STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

REVIEW OF THE COST ALLOCATION AND RECOVERY OF ONGOING OPERATION AND MAINTENANCE EXPENSES RELATED TO THE INTERCONNECTION OF DISTRIBUTED GENERATION PROJECTS (12/6/21)	Docket No. 5205

HANDY LAW LLC'S COMMENTS

Handy Law, LLC submits these comments on cost assessment and allocation for interconnection of distributed generation projects. Comments (i) and (iii) were also filed in docket 5235 but at its open meeting for decision in that docket the Commission suggested those issues ought to be addressed in the pending interconnection dockets, 5205 and 5206. The Chair further expressed hope that these issues raised in docket 5235 but not addressed there might be negotiated to an agreed resolution (rather than adjudicated in an adversarial commission proceeding), so we ask Commission staff to please put them on your agenda for tracking here. We also offer to discuss any of these issues and their resolution with any of the parties to this proceeding at any time. If comments (iii) and (v) (or any others) are better placed in docket 5206 it can be reproduced to that docket or just let us know and we will refile them there.

i) Cost Assessment and Allocation for System Improvements

In docket 5235, the Chair, Commissioner Anthony and Ms. Wilson Frias asked Rhode Island Energy (RIE, which will be used here to depict both the current Company and its predecessor) questions about requiring interconnecting renewable energy customers to build excess system capacity and who assumes the risk of that capacity. RIE responded that it commonly requires such customers to overbuild to its standards or expectations despite whether such overbuilding is needed to interconnect the customer's renewable energy project. Handy Law strongly contends with RIE's answers to the line of questioning and disputes its policy here. Both the statute and the tariff are clear that an interconnecting renewable energy customer may only be charged for "system modifications" (upgrades necessary to interconnect that customer's project) and may not be charged for "system improvements" (upgrades benefitting RIE's system or its other customers). The failure to administer this distinction carefully and clearly costs Rhode Island's renewable energy industry, its energy policy goals, and its ratepayers dearly.

Ms. Wilson Frias asked RIE what happens when an interconnecting renewable energy customer is forced to overbuild the electric distribution system to RIE's standards (e.g., to build a 4-way duct bank when only a 2-way duct bank is required)[1] but no other load or generation customer makes use of that donated excess capacity. RIE responded that the renewable energy customer foots the bill for such an overbuild and is only repaid for such overbuilding if and when another customer uses it. Handy Law disputes that policy as inconsistent with the statute and tariff and an unjust and unreasonable overcharging. Neither the statute nor the tariff authorizes RIE to charge an interconnecting renewable energy customer for upgrading the electrical system to RIE's standards regardless of whether all such upgrades are needed to interconnect that customers system.[2] If RIE wants to overbuild its system in anticipation of future system benefit, RIE must fund the cost of any

[1] The Commission should also note that such overbuilding comes with much more substantial cost implications than might be expected because depth of construction has major cost repercussions (not just linear but exponential – e.g., avoiding lines, ledge, etc).
[2] There is only one exception to this authorized by our statute. That is only when RIE appeals to the Commission for a determination that its already identified need to improve the electric system is being accelerated by the work required to interconnect a customer (section 4.1(b)). In that one, specific instance, RIE may first charge the renewable energy customer for the upgrade and then reimburse the customer when the upgrade would have otherwise been required for other customers. We are unaware of any situation in which RIE has invoked and the Commission has approved the application of this statutory provision or reimbursed any renewable energy customers for such accelerated system improvements. The lack of transparency on the electrical system and RIE's control of all the information about the system makes it virtually impossible for a renewable energy developer to prove when RIE claims "system modifications" for what are properly considered "system improvements." That is one reason why the industry has proposed to give a neutral ombudsman visibility onto the system and capacity to oversee RIE's decision making on interconnection.

such overbuild; it may not charge its renewable energy customer for those costs. RIE's admission that it has been doing so is a matter of substantial public interest and concern because it very fundamentally frustrates the economics of our renewable energy industry. That industry is favored by Rhode Island policy expressly because locally sourced renewable energy promises to enhance reliability/security, lower costs and reduce emissions.

This same kind of concern also came up in docket 5235 with regard to Revity's claim to ambiguity in section 5.3 of the tariff on cost sharing. RIE's promulgation of a tariff that is so clearly inconsistent with the statutory language on the cost sharing obligation in R.I. Gen. Laws §39-26.3-4.1(c), purports to allow RIE discretion to administer cost sharing if and when it wants to do so regardless of the clear fact that the statute requires it.[3] In docket 5235, RIE conceded that this tariff provision's inconsistency must be "cleared up" to provide consistency with the statutory mandate. However, since 2017, when this cost sharing provision became law, RIE could its tariff language as a justification for not administering (or agreeing to) cost sharing in situations where cost sharing was not only equitable but also mandated by law (for all system improvements whether company constructed or self-performed). Here again, renewable energy developers do not have transparency to determine whether and when RIE has exercised such administrative discretion inappropriately (to deny cost sharing where it should have been required), but any such breaches would hurt the renewable energy industry, ratepayers and Rhode Island's energy policy.

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[3] These are not the only instances in which RIE has been allowed to administer the law in a manner that contravenes its clear language, overcharging local renewable energy projects in a manner that threatens the economics and Rhode Island's energy and climate policy. See also ACP Land LLC et al v. National Grid plc et al, Case 1:21-cv-00316-MSM-LDA (D.R.I.) (motion to dismiss denied); In Re: Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Docket NO. 4981 Transmission System Costs and Related "Affected System Operator" Studies, SU-2020-0106-MP (R.I.)(appeal pending).

In docket 5235, PUC 4-1(f) raised a question about how RIE is administering its own cost sharing obligation in the context of system improvements that are accelerated as a result of renewable energy customer interconnection requests. The R.I. law on that, (§39-26.3-4.1(c) - http://webserver.rilegislature.gov//Statutes/TITLE39/39-26.3/39-26.3-4.1.htm) reads:

> (b) If the public utilities commission determines that a specific system modification benefiting other customers has been accelerated due to an interconnection request, it may order the interconnecting customer to fund the modification subject to repayment of the depreciated value of the modification as of the time the modification would have been necessary as determined by the public utilities commission. Any system modifications benefiting other customers shall be included in rates as determined by the public utilities commission.

The PUC's data request asked:

> (f) In Docket No. 4763, in response to Record Request 4, http://www.ripuc.ri.gov/eventsactions/docket/4763-NGrid-RR(2-23-18).pdf the Company stated: "The Company will consider a system modification to be an accelerated modification if such modification is otherwise identified in the Company's work plan as a necessary capital investment to be installed within a fiveyear period as of the date the Company begins the impact study of the proposed distributed generation (DG) project (defined as an Accelerated Modification). [footnote omitted] The Company will identify the Accelerated Modification and the cost thereof in the impact study. The Renewable Interconnecting Customer will be responsible for the identified Accelerated Modification costs less the depreciated value (Modified Costs), which Modified Costs will be estimated in the interconnection service agreement (ISA). Upon reconciliation, final labor, material and depreciation values will be provided based on the actual date of asset installation. The Company will file with the Commission all executed ISAs for Renewable Interconnecting Customer DG projects with an identified Accelerated Modification by July 1 of each year. Renewable Interconnecting Customers may also petition the Public Utilities Commission (PUC) directly if the customer believes it has been incorrectly charged for an Accelerated Modification under Section 5.4. In these cases, the Renewable Interconnecting Customer shall be responsible to pay for the cost of the system modification pursuant to the ISA, unless and until a determination has been made by the PUC."
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> > i. Is this explanation consistent with the Company's current approach in the Tiverton case? If not, please explain.

RIE responded:

> No, because the project does not meet the definition of an Accelerated Modification under Section 5.4(c) of the Standards for Connecting Distributed Generation, R.I.P.U.C. No. 2244 ("DG Tariff") because installation falls outside the five-year period as of the date the Company began the impact study for the project. The Company proposes to reimburse the DG developer as described in Section 5.4(b) of the DG Tariff, which reads as follows:
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> > Effective for Renewable Interconnecting Customer Applications filed on or after July 1, 2017, in the event that the Commission determines that a specific System Modification of the electric distribution system benefits other customers and has been accelerated due to an interconnection request and orders the Renewable Interconnecting Customer to fund the modification, the Renewable Interconnecting Customer will be entitled to repayment of the depreciated value of the modification as of the time the modification would have been necessary as determined by the Commission. Subsequent Renewable Interconnecting Customers will be responsible for

> prorated payments within ten (10) years of the earlier Renewable Interconnecting Customer's payment toward System Modifications.

Here, once again, RIE has promulgated and the PUC has approved a tariff that is clearly inconsistent with the statutory requirement. There is no provision in the statute that allows RIE to limit its definition of accelerated system improvements to only those improvements that come within 5 years of the impact study it issues to a renewable energy customer. RIE admits that it is administering to the terms of that tariff despite the fact that the tariff does not fulfill the statutory requirement that it must reimburse renewable energy customers for accelerated system improvements no matter how long after they are charged to the customer as system upgrades required for interconnection. There is no telling how much this failed administration of the statute has cost renewable energy developers, the customers relying on their projects and RI policy encouraging renewable energy. It sure would seem to enable RIE to keep revenue to which it is and was not entitled.

These concerns are only amplified in the context of obligations for transmission system investments. Beyond the still unresolved issue of whether Rhode Island law allows our distribution company to charge for upgrades to the transmission system (see Commission decision in docket 4981, pending appeal), neither the law, nor the tariff nor equitable cost allocation policy should allow RIE to charge for any system improvements required for existing service requirements. It is self-evident that requiring local renewable energy developers to fund such substantial system improvements that so evidently benefit all of RIE's customers is an economic kill switch for much (if not all) of Rhode Island's renewable energy industry and, consequently, for Rhode Island's renewable energy and climate policy.[4]

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[4] It is also important to note that RIE has had and has economic interests in supply alternatives (be it the value of infrastructure investments that can be avoided by locally sourced alternatives or its vested interests in natural gas business, utility scale renewable energy alternatives and even economic incentives for specific programs for local renewables like the REG program as opposed to net metering) and thus cannot be allowed the benefit of any presumption that it will maintain neutrality in the exercise of its monopoly control over access to our electrical system.

Given all of this confusion and now evident misadministration of the statute and tariff provisions on the assessment and allocation of investments in system improvements, Handy Law, LLC submits that the Commission should conduct discovery, require restitution and resolve proper administration of such investments in the improvement of our shared electric system.

ii. Capital Cost of Improvements – Consistent Treatment

In its response to the Commission's request 3-1, RIE indicates that it discounts the cost of system improvements funded by load customers but does not apply that discount to distributed generation customers. RIE states that the revenue it receives from load customers offsets its cost of conducting system improvements for those customers. This position and practice also appears to be discriminatory, unjust and unreasonable.

Customer rates are designed to cover the cost of service. The cost of serving a load customer is more than the cost of serving a generating customer, and the rates reflect that. If the rate for a load customer accurately accounts for the cost of serving that customer, then the capital cost of system improvements would need to be an additional cost not factored into the cost of service. Revenue paid to RIE for service provided may be indicative of the private value proposition to RIE (for the service offered) but does not indicate the net value proposition the capital cost credit produces to the public – to our electrical system, to ratepayers or to society. RIE's charter allows it a monopoly over our system used to distribute electricity only so far as that monopoly serves the public interest. Despite the history of this valuation presumption for improvements funded by load customers, it is no longer justified and ought to be reconsidered pursuant to all the values, costs and benefits addressed in docket 4600.

Any long-held presumption that distributed generation customers present a net cost proposition to the electrical system, ratepayers and society similarly is not based on a proper valuation of the benefits of local, distributed generation and is, therefore, unsupported, discriminatory, unjust and unreasonable. It is the same kind of presumption that was raised, refuted and withdrawn in RIE's proposed "access fee" rate proposal in docket 4568. It fails to account for many, many benefits of DG, including (but not limited to) reduced need for investment in transmission and distribution, enhanced security/reliability, and peak shaving capacity, not to mention the less tangible societal benefits that do not go unvalued in a proper docket 4600 analysis. Unsubstantiated value presumptions can no longer be used as a means to differentiate charges between customers. Any such policy and practice now needs to be justified under all the values, costs and benefits diligently studied and laid out in docket 4600.

iii. Amending Procedure Moving Forward.

In docket 5235, the Commission and its staff questioned the appropriate process for amending policies for self-performance, cost assessment and cost sharing/allocation moving forward. RIE said it is working on developing standards for self-performance of interconnection upgrades and stressed that such standards ought to be adopted internally outside the tariff. RIE's counsel said that they will only be released to the public for review and comment with the understanding that RIE will make any final determinations entirely at its own discretion. We are not at all comfortable with that approach. RIE claims that such standards do not rise to the level of tariff treatment because they do not implicate the provision of electrical service to customers. That proclamation only further illustrates the size of this problem.

Rhode Island law and policy is clear that interconnecting renewable energy customers are not only RIE's customers entitled to receive electrical service under the same equitable terms as any other customers; it actually elevates such customers to a preferred, policy priority level.[5] RIE still refuses to acknowledge the transition from a one-way electrical system to its essential role in facilitating and implementing our multi-directional energy future. We are concerned about allowing RIE to develop and adopt any such policies without full transparency, opportunity to comment and amend, all subject to Commission approval.

Even the Division's offer of recommendations and suggestion that it alone review such policies and procedures is inadequate to protect the interests of the renewable energy industry and Rhode Island policy. As is generally the case, the Division does not and cannot represent all interests in such standards. As just one example of (many) unrepresented interests, local renewable energy developers have distinct experience and interests that are not represented in the recommendations from the Division's consultant. For example, while the Division's recommendation that self-performed construction must be conducted only by RIE's preapproved contractors may portend to serve some nominal interest in safety and reliability (which is already governed by strict construction standards), it promises to limit access to the competitive market for such services in ways that may benefit RIE but are most likely to make the construction more costly and less timely to the detriment of the developers, ratepayers and Rhode Island policy. Likewise, the Division's recommended requirement that all benefitting parties approve a self-performed construction plan and budget before commencement of construction allows the non-performing but benefitting developers too much leverage and control over the construction schedule, budget and process, effectively allowing them a kill switch.

[5] In fact, the general assembly has proposed self-performance standards in legislation pending this session. That bill (H8220/S2689) has already passed the Senate. What could be a more evident indication of public interest in this element of RIE's electric service?

The tariff is the proper place for any such policies and procedures. A tariff proceeding must be open and transparent for participation by all who want to weigh in, because such policies and procedures deeply impact all of us.

iv. Contributions in Aid of Construction

While it is valuable, important and appreciated for the Commission to coordinate conversation and resolution on how system improvements are valued, assessed and allocated among different kinds of customers in this stakeholder process, this Commission is no longer the venue to discuss federal policy on "contributions in aid of construction." Two renewable energy developers sought this Commission's ruling on CIAC and its taxation in a petition filed on January 16, 2014, docket 4483. After just about four years of process, the Commission ultimately disclaimed jurisdiction over CIAC in its Order issued on November 27, 2017. Upon review in the Rhode Island Supreme Court, that Court also disclaimed jurisdiction over federal CIAC policy in its decision issued on June 1, 2020. Given Rhode Island's decision not to exercise jurisdiction to resolve the question of how CIAC is assessed and taxed, that issue is now pending resolution in the United States District Court for the District of Rhode Island.

We appreciate the Commission's effort to address whether the capital cost of system improvements are assessed equitably between RIE's customers. The issue of whether any system improvement is properly classified as CIAC and is then properly subject to taxation is a question of federal jurisdiction which need not and ought not be addressed here.

v. California's Experience and Example

The stakeholders to this proceeding are presumably aware of the breakthrough California recently made on improvements to its interconnection policy.[6] The Coverage in Utility Dive summarizes their new approach as follows:

> Under the new system, DER projects that want to interconnect to California's grid will go through a review process that uses the "integration capacity analysis" – essentially, a model of grid conditions that provides a picture of the hosting capacity of the electric system, or the amount of power output it can handle without requiring infrastructure upgrades.
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> Under the new roles, projects that are less than 90% of available capacity per the integration capacity analysis will be able to pass the screen, while those that do not pass are subject to additional reviews. However, according to the Interstate Renewable Energy Council, the resolution also improves those review processes and will likely allow more distributed resources to come online.
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> The new process will potentially allow more projects to pass through the fast track process, which means they could get interconnected in a matter of months versus many months to a year or more, Stanfield, an attorney for IREC in the CPUC proceeding, said.
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> "It creates a more efficient and more transparent interconnection process for projects where there is capacity on the grid for those projects," Stanfield said. By doing that, the new framework should help better direct projects to the locations where there is capacity on the grid, and minimize the amount of time utilities and developers spend pursuing projects where there isn't capacity.
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> The resolution is an important step in forcing California utilities to think of hosting capacity on an hourly basis, rather than planning solely around minimum annual capacity, Brad Heavner, policy director with the California Solar & Storage Association, said in an email.
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> "There are still unknowns in its implementation, but if done right it will avoid a lot of unnecessary study when projects are clearly within the existing grid capacity," he added.

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[6] If not, please see as reported here - https://www.utilitydive.com/trendline/distributed-energy-resource-growth/30/?utm_source=UD&utm_medium=Library&utm_campaign=VirtualPeaker&utm_term=Utility%20Dive

California has had much more history and experience with these issues than we have had here in Rhode Island. It is our understanding that the State worked closely with the Interstate Renewable Energy Council in devising this new approach. Rhode Island now has energy and climate goals that are even more aggressive than California's. Our state can no longer afford time to further study these matters or attempt to address them at the edges of an ever gradually adapted, old interconnection tariff. To deliver on our general assembly's mandates we submit that it is time to consider simply adopting the benefit of such experience and careful consideration on streamlining the path to a clean energy future.[7]

Thank you for your consideration our comments on interconnection policy and process addressed in these proceedings.

Respectfully submitted,

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/s/ Seth H. Handy________________

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[7] If this comment is better placed in docket 5206 please duplicate it there or let us know and we will also refile it in that proceeding. Thank you.