

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

IN RE: Complaint by Benjamin Riggs relating to :
 Net Metering at the Town of Portsmouth :
 Wind Generator Facility and National :
 Grid – Electric :

Docket No. D-10-126

**MEMORANDUM OF
RHODE ISLAND OFFICE OF
ENERGY RESOURCES**

Facts

The facts of this matter are set forth in the Agreed-Upon Statement of Facts.

Issues

The issues to be decided in this proceeding, as set forth in the Division's April 12, 2011

Procedural Schedule, are as follows:

- I. Whether the Town of Portsmouth is receiving an excessive rate for the output it sells back to National Grid?
- II. Whether the Town of Portsmouth's Wind Facility is a net metering configuration or a wholesale generator according to federal law?

Discussion:

- I. Whether the Town of Portsmouth's Wind Facility is a net metering configuration or a wholesale generator according to federal law?

The Office of Energy Resources (hereinafter, "OER") will address the issues in reverse order because answering the net metering question will lead to the answer regarding the "excessive rate". OER submits that the wind facility owned by the Town of Portsmouth is a net metering facility as defined by the applicable State statutes. Therefore, the rate Portsmouth is receiving is not excessive because the rate is consistent with the net metering laws.

The linchpin of this discussion is whether the Portsmouth wind facility is a net metering facility. To fully comprehend the OER's position on this issue, one must understand the statutory structure and history of renewable energy in Rhode Island.

A. Statutory History of Renewable Energy in Rhode Island

Prior to the 1970s, energy efficiency and conservation rested largely with private energy companies, usually investor-owned utilities. Utility regulation vested in the Public Utilities Commission, which was established in 1912. Throughout the modern industrial era, the utility industry and government energy policies emphasized the production and supply of energy resources.

In the 1973, the Organization of Petroleum Exporting Countries ("OPEC") forever changed Rhode Island's energy policies when it simultaneously raised the price of crude oil and reduced its production. The resultant "energy crisis" suddenly made energy conservation an urgent public policy concern. The State of Rhode Island responded by creating the State Energy Office by Executive Order 75-025 of Governor Noel. The purpose of the State Energy Office (now known as the OER) was to actively promote energy efficiency and renewable energy

development, as well as providing assistance to lower income households hurt by rising energy costs.

In the early 1990's, the State and Narragansett Electric (now, National Grid) implemented a "demand side management program" which imposed a surcharge of 2.3 mils per kilowatt hour to fund investment in energy efficiency measures and renewable energy development. Two decades after the energy crisis, energy analysts had come to understand that the days of abundant and reliably inexpensive energy were gone and that energy policies needed to focus on managing demand and developing new energy sources. The demand side management program encouraged the reduction of energy demand by implementing measures that would increase the efficiency of energy consumption.

In 1996, Rhode Island was the first state to dismantle vertically integrated utilities by separating electrical generation from electricity transmission and distribution. (P.L. 1996, Ch. 316, 96-H 8124B) The concept was that an emerging competitive market would dramatically reduce energy costs in Rhode Island. The restructuring of Rhode Island utilities was to take place over several years. During those phase-in years between 1996 and 2001, the competitive electricity supply market failed to emerge broadly.

The Public Utilities Restructuring Act of 1996 also created the Rhode Island Renewable Energy Fund and the codified the demand side management program. R.I. Gen. Laws §39-2-1.2(b). The Renewable Energy Fund and the demand side management fund were created to influence both sides of the energy supply and demand formula. Renewable energy would increase the supply of energy¹ and demand side management would decrease energy use.

¹ Another known benefit of renewable energy is the reduction of carbon emissions and greenhouse gasses. R.I. Gen. Laws §23-82-2(3) and 39-26-1(c).

In 2004, a Renewable Energy Standard was enacted that established the goal of having fifteen percent (16%) of Rhode Island's electricity come from renewable energy resources by 2020. R.I. Gen. Laws §39-26-4(2-4). In adopting the Renewable Energy Standard, the General Assembly was emphatic and unequivocal in its support for renewable energy in Rhode Island. The General Assembly expressly stated that:

(a) The people and energy users of Rhode Island have an interest in having electricity supplied in the state come from a diversity of energy sources including renewable resources;

(b) Increased use of renewable energy may have the potential to lower and stabilize future energy costs;

(c) Increased use of renewable energy can reduce air pollutants, including carbon dioxide emissions, that adversely affect public health and contribute to global warming;

(d) Massachusetts, Connecticut, and other states have established renewable energy standard programs to encourage the development of renewable energy sources;

(e) It is in the interest of the people, in order to protect public health and the environment and to promote the general welfare, to establish a renewable energy standard program to increase levels of electric energy supplied in the state from renewable resources. R.I. Gen. Laws §39-26-1.

The language used by the General Assembly bears repeating: **renewable energy “is in the interest of the people.”** *Id.* (emphasis added.)

Section 3 of the Renewable Energy Standard states that the purpose of the statute is, “to facilitate the development of new renewable energy resources” R.I. Gen. Laws §39-26-3. The statute also requires that, “[t]he provisions of this chapter shall be liberally construed to give effect to the purposes thereof.” R.I. Gen. Laws §39-26-10. The parties in the case at bar repeatedly cite this statute as the authority for the Division to resolve this Complaint. The OER

emphatically concurs that this State statute is determinative of these issues.² When the Division is interpreting the provisions of the Renewable Energy Standard statute, the Division must be guided by the stated purpose of the statute: to facilitate the development of new renewable energy resources. The Division is also required to liberally construe the language in the statute to facilitate the development of new renewable energy resources.

In 2006, the State enacted "The Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006. P.L. 2006, Ch. 236 § 1039. The general purposes of the Act are: "(1) to provide Rhode Island residents, institutions and businesses the benefit of stability through diversification of energy resources, energy conservation, efficiency, demand management and prudent procurement, (2) **to facilitate the development of renewable energy resources**; (3) to make the cost of energy more affordable by mitigating demand and rates charged to low-income households; and (4) to strengthen energy planning, program administration, management, and oversight in a manner that is publicly accountable and responsive." Once again, the General Assembly was making sweeping changes to Rhode Island's energy policy and the significance of renewable energy was affirmed in this effort.

In 2007, the Renewable Energy Standard statute was amended to include net metering. R.I. Gen. Laws §39-26-6(g). The net metering language set both the maximum allowable distributed generation capacity of net metered systems and the aggregate amount of net metering. Essentially, net metering was added to the Renewable Energy Standard as another means of implementing the purposes of this statute: to facilitate the development of new renewable energy resources.

² It is unnecessary to determine whether Portsmouth is a "wholesale generator" under federal law because the municipality is exempt under federal law (16 U.S.C. §824(f) (2005)) and a State statute defines the facility as a net metering facility.

The following year, the General Assembly amplified the Renewable Energy Standard statute by increasing the allowable capacity of net metering facilities. R.I. Gen. Laws §39-26-6(g). The revised statute also added the net metering facility (“NMF”) rate for renewable generation credits. R.I. Gen. Laws §39-26-2(22). This NMF rate was later incorporated into the Tariff (R.I.P.U.C. No. 2035) although the statute itself did not define the rate as a tariff.

In March of 2009, the Rhode Island Public Utilities Commission issued a Report and Order declaring that the practice of National Grid issuing checks to municipalities was not consistent with the Renewable Energy Standard statute. R.I.P.U.C. No. 3999. Four months later, the General Assembly revised the statute to expressly include payment to municipalities by check. R.I. Gen. Laws §39-26-6(g)(3). The General Assembly acted to erase any adverse decisions that might slow the progress of renewable energy.

Furthermore, the General Assembly has fashioned a special status for municipalities in the State’s renewable energy policy. The General Assembly created the municipal renewable energy investment program to help fund community-scale renewable energy development. R.I. Gen. Laws § 39-2.1.2. The Renewable Energy Standard statute also creates a different eligibility standard for municipal projects to qualify for MNF rates. R.I. Gen. Laws § 39-26-6(g). In 2007, 2008 and 2009, the General Assembly revised the energy statutes to grant municipal renewable energy projects preferred status. As a result, municipal renewable energy facilities receive preferential treatment in the Rhode Island renewable energy regulatory scheme.

Only two weeks ago, the General Assembly and Governor Chafee extended the demand side management program for an additional seven (7) years to 2018. R.I. Gen. Laws §39-2-1.2. Sevene renewable energy bills are under active consideration in the General Assembly as of the date of this Memorandum. There can be no dispute, therefore, that the linear progression of

legislation in Rhode Island has elevated renewable energy to be a critical component of energy policy in Rhode Island. The legislative history of renewable energy in Rhode Island demonstrates without any doubt that the General Assembly and the Governor support renewable energy. For the past decade, the legislature has repeatedly reiterated this endorsement by enacting statute after statute that promote and expand renewable energy in Rhode Island. Unless there are unequivocal prohibitions to the contrary, this broad statutory public policy should be respected in this case.

B. Net Metering

The parties in this proceeding have repeatedly referred to the engineering configuration of the Portsmouth wind facility as the dispositive factor in determining whether the facility is a net metering facility. Whether the turbine is “behind the meter” or “in front of the meter” is often cited as critically important to the resolution of Mr. Riggs’ Complaint. The OER submits that the engineering configuration of the Portsmouth wind facility is not critical to the net metering issue.

The Renewable Energy Standard statute defines “net metering” as “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.” R.I. Gen. Laws §39-26-2(17). In other words, net metering is the “process of measuring the difference” between what is delivered and what is generated. *Id.* Net metering is computational, not structural. Net metering in Rhode Island is simply offsetting electricity that is produced from electricity that is consumed. The statute does not require that the facility generate more electricity than it consumes to be a net metering facility. The “net” in

net metering may be a negative net. The net metering statute does not require any particular engineering configuration. Whether the wind turbine is “behind the meter” or “in front of the meter” is incidental to net metering in Rhode Island. While “behind the meter” arrangements are clearly allowed by Chapter 39-26, they are not fundamental to net metering under Rhode Island law. What is critical is the *difference* between the electricity delivered to the customer and the electricity generated at the net metering facility by the customer.

The configuration at the Portsmouth facility allows Portsmouth to measure the difference between the electricity the Town purchases from National Grid and the electricity Portsmouth generates with its turbine. This is consistent with the statutory definition of “net metering”. Therefore, Portsmouth is net metering. No particular “net metering configuration” is necessary.

II. Whether the Town of Portsmouth is receiving an excessive rate?

The Renewable Energy Standard statute establishes the standards for determining whether a facility is eligible for the net metering rates. R.I. Gen. Laws §39-26-6(g). The statute defines which facilities are “*eligible* net metered facilities” by examining ownership of the facility and the generation capacity of the facility. R.I. Gen. Laws §39-26-6(g)(3)(1). A renewable energy facility owned by a municipality with a generation capacity of less than 3.5 Megawatts is eligible for the NMF rates set forth in the statute. *Id.*

The Portsmouth site is a net metering facility. The Town of Portsmouth is a Rhode Island municipality. Portsmouth owns the wind turbine. Agreed-Upon Statement of Facts, No. 3. The turbine has a generation capacity of 1.5 MW which is less than the 3.5 MW maximum in the statute for municipal facilities. *Id.* Therefore, the Portsmouth municipal wind generation

facility meets the statutory requirements of an “eligible net-metered renewable energy system”. R.I. Gen. Laws §39-26-6(g)(3)(1).

The parties have stipulated that, “National Grid has credited Portsmouth for the output of the Portsmouth wind generating facility at the tariff based NMF rate.” Agreed-Upon Statement of Facts, No. 34. The parties also stipulated that, “Portsmouth is presently credited a varying renewable generation credit for its power, as calculated under the net metering statute and tariff.” Agreed-Upon Statement of Facts, No. 35.³ These Stipulations document that Portsmouth is receiving the NMF rate. Because Portsmouth meets the statutory definition of “eligible net-metered renewable energy system”, the Town qualifies for the NMF rate. Therefore, the NMF rate paid to Portsmouth is not excessive but in accordance with the governing Rhode Island law.

III. Portsmouth Wind Facility in Rhode Island’s Energy Policy.

The Rhode Island General Assembly has repeatedly voiced its support for renewable energy as an integral part of the State’s energy policy. The General Assembly has compelled the cooperation of the OER, the Energy Efficiency and Resources Management Council, the Economic Development Corporation, National Grid and the Division of Public Utilities and Carriers to effectuate policies that facilitate renewable energy. R.I. Gen. Laws §39-26-8(a). These parties are “directed to collaborate” to maximize the renewable energy program in Rhode Island. *Id.*

The purpose of the Renewable Energy Standard statute is to “facilitate development of new renewable energy resources” R.I. Gen. Laws §39-26-3. The statute is be liberally

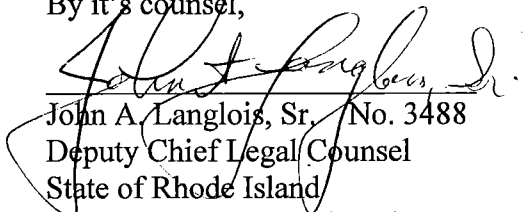
³ For the purposes of this proceeding, the Division should rely on the NMF rates established by statute as the primary authority rather than the rates adopted in the Tariff. The PUC cited the statute as the basis for the NMF rate adopted in the Tariff. R.I.P.U.C. No. 3999.

construed to give effect to that purpose. R.I. Gen. Laws §39-26-10. Therefore, it is the statutory obligation of the Division of Public Utilities and Carriers to interpret the applicable statutes in such a way as to facilitate renewable energy in general and the Portsmouth wind facility in particular.

If the Division discourages renewable energy by narrowly construing the definition of “net metering” in this instance, the Division would be violating its statutory obligations. The Division is **required** to maximize the renewable energy program in Rhode Island. R.I. Gen. Laws § 39-26-8(a). The Portsmouth facility presents the Division with the real opportunity to make progress in fulfilling this obligation.

The Portsmouth wind generator is a net metering facility. The Portsmouth wind facility is not receiving an excessive rate for its electricity. Accordingly, the Riggs Complaint should be dismissed.

Respectfully submitted,
Rhode Island Office of
Energy Resources
By it's counsel,

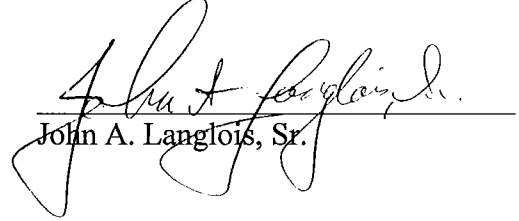


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Dated: June 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on June 10, 2011, the original of the within Memorandum was filed along with four (4) copies, at the Division of Public Utilities and Carriers, 99 Jefferson Boulevard, Warwick Rhode Island and to the all parties on the attached Service List via e-mail.


John A. Langlois, Sr.

**Complaint Relating to the Town of Portsmouth Generator Facility – NetMetering
Docket No. D-10-126**

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