Thomas R. Teehan
Senior Counsel

May 16, 2011

VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Division Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket No. D-10-126 - Complaint of Benjamin Riggs Relating to Portsmouth Generating Facility
National Grid's Opposition to Motion for Summary Disposition

Dear Ms. Massaro:

Enclosed please find National Grid's[1] Opposition to Motion for Summary Disposition concerning the above-referenced proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,

Thomas R. Teehan

Enclosure

cc: Docket D-10-126 Service List
Steve Scialabba

[1] The Narragansett Electric Company d/b/a National Grid.

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

IN RE: COMPLAINT OF BENJAMIN RIGGS RELATING TO PORTSMOUTH GENERATING FACILITY	)	DOCKET NO. D-10-126

NATIONAL GRID'S OPPOSITION TO MOTION FOR SUMMARY DISPOSITION

National Grid[1] hereby opposes the motion for summary disposition brought in this case by some of the intervening parties (hereinafter referred to as "movants"). As an initial procedural comment, the Company notes that although Division Rule 19(e) provides for a summary disposition of matters in a given proceeding, the movants' filing of this motion seems to directly conflict with the procedural schedule, which provides for a full briefing of the matters on a pre-set schedule allowing sufficient time for the parties to assemble and research their arguments in a comprehensive manner rather than to respond in a ten-day period to isolated issues.

Beyond these procedural concerns, the three arguments put forward by the movants are simply not sufficient, as a matter of law, to warrant summary disposition of the issues presented in this case. The movants submit the following three flawed arguments in support of their motion for summary disposition: (1) The Division does not have jurisdiction over this matter because it would have to decide the constitutionality of the provisions of the Rhode Island net-metering statute; (2) Portsmouth is exempt from

[1] The Narragansett Electric Company d/b/a National Grid ("National Grid" or the "Company").

the provisions of the Federal Power Act and PURPA; and (3) the Division may not fashion a retrospective remedy if it were to determine that Portsmouth has been receiving the wrong rate under the applicable statutory and tariff provisions.

Contrary to the movants' arguments, it is not intended that the Division rule in this proceeding on the constitutionality of the Rhode Island net-metering statute or the tariffs enacted pursuant to those statutory provisions. Rather, in this proceeding, the Division is asked to interpret the provisions of the tariffs and statute to determine whether Portsmouth is eligible for the net-metering credit rate for power generated at the facility. In reaching that determination, the case law in Rhode Island is clear that the Division is certainly authorized and expected to refer to, interpret, and apply the statutory and tariff provisions that control the matter before it.

With respect to the movants' second argument regarding municipal exemption language contained in the Federal Power Act, whether or not Portsmouth is exempt from the Federal Power Act and PURPA is not a dispositive issue in this case. The threshold issue is whether under the provisions of state law and tariffs the Portsmouth facility is eligible for the net-metering credit rate for power that it sends into the distribution system. That determination will hinge upon the Division's interpretation of the meaning and intent of the state's Renewable Energy Standards statute and of the state's Qualifying Facility tariff, including the net-metering provisions of that tariff. Once that determination has been made, the state tariffs and statute should be applied to the facts of the Portsmouth facility. In our case, the relevant statutory requirements for eligibility to receive the net-metering rate and the tariffs that set out net-metering provisions are written to apply in a uniform way to all customers, and were not intended to be applied

differently to customers that happen to be municipalities. Portsmouth is not exempt from the provisions of the Rhode Island Renewable Energy Standards and the applicable tariffs regarding Qualifying Facilities and net metering. As it construes to the relevant statutory and tariff provisions, the Division, just like any other Rhode Island administrative agency, may consider the provisions of other state and federal statutes and construe those provisions in harmony with one another.

Finally, whether Portsmouth is responsible for refunding any net-metering payments it received, depends upon the threshold interpretation of the provisions of the applicable statute and tariffs to determine whether given the sizing and configuration of the Portsmouth generator is eligible for treatment as a net-metered facility. Accordingly, it is premature to consider or decide whether the applicable rate under the tariffs should be applied retroactively to prior periods, until the first step in the Division's review has been completed. If the wrong rate has been applied to the Portsmouth facility, the Division will only then be in a position to reach a determination regarding any corrective measures.

1. The Division Does Have Jurisdiction to Interpret the Rhode Island Net Metering Statute.

In the Portsmouth matter, the Division is not being called upon to declare any provision of state law unconstitutional, as the movants suggest. Instead, the Division is being called upon to simply interpret statutory and tariff provisions to determine whether the Portsmouth facility is a net-metering facility under applicable Rhode Island law and thus eligible to receive renewable generation credits. It is well settled that an

administrative agency may interpret and apply a statute that is applicable to matters before it. Although an administrative agency's holdings of law are subject to a de novo standard of review, the Rhode Island Supreme Court has repeatedly indicated that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency, even when the agency's interpretation is not the only permissible interpretation that could be applied. Pawtucket Power Associates v. City of Pawtucket, 622 A.2d 452 (1993).

Under the Rhode Island Supreme Court's well established rules of statutory construction, statutes relating to the same subject matter should be considered together so that they will harmonize with each other and be interpreted consistent with the overall legislative objective and purpose. Brennan v. Kirby, 529 A.2d 633,637 (RI 1987); State v. Goff, 110 R.I. 202, 205, 291 A.2d 416, 417 (1972). Thus, in our case, the Division is free to consider the interplay of the Federal Power Act and PURPA with the net-metering provisions found in the Rhode Island Renewable Energy Standards statute in order to construe that statute in a way that will give it its proper and intended effect. Moreover, in Rhode Island, an established tenet of statutory construction is that in a situation where a statute may have two meanings, one of which poses serious constitutional questions and the other of which is free of such difficulties, the latter should be adopted. Rhode Island State Police v. Madison, 508 A.2d 678 (1986).

In our case, in order to determine whether Portsmouth was properly allowed to receive net-metering rates for its generation output, the Division may very well have to consider the interplay of federal and state statutes in interpreting the legislature's intent when it enacted the current net-metering provisions. Such an analysis is the accepted

approach to statutory construction and one that is entirely within the jurisdiction of the Division in this case.

2. A Claimed Exemption from Provisions of the Federal Power Act Does Not Exempt Portsmouth From the Rhode Island Renewable Energy Standards or the State's Qualifying Facility (QF) Tariffs.

If the Division concludes that the Portsmouth generating facility is not eligible for renewable generation credits under the provisions of Rhode Island state law and tariffs, Portsmouth's claimed exemption from the provisions of the Federal Power Act and PURPA does not exempt it from those applicable state statutory and tariff provisions. The claimed exemption is therefore not dispositive of this matter.[2]

The applicable tariffs in this case are state tariffs reflect the provisions of the Rhode Island RES statute. The calculation of the net-metering credit and the determination of a facility's eligibility for those credits are matters that are determined under state law and apply uniformly to all customer-sited generating facilities. Separate net-metering eligibility requirements have not been established for different types of customers. Thus, there should be one uniform interpretation of the statutory and tariff provisions that can be applied to all customers, not separate interpretations of the net-metering requirements depending on the status of a given customer, as movants suggest in their motion. Depending on the Division's construction of those tariffs (and the statutes under which they were established) Portsmouth may be ineligible for net-metering credits because of its sizing and configuration. That threshold determination will be made based ultimately on an interpretation of state law, and thus Portsmouth's

[2] Although the movants' brief asserts that the Portsmouth generating facility is a state-owned facility, that assertion is not definitively established in the record.

claimed exemption from the avoided costs requirement under federal law will not excuse Portsmouth from the net-metering requirements under state statute and tariffs.

3. A Decision as to the Appropriate Rate to Be Paid for Portsmouth's Generation Does Not Require Legislative Reform for Implementation.

Before reaching the question of corrective measures, the Division must first determine the appropriate rate to be paid for generation from the Portsmouth facility. The Division's answer to that question would not, as the movants argue, be the imposition of a "new policy" by National Grid or the Division. It would simply be a determination under the existing statutory and tariff language whether Portsmouth was an eligible net-metered facility and if not whether the QF tariff provides the appropriate rate for the facility's output. Before that determination is made, it is premature to decide what corrective action might be taken relative to past net-metering credits assigned to Portsmouth.

Conclusion

There is no basis for summary disposition of the issues in this case. The Division has the authority and responsibility to interpret statutes and tariffs that impact its decision on matters properly before it. In resolving issues of statutory construction, the Division may and should interpret a statute's language in a way that allows it to be read in harmony with other related statutes and in a manner that avoids any constitutional infirmities. In our case, the Division will ultimately decide whether the Portsmouth facility was eligible for net-metering credits paid for the generation that it sent onto the distribution system. Even if the Portsmouth generating facility were individually exempt from the provisions of the Federal Power Act, it cannot avoid the application to it of state

statutory and tariff provisions. In light of these considerations, the Company respectfully requests that the motion for summary disposition be denied.

National Grid
By its attorney,

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Thomas R. Teehan (#4698)
280 Melrose Street
Providence, RI 02907
(401) 784-7685

Dated: May 16, 2011