

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS  
89 JEFFERSON BOULEVARD  
WARWICK, RHODE ISLAND 02888**

IN RE:           Complaint by Benjamin Riggs relating to       :  
                  Net Metering at the Town of Portsmouth       :     Docket No. D-10-126  
                  Wind Generator Facility and National       :  
                  Grid – Electric                                       :

**NOTICE OF HEARING AND OPPORTUNITY TO INTERVENE**

**HEARING TO BE CONDUCTED ON:  
Wednesday, April 6, 2011 at 10:00 AM**

**DEADLINE TO FILE REQUESTS TO INTERVENE:  
March 23, 2011**

Whereas:     On May 24, 2010, the Rhode Island Division of Public Utilities and Carriers (“Division”) received a written complaint from Mr. Benjamin C. Riggs, Jr., 15D Harrington Street, Newport, Rhode Island (“Complainant”) wherein Mr. Riggs questioned the propriety of net-metering arrangement between the Town of Portsmouth (“Town”) and the Narragansett Electric Company, d/b/a/ National Grid (“National Grid”) relating to a wind-powered generating facility owned by, and located within, the Town, located at the Portsmouth High School.

Whereas:     National Grid was provided a copy of the complaint by the Division and submitted a reply to the complaint on September 3, 2010.

Whereas:     On September 17, 2010, the Division contacted National Grid and informed the Company that the Division had completed a review of the Complaint, pursuant to R.I.G.L. §39-4-13, and had found “sufficient facts to warrant a formal investigation of what it deems are unresolved issues associated with the Complaint, and also with respect to Narragansett’s interpretation of the statutes which address net metering.”<sup>1</sup> The Division thereupon notified National Grid that the Division had established a formal docket (D-10-126) in the matter.

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<sup>1</sup> See September 17, 2010 letter from Jon G. Hagopian, Esq., counsel for the Advocacy Section, to Thomas R. Teehan, Esq., counsel for National Grid.

Whereas: On February 2, 2011, the Division's Advocacy Section ("Advocacy Section"), an indispensable party during this formal investigation, submitted a Memorandum of Law to the Administrator of the Division, wherein the Advocacy Section offers a legal opinion regarding the propriety of the net-metering arrangement in issue. In its memorandum, in which the Advocacy Section cites reliance on facts elicited from National Grid through discovery and from its independent review of federal and State laws, the Advocacy Section outlined the following conclusions:

- National Grid has inappropriately permitted a self-standing generator with no material on site load to be net metered and receive credits at a rate that is higher than its avoided cost. By National Grid's own admission in discovery responses, its interpretation of state law as it applies to net metering was done in a manner that violates federal law. National Grid indicated that the Rhode Island statute should be interpreted more narrowly to avoid constitutional issues.... National Grid did not follow its own stated position in administering its transaction with Portsmouth.
- The Portsmouth Wind facility meets the criteria for a Qualifying Facility under FERC regulations. As discussed above, FERC caps QF purchases at avoided cost. This requirement must be followed by state regulatory authorities when satisfying their obligation to implement PURPA.
- 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.
- 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 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 and under Federal law. National Grid has 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 in excess of the avoided cost.

- To the extent National Grid has recovered from its customers any lost revenues associated with its arrangement with the Portsmouth Wind Facility, this recovery would appear to be inappropriate based on the conclusion that the payments to the Facility are excessive. At a minimum, any further recoveries of costs by National Grid associated with net metering of the Portsmouth Wind Facility, or any similarly situated arrangement should cease immediately.
- The Division should order the parties to comply with the mandates of PURPA as set forth in this memorandum. All payments to the Facility should be at the Qualifying Facilities rate as per National Grid tariff No. 2035.<sup>2</sup>

Whereas: The Division provided National Grid with a copy of the foregoing Memorandum of Law and directed the Company to submit a reply to the Advocacy Section's legal conclusions by February 23, 2011.

Whereas: National Grid filed a reply with the Division on February 23, 2011. In its reply, National Grid offers the following observations and comments:

The purpose of the Company's reply comments is not to take issue with the Division's analysis, but to offer a reasonable solution to allow the ... [Town] to realize a continuing, reasonable revenue stream from its generation facility while avoiding running afoul of applicable federal law and regulations.

[T]he current pricing does not comply with the federal avoided-costs cap.

[T]he Company suggests a curative approach under which it would purchase the output of the Portsmouth facility for use as Standard Offer supply at a rate that approximates the average wholesale cost of power that it pays to service its Standard Offer customers. In turn, the Town could still sell its renewable energy certificates in the market for additional revenue.

Because of its voluntary nature, this procurement would not be a transaction that is subject to the...federal provisions, and the resulting pricing would eliminate concerns about ratepayer subsidization. The Company believes that this would be a fair and reasonable approach

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<sup>2</sup> Advocacy Section's February 2, 2011 Legal Memorandum, pp. 13-14.

that would remove concerns about the facility's compliance with applicable federal provisions and at the same time allow the Town ... to benefit from its generating facility. Of course, this arrangement also would need PUC approval.<sup>3</sup>

Whereas: The Division acknowledges that there is a great deal of interest in the instant complaint matter, as evidenced by the large number of individuals and entities that have requested inclusion on the Service List.

Accordingly,

The Division will conduct a formal evidentiary hearing in this docket at the time, and on the date specified above. The hearing will take place in the Division's 2<sup>nd</sup> Floor Hearing Room, located at 89 Jefferson Boulevard in Warwick.

In accordance with the provisions contained in R.I.G.L. §§39-4-14 and 39-4-15, the Division hereby notifies National Grid of the hearing to be conducted in this docket and directs that National Grid appear at this hearing to assist the Division in its evaluation of the merits of the Complaint matter in controversy.

The Division will also entertain motions to intervene in this docket, if such motions are received by the Division no later than **March 23, 2011**. Interested persons may also appear and offer written and/or verbal comments at the hearing.

Thomas F. Ahern  
Administrator

Date: February 28, 2011

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<sup>3</sup> See February 23, 2011 letter from Thomas R. Teehan, counsel for National Grid, to the Division's Clerk, Luly Massaro.