



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS

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June 15, 2022

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Docket No. 5235

Dear Ms. Massaro,

Enclosed for filing in the above matter with the Commission, please find a Memorandum of Gregory L. Booth, PLLC on behalf of the Division of Public of Utilities and Carriers.

Respectfully submitted,


Division of Public Utilities and Carriers

Leo J. Wold

Leo J. Wold
Chief of Legal Services

Memorandum

**To: Rhode Island Division of Public Utilities and Carriers
Mr. John Bell**

**From: Gregory L. Booth, PLLC
Gregory L. Booth, PE** 

Date: June 15, 2022

**Subject: Docket No. 5235; Revity Energy LLC Petition for Declaratory Judgment
Regarding the Rights and Obligations of an Interconnection Customer**

Introduction

This Memorandum outlines the investigation process into the Petition of Revity Energy LLC ("Revity"), my analysis of the parties' *Agreed Facts*, and the engineering complexities which factor into the recommendations. My analysis and recommendations address the engineering and cost recovery issues, not any legal framework. This Memorandum discusses Narragansett Electric Company and National Grid. PPL Rhode Island (PPL Corporation) has acquired Narragansett Electric Company, therefore all references to Narragansett Electric Company and National Grid shall become Rhode Island Energy, the new name for the acquired Narragansett Electric Company.

Background of Analysis

1. The Green Development ("Green") interconnection application queue date was on or about February 12, 2019. National Grid's response to Data Request DIV 1-4 further explains the start of the process including important facts such as Green's "self-perform" election and that Revity and EDP, another potential interconnecting facility, were made aware of the Green civil construction work costs. It was determined that the Green built duct bank system must be constructed in a manner which would benefit Revity and EDP.
2. Revity has indicated in its response to Data Request DIV 1-6 that it participated in a January 25, 2021 conference call with National Grid and others to discuss the self-perform of the civil construction cost sharing. This response included the meeting minutes.
3. There were communications and meetings between Green and National Grid for more than a year before Green began civil construction of the duct bank system in September 2021.
4. Revity, in its response to Data Request DIV 1-1, indicated it wrote to Green directly on October 1, 2021 concerning sharing the duct bank system, and later held meetings on November 23 and 26, 2021.
5. On April 12, 2022, National Grid received a Cost Summary of the Nooseneck duct bank system.
6. Revity filed its Petition with the Commission on February 18, 2022.
7. Revity filed on March 30, 2022, a Request for Commission Staff Dispute Resolution Assistance.

8. Mr. Booth reviewed and held multiple conferences with the Division regarding the matters considered under this Docket 5235.
9. Mr. Booth developed a series of data requests to be served on National Grid, Green and Revity which were filed by the Division. Additionally, the Division filed other data requests. All the responses to these data requests were analyzed.
10. April 5, 2022, a conference involving parties and agreement of parties to jointly develop an "Agreed Set of Facts" by May 18, 2022 was established. The *Agreed Facts* document was submitted May 23, 2022. Mr. Booth reviewed this document and has included some clarification in this memorandum.
11. April 27, 2022, a conference with the Division was held with National Grid for follow-up questions and clarification of certain data request responses. Division staff subsequently held conferences with Revity and Green on May 5 and May 12, 2022, respectively.
12. Mr. Booth examined the tariff and policy assessment related to National Grid's Interconnection Tariff and Terms and Conditions for Distribution Service (Contribution in Aide of Construction) Tariff and historical involvement in Interconnection Tariff conferences with Division, National Grid and Stakeholders, including the tariff edit and update process.

Agreed Facts Clarifications

There are some meaningful facts in the *Agreed Facts* document submitted May 23, 2022 which were omitted or require further clarification. These include:

1. Revity participated in a conference call on January 25, 2021 with National Grid and others to discuss the self-perform of the civil construction cost sharing, per Revity response to Data Request DIV 1-6. This conference call was some seven (7) months prior to the beginning of the civil construction of the duct bank system.
2. While *Agreed Facts* Item 34 states: "Throughout 2021, Revity objected to Narragansett's ability to cost-share for the Weaver Hill common path interconnection work."; Revity apparently made no contact concerning the cost-sharing associated with the duct bank system from January 25, 2021 until October 1, 2021 (*Agreed Facts* Item 31) when it contacted Green, and November 4, 2021 when it contacted Narragansett (*Agreed Facts* Item 33). This is an apparent gap of eight (8) months in which there was no contact. Additionally, the second and third contacts occurred after the self-perform construction had begun.
3. The *Agreed Facts* do not mention the November 23 and 26, 2021 meetings between Revity and Green per the Revity response to Data Request DIV 1-1.

Analysis

National Grid and Green are essentially in agreement concerning the meetings, communications and issues related to the "self-performance" by Green of the duct bank system construction and eventual donation of this system to National Grid. While Revity was not an active participant in these activities, it was certainly aware of the "self-performance" project by Green. Revity knew of the project construction and its desire to utilize a portion of the "self-performed" system capacity combined with the National Grid capacity portion of the total system for a major segment of the route. The data request responses describe the system and portion of the route Revity desires to utilize. It is summarized as follows:

The system Revity has indicated it wants to utilize for interconnection and transmission of its generated power includes facilities "self-performed" by Green and constructed by National Grid which together comprise a complete duct bank with

spare conduits. The entire facility is now a portion of the National Grid system, owned and operated by National Grid.

Rather than coordinate with National Grid on the requirements and cost to utilize the facilities, Revery desires to negotiate directly with Green to negotiate its payment for the use of the Green's self-performed duct bank work. While likely more a legal or regulatory question, I am unclear how one party can negotiate and pay another party for capacity and use of a system for which neither party owns, thus leaving the facility owner out of the entire process. I am unaware of any similar transaction associated with facilities owned and operated by a utility in which the utility is not a party to a transaction associated with its facilities.

Since the system was constructed for the benefit of interconnecting parties and is not intended for serving retail customer load, it appears to be necessary to treat it in a similar manner as any other project owned by the utility but specifically constructed for another party's benefit. There is a history in Rhode Island, consistent with industry practices and similar to other jurisdictions, which applies to the treatment of these types of facilities. The underlying requirements are reflected in the Narragansett Electric Company Terms and Conditions for Distribution Service. Without making a legal or regulatory argument, the terms and conditions include the requirement for the customer to comply with the Company's specifications and policies governing the type of construction, inspection and other items. The Company may require a customer to pay for all or a portion of the costs for facilities, which is considered a contribution in aid of construction ("CIAC"). Under the terms and conditions, a customer may "self-perform" certain portions of a project in lieu of paying a CIAC but facility ownership is maintained by National Grid. This is similar to what has transpired with Green and its "self-performed" facilities which were donated to the Company. Thus the Narragansett Electric Company Terms and Conditions for Distribution Service represents an example of how the Company has treated circumstances for multiple parties sharing dedicated facilities.

These terms and conditions further provide for a cost to be prorated among customers when more than one uses excess facilities, and such cost is based on the amount of facilities attributable to each customer. These terms and conditions even address what occurs if a customer is added after initial construction. If service to a new customer or group of customers is supplied from the facilities within five (5) years of the first payment received by the Company, any contribution received from a new customer will be used to proportionately reduce the balance owed by the initial customer. What this means is that the Company's policy and practice has been and continues to be to one of obtaining funds from others that use donated facilities, which may include excess facilities that may be utilized by additional customers in the future, and reimbursing the original party for a portion of its cost based on the funds it receives from the other customer. This is consistent with how the Company is proposing to function under the Standards for Connecting Distributed Generation, coupled with line extension policies and tariffs, in the matter of the Green "self-performed" donated facilities. Individual new customers connecting to excess or donated facilities owned by the Company are not entitled to negotiate with the initial customer on how charges should be applied for use of the facilities.

Based on my assessment, National Grid appropriately followed policies by dictating the design criteria and what was required for both the "self-performance" portion of the system and what its constructed portion of the system would include. Additionally, the Company dictates what design criteria all other interconnected facilities must meet and what the associated costs are whether

interconnecting at the time the facilities are completed or in the future. This is consistent with Company policies, including the Interconnection Tariff, and the need for a safe and reliable interconnected system. Green's "self-performed" facilities contemplated the utilization by other interconnecting parties, including Revity. The engineering planning, design and construction took all the requirements for all the parties, not just Green-the self-performer, into consideration. The intent was to construct the least cost facilities for interconnection of all anticipated parties and that objective was communicated to all parties during the process. National Grid is the owner of the facilities and should be responsible for guiding the future use of excess facilities and associated costs including reimbursements to Green. Allowing Revity to independently negotiate with Green on how charges should be applied for the use of National Grid's facilities would create an unacceptable precedent that conflicts with the Company's long-standing treatment of similar instances under the Narragansett Electric Company Terms and Conditions for Distribution Service.

Options

There appear to be four (4) options to be considered for Revity's cost reimbursement to both Green (for use of the "self-performed" portion of the duct bank) and National Grid (for use of duct bank capacity installed by the Company):

Option 1: Revity does not provide any reimbursement associated with the Green "self-performed" duct bank system.

Option 2: Revity negotiates an independent reimbursement for the "self-performed" duct bank system costs directly with Green. This still leaves the portion of capacity cost reimbursement to National Grid for that portion of its expended costs.

Option 3: Revity negotiates the full reimbursement cost with National Grid for the portion of the system it will utilize to interconnect its facilities. That portion of the reimbursement to National Grid which is associated with the Green "self-performed" duct bank system utilized by Revity is reimbursed by National Grid back to Green in full and the Company applies the remaining amount to the capacity cost reimbursement.

Option 4: Revity negotiates the full reimbursement cost with National Grid for the portion of the system it will utilize to interconnect its facilities. That portion of the reimbursement to National Grid which is associated with the Green "self-performed" duct bank system utilized by Revity is not reimbursed by National Grid back to Green in part or in full.

Each of these options were analyzed in the context of Revity's specific requests to the Commission and the above policies and practices.

Discussion of Options

Option 1 is contrary to all policies and practices in Rhode Island and other states. Furthermore, it is clearly not the intention of any of the parties to have a self-performer be imposed with all the costs associated with providing excess facilities for other parties. Therefore, Option 1 should be completely rejected.

Option 2 is the request being made by Revity. I am unaware of any precedent in Rhode Island or other state in which facilities donated by a party to the utility and owned by the utility are the

subject of independent negotiations for reimbursement with the party which constructed and donated those facilities to the utility. Furthermore, in this instance, Green has no ownership or interest in the facilities since they have been donated to National Grid. Additionally, Green has no negotiation position since it has donated the facilities to National Grid. Private business negotiations presuppose that one party has something another party wants an interest in and thus has equal footing in the negotiations. Green has no negotiating power since it has nothing to provide or withhold. Thus, Revery would have an unfair advantage in the negotiations with nothing to be lost if it made no contribution after it already had an Interconnection Service Agreement in place with National Grid, giving Revery the right to use the duct bank at no guarantee of payment to Green. This Option provides no protection or equity for Green and allows Revery an opportunity to avoid all or most of the cost sharing, which is not much different than Option 1.

Option 3 is the presently proposed procedure by National Grid. I recommend this Option be the preferred method of resolution of the cost sharing of the interconnection facilities to be used by Green and Revery. This method would be continued in the event other parties shared in the interconnection facilities. There are details associated with the level of proration and cost sharing, including reasonableness of the cost associated with the constructed facilities, which I discuss later in the Recommendation section of my Memorandum.

Option 4 is similar to Option 3 with the exception that only a portion or none of another parties' contribution to the cost of the self-performed project dollars are reimbursed to the developer which completed the self-performance of interconnecting facilities. This would certainly be unacceptable to the developer who self-performed. It would also be a major deterrent to other potential self-performance of projects. Finally, it would not be consistent with fair and equitable practices, precedents under other tariffs, and the stated intent of National Grid.

Recommendation

Through my analysis, I have developed a recommendation as it specifically relates to the Petition of Revery while also allowing for the Revery decision to serve as a guide for future self-performed projects. Additionally, it should serve as a basis for enhanced clarity in the self-performing criteria and cost sharing. I recommend that National Grid administer the entire interconnection facility multi-party reimbursement process. This would include:

1. Developing a project design criterion which meets the Company's standards and provides for the least cost option for all the known factors, including potential utilization of a portion of the self-performed project by other entities.
2. Assuring that only Company approved contractors are used for self-performed projects following comparable procurement methodology that the Company uses for its own contractors and publish for access by anyone.
3. Developing and publishing a full auditing process available to all interconnecting parties.
4. Assuring that the project cost has been adequately documented and does not include unreasonable costs being added into a final cost reconciliation for the self-performed project.
5. Developing an equitable distribution of cost for the portions of a self-performed project that are shared among multiple interconnecting parties. This should consider the portion of the self-performed project each interconnecting party utilizes. It should additionally include a cost distribution model which is based on capacity utilization ratio, space

utilization ratio, and a combination of these ratios as determined to be most equitable to all parties involved.

6. Requiring all parties to provide written acceptance of, at minimum, facility use, cost allocation, and commitment for payment prior to construction commencement to the extent possible and certainly prior to execution of an ISA.
7. Collecting the funds and reimbursing the developer who completed the self-performed facilities and then donated the facilities to National Grid. These funds should be reimbursed within 90 days of collecting funds from another party.
8. Repeating this multi-step process each time an additional interconnecting party utilizes a portion of a self-performed project. The collections from each additional interconnecting party shall be reimbursed to all the parties who have made contributions to the project cost, including the original self-performer. This shall be done as an equitable ratio of cost incurred by the previous interconnecting parties.

It is my professional opinion that National Grid is the only party in the interconnection process that can reasonably and efficiently administer this process in a consistent and equitable manner. I recommend National Grid develop a comprehensive set of self-performance and cost sharing standards which it would present to the Division for review and comment. A documented set of procedures will establish a framework for avoiding future confusion and potential disputes requiring Commission resolution.