billing period exceeds the customer's kWh usage during the billing period, the customer shall be billed for zero kilowatt-hour usage and a renewable generation credit shall be applied to the customer's account. Renewable generation credit shall be defined as the credit equal to the excess kilo-watt hours generated multiplied by the sum of 1) the Standard Offer or Last Resort Service charge, if applicable; 2) the distribution kWh charge for the applicable rate class; 3) the transmission kWh charges for the applicable rate class; and 4) the transition charge. Unless otherwise requested by the customer, the customer shall be compensated monthly by a check from the Company for the Renewable Generation Credits. Upon request by the customer, the renewable generation credit may be credited to the customer's bill in the following billing period and carried forward to subsequent billing periods through the end of the netting period. Any unused credits remaining on the customer account at the end of the netting period shall be used to offset recoverable Company costs. Any Rhode Island city or town, state agency, educational institution, non-profit affordable housing, farm, or the Narragansett Bay Commission, whose account is not currently in arrears, may elect to apply any such credits earned to other accounts, up to a maximum of ten, owned by it.

It appears from the facts of the instant matter that Portsmouth is being paid for the sale of its facility's output according to paragraph B(1) of Section III of the Tariff.

¹⁰ The initial netting period will be from the date of the first meter read after the commencement of operation of the qualifying facility through December following the first January occurring subsequent to the commencement of operation.

III. ARGUMENT

The Advocacy Section turns to the first issue of whether the Town of Portsmouth's Wind Generator Facility is a net metering configuration or a wholesale generator according to state and federal law. The facts here demonstrate that the Portsmouth Wind Generator Facility is a self-standing unit with no meaningful use of its own output to meet the Town's load requirements and actually feeds all of its output directly into the distribution system to be sold into the regional power market. Portsmouth receives a monthly check from National Grid for kilowatthours generated and sold into the ISO short-term market at the rate of the aforementioned RGC.

Portsmouth will argue that its generating facility is net metering and will take the Division in all probability through a series of mathematical netting machinations in order to attempt to prove this position. This should be carefully considered since, truth be told, Portsmouth boasts something entirely different. The Advocacy Section's review of cases addressing net metering and qualifying facilities at the FERC leads it to conclude that the Facility does not meet the FERC definition of a net metered facility. National Grid's data responses, as well as its response to the Complaint, also support this conclusion.

The agreed statement of facts in the instant case reveals that, on April 1, 2010, Gary Crosby, the Portsmouth Wind Turbine Coordinator stated in a letter that "Portsmouth's wind turbine is not a 'behind-the-meter' facility. Every kWh that the turbine generates goes directly onto the grid." There does not seem to have been any intention on the part of Portsmouth to configure their connection on the customer side of the meter. Portsmouth obviously believes that this is lawful in accordance to state statute and industry standard as they apply. The problem with this argument is that the state statute, which is in clear harmony with the industry standard and cases instructive of the issue, demonstrate that there is clear contemplation of a behind the meter

configuration and netting with excess output occasionally being fed back to the grid. The idea that this statute was enacted to allow a municipality or other citizen of this state to construct a commercial size wind turbine, tie it directly to the utility's distribution and transmission system, sell all of its output into the market, and insist upon receiving a retail rate for the sale of the output is an unreasonable interpretation of the present statute. Such a scenario, which is the very type Portsmouth has undertaken, is one that has essentially no net metering involved. If Portsmouth was truly net metering it would be capable of demonstrating that it is a self generator in accordance with the definition of R.I. Gen. Laws §39-26-2(25) displacing all or part of its retail consumption, as metered by the distribution utility to which it interconnects, through the use of a customer-sited generation facility (meaning a generation unit that is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer).¹¹ As we have seen from the facts, the Portsmouth Wind Generating Facility is not configured in this manner. Moreover the Facility simply does not comply with the industry definition of a net metering facility.

This brings us to the second issue here. What, if any, is the proper rate applicable here based upon the Portsmouth Wind Generator Facility configuration. It appears that the Facility has self-certified as a QF by virtue of its submission of Form No. 556 to the FERC in 2008. Although it has been certified, it has not executed National Grid's standard QF contract. It receives a rate

¹¹ See R.I. Gen. Laws §39-26-2(4) "Customer-sited generation facility" means a generation unit that is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer and R.I. Gen. Laws §39-26-2(25) "Self-generator" means an end-use customer in Rhode Island that displaces all or part of its retail electricity consumption, as metered by the distribution utility to which it interconnects, through the use of a customer-sited generation facility, the ownership of any such facility shall not be considered an obligated entity as a result of any such ownership arrangement.

that is higher than National Grid's tariffed QF rate per R.I.P.U.C No. 2035, Section III, Rates For Qualifying Facilities. According to the tariff, the QF rate is equal to the payments received by National Grid for the sale of such QF's output into the ISO-NE administered markets for the hours in which the QF's facility generated electricity in excess of its requirements. This is the rate the Portsmouth Facility is eligible to be paid as a QF under the Tariff. The facts here support the conclusion that National Grid incorrectly treated the Portsmouth Wind Facility as a net metered customer and has paid a rate equivalent to the Standard Offer charge, plus the kWh component of the distribution, transmission, and transition charge. This payment is contrary to National Grid's Tariff that requires Portsmouth be paid the non exempt QF rate, which is the ISO hourly price.

IV. CONCLUSION

For the foregoing reasons, the Advocacy Section asserts that National Grid's treatment of the Portsmouth Wind Generator Facility as a net metered customer is improper and National Grid's payments to the Facility are contrary to the Commission-approved Tariff.

Respectfully submitted,

ADVOCACY SECTION,
STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES
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CERTIFICATION OF SERVICE

I hereby certify that on the 10th day of June, 2011, that I transmitted an electronic copy of the within Memorandum to the attached service list and to Luly Massaro, Division Clerk. A hard copy was also hand delivered to Ms. Massaro.



**Complaint of Benjamin Riggs – Relating to Town of Portsmouth Generator
Facility –Net Metering
Docket No. D-10 126 – Service List Updated**