**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**
**PUBLIC UTILITIES COMMISSION**

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| IN RE: TARIFF ADVICE TO AMEND<br>ELECTRIC TARIFF, ENTITLED STANDARDS<br>FOR CONNECTING DISTRIBUTED<br>GENERATION, RIPUC NO. 2180 | )<br>)<br>)<br>)<br>) | Docket 4763 |

**NEW ENERGY RHODE ISLAND**
**OBJECTION**

New Energy Rhode Island (NERI) objects to the proposed tariff revisions.

*General Objections*

National Grid is not qualified to serve in this gatekeeping function for the renewable energy industry and Commission intervention is necessary now "to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people." R.I. Gen Laws §§39-1-1(a)(1)-(2).

Our General Assembly has resolved that the business of distributing electrical energy is "affected with a public interest," that lower electrical rates promote our economy and general welfare, that the price of energy in Rhode Island create hardships in our state, and that it is necessary for Rhode Island to achieve reasonable, stable rates, and system reliability that includes energy resource diversification and distributed generation. R.I. Gen Laws §39-1-1(a)(1), (d)-(e). It has declared that "[s]upervision and reasonable regulation by the state of the manner in which such businesses . . .carry on their operations within the state are necessary to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people, and are a proper exercise of the police power of the state." R.I. Gen Laws §§39-1-1(a)(1)-(2). With these purposes and declarations in mind, the legislature "vested in the public utilities commission and the division of public utilities and carriers the exclusive power and authority to supervise, regulate, and make orders governing the

conduct of companies offering to the public in intrastate commerce energy, communication, and transportation services and water supplies for the purpose of increasing and maintaining the efficiency of the companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls and charges by providing full, fair, and adequate administrative procedures and remedies. . ." Id. at §39-1-1(c). The Commission's enabling legislation is to be "interpreted and construed liberally in aid of its declared purpose" and the Commission is given, "in addition to powers specified in this chapter, all additional, implied, and incidental power which may be proper or necessary to effectuate their purposes." Id. at §39-1-38.

One of the State's principal advisors, Mr. Rich Sedano, is now the director of the Regulatory Assistance Project (RAP), a foremost think tank on energy policy.[1] The first of RAP's three key principles for Smart Rate Design is that – "A customer should be able to connect to the grid for no more than the cost of connecting to the grid."[2] For many years renewable energy developers have advocated to reduce the many unnecessary and counterproductive burdens placed on interconnection that inhibit the development of a more secure, less expensive and cleaner energy supply.[3] Those efforts have required the dedication of too much hard-earned resources and have been met with much frustration. The industry is simply tiring of advocating for the kind of regulation that will put in place the mechanics needed to deliver the new energy economy state policy calls for so loudly and with such clarity. National Grid recently reported the DG Board that only 22 megawatts (28MW) of the 40MW meant to be developed under the distributed generation standard contract program is in operation, 17MW having been cancelled after enrollment. Only 7MW is operational under the

[1] As you know, Rich directed System Integration Rhode Island – see http://www.energy.ri.gov/electric-gas/future-grid/systems-integration-ri.php.
[2] "Smart Rate Design," Lazar & Gonzalez (July 2015), p. 6. http://www.raponline.org/knowledge-center/?_sf_s=smart%20rate%20design)
[3] See PUC Dockets 4277, 4288, 4483, 4539, 4547, 4568, 4649, H5131 (legislation 2015), S82 (legislation 2015), H7006 (legislation 2016), H5413 (legislation 2017).

Renewable Energy Growth Program despite the goal of enrolling 105MW by now. It is not clear whether the failure to get these projects to operation has to do with economics (low return on investment and ceiling pricing) or mechanics like interconnection, but the signs are clear that we are failing state policy.[4] In the Transforming the Power Sector Phase One Report, the State of Rhode Island has declared:

> the primary financial means through which the utility can grow its business and enhance earnings for shareholders is to invest in capital projects. This bias, created by the regulatory framework rather than by the utility itself, discourages the utility from seeking more efficient solutions that do not depend on large capital investments (p. 16). . . the current regulatory framework does not incent the utility to maximize integration of DER, which would reduce customer exposure to increasing wholesale supply costs and also increase the region's energy security. That is, the regulatory framework may not sufficiently incent the utility to build a DER-centered system, consistent with the state's Least-Cost Procurement statute. Instead, under the current regulatory framework the utility neither benefits nor is penalized from increasing electricity supply costs that customers pay. (p. 18)

Sadly, the report concludes its section on the Utility Business Model with this concesssion:

> The proposed robust performance incentive mechanisms are designed to leverage the utility to maximize its overall return on equity to achieve state objectives that will benefit ratepayers. However, even in the presence of these incentives, there will remain an inherent financial bias for the utility to apply capital expense solutions rather than operational expense solutions, because the utility's authorized return on equity applies to capital expenses, not operational expenses.

It is now very clearly held that National Grid administers the interconnection of renewable energy to our distribution system while conflicted by its goal to maximize profits from large capital investments emanating from centralized generation, transmission and distribution that are impeded by distributed generation. It is completely unreasonable to expect National Grid to be a fair arbiter of interconnection or to expect that the Commission can adequately weed out and police the many opportunities to discourage distributed generation through interconnection. It is time to appoint an

[4] What is clear is that someone is getting a windfall out of bond deposits and the DG Board has a critically sick patient in need of diagnosis.

ombudsman that can at least watch and more directly police this fox as it guards Rhode Island's henhouse.[5]

At the very least, this tariff proceeding ought to include and be reconciled the performance based incentive performance measurement incentives outlined in the Transforming the Power Sector Report. They are as follows:

- Interconnection Support
  - Description: To encourage the utility to reduce time and cost of interconnection to better serve customers who want to generate or store electricity. This performance area is expected to be addressed in an upcoming Commission docket.
  - Metrics:(1) Average days for customer interconnection, by month,by customer sector. (2) Average cost of interconnection, annually, by customer sector (3) Difference between initial estimate and actual cost of interconnection.
  - Target: TBD. This should be based upon reasonable improvements over past practices, depending upon the extent to which these practices have been a problem in the past.
  - Incentive: TBD. This should be based on the targets developed. Options include dollars per reduction in interconnection time; dollars per average cost of interconnection; dollars per reduction in actual costs.

Clearly our regulators, experts and stakeholders still have very substantive thinking to do about how to better align utility incentives with a successful interconnection regime. It needs to be done while we have the opportunity in this tariff proceeding, to help diffuse some of National Grid's disincentive to facilitate interconnection. NERI is confident that if and when National Grid's incentives are ever truly aligned with state policy encouraging distributed energy resources, this tariff and the administration of interconnection will be rethought entirely to simplify and facilitate interconnection.

We see no reference to the statutory requirement to initiate a docket to establish metrics for the electric distribution company's performance in meeting the time frames set forth herein and in the distributed generation interconnection standards approved by the public utilities commission and for the Commission to consider inclusion of incentives and penalties in the performance metrics. R.I.

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[5] It may just be a convenient coincidence that so many of National Grid's substantive proceedings before the PUC and elsewhere have been positioned to require attention at the same time as its distribution rate case (e.g., interconnection tariff, declining ceiling prices for a failing REG program, rejection of streetlight metering, Invenergy, Providence LNG proposal. . .).

Gen. Laws §39-26.3-4.1(e). That docket was to be opened no later than September 1, 2017. Its intent should be incorporated in this tariff proceeding.

The Commission should order National Grid to partner with Grid Unity or a similar service to automate the bulk of interconnection study efforts and bring cost of interconnection study from four months and $30,000, to a couple days and a tenth of the cost: See https://gridunity.com/.

As part of this process, NERI asks the Commission to please confirm that any automation of the interconnection process is clearly and definitely set up to benefit interconnecting customers and does not intentionally or unintentionally make the process more difficult. As one example, the automated application process now makes it impossible to reproduce similar applications (which could be copied easily in hardcopy) such that multiple applications containing largely the same information must all be reentered. That is an alleged "improvement" without actual benefit.

NERI does not see that the tariff amendments or the tariff incorporates all of the settlements and orders from Docket 4483. These include, but may not be limited to, the following:

- project conference and notification (November 12, 2014 Order, Order 22957)
- itemization of impact study costs whenever it attempts to collect costs in excess of the statutory fee. The interconnection customer will no longer be required to request an itemization of impact study costs. (Order 22957)
- impact study cost estimates will be valid for 120 days (Order 22957)
- The Tariff shall include the following provision in Section 9.2: "Notwithstanding any provisions contained in this section, the parties may agree to have formal arbitrations conducted by Commission staff" (Order 22957)

The Commission has refused to inform the industry of the total financial impact of National Grid's failure to honor the IRS safe-harbor that exempts renewable interconnection customers from the Contribution in Aid of Construction tax that has been past through to renewable energy developers despite an exemption first established in 1988. The industry is entitled to this information and to protection against this unreasonable and illicit charge for interconnection.

The proposed edits still fail to simplify the tariff as was recommended and ordered by the PUC in Docket 4483. There are examples of much simpler interconnection rules readily available – see IREC model http://www.irecusa.org/fileadmin/user_upload/ConnectDocs/IC_Model.pdf; NARUC (National Association of Regulatory Utility Commissioners) models http://www.naruc.org/Publications/dgiaip_oct03.pdf; http://www.naruc.org/Publications/dgiaip.pdf Petitioners respectfully ask the Commission to consider simplifying this tariff as possible according to these models that are based on extensive input and model interconnection protocols from across the country. This request for general simplicity is echoed in other comments below.

*More Specific Comments*

1) ISO jurisdiction and rules (§§1.1, 1.2 re "Affected Systems," 3.4(c), 3.5, Table 1 n. 7, elsewhere): All references to ISO jurisdiction and rules should be removed. They are merely a scare tactic and have to do with an entirely separate regulatory process that is subject to its own interpretation, rulemaking and contests. There is no need to complicate this tariff by cross-referencing ISO's interconnection approval process. National Grid makes it clear that despite any timelines dictated by the General Assembly it now intends to delay interconnection by sending interconnecting customers down the deep rabbit hole at ISO-NE. We have not had the opportunity to review ISO's new rules on its approval process, but our guess (based on brutal past experience with them) is that our State should be actively engaged in defending our policy interests against their inclination toward inappropriate and unnecessary interference. In fact, R.I. Gen. Laws §39-26.3-4.1(d) compels National Grid to make commercially reasonable efforts to resolve any such delays imposed by third parties and National Grid should simply be held to that standard (and properly policed) with ISO-NE (good luck with that. . .and ombudsman might be able

to help with that effort). Regardless, those rules are not relevant to or warranted for inclusion in this tariff.

2) "Affected Systems" (§§1.1, 3.4, Exh. E, Exh F, Exh G, Exh H): It is unnecessary for National Grid's tariff to raise concerns about affected systems it does not control. That is a sly effort to complicate and intimidate by incorporating indirect expenses and excused delays that are not contemplated in the new statutory language of R.I. Gen. Laws §39-26.3-4.1(d). More specifically, the statute only allows National Grid to charge interconnecting customers for "system modifications to <u>its electric power system</u> specifically necessary for and directly related to the interconnection [to <u>its electric power system</u>]" and would only allow third party interconnection delays that cannot be resolved through commercially reasonable efforts. National Grid should simply be held to that "commercially reasonable effort" standard (and properly policed) with affected parties (good luck with that effort. . .an ombudsman might be able to help with that effort).

3) "System Improvement" and "System Modification" (§1.2): These definitions are essential to distinguish investments that must be funded by interconnecting customers and those that benefit other customers and will be rate-based. Yet, the tariff revisions completely neglect that distinction and fail to incorporate the statutory requirements that National Grid may only charge interconnecting customers "system modifications to its electric power system specifically necessary for and directly related to the interconnection" (R.I. Gen. Laws §39-26.3-4.1(d)) and that "Any system modifications benefiting other customers shall be included in rates as determined by the public utilities commission." National Grid's customers deserve much more clarity and transparency on these matters that were of central importance to our General Assembly.

4) Process Overview (§3.0): The catchall reference allowing any interconnection delays "otherwise affected, suspended, extended, or interrupted as specified in this tariff" is inconsistent with the statute as otherwise noted in these comments. The statute speaks very clearly and specifically to permitted delays and the tariff must simply, clearly and directly reflect that.

5) Replacement Renewable Resource (§3.0, sheet 12): NERI does not trust that National Grid will fairly administer these provisions regarding simple replacements of renewable energy generating resources. We anticipate that National Grid will always find reason to declare that system modifications are necessary "because of a change in the rating or utility disturbance response that adversely affects the impact of the Facility on the distribution system" and must, therefore, be allocated to the customer. An ombudsman might be able to help with that.

6) Pre-Application Reports (§3.2):

   - The prohibition against filing more than ten pre-application reports in one week is unnecessary and contrary to state policy. The agreement to provide the report within 10 days "assuming a reasonable number of applicants under review" is a hollow promise.
   - The Commission should order National Grid to partner with Grid Unity or a similar service to automate the bulk of interconnection study efforts and bring the cost of a typical interconnection study from about four months and approximately $30,000, to a couple days and a small fraction of the current cost.

7) Time frames (§3.5 Sheet 20, Table 1 notes 1 & 7 sheet 29):

- The language regarding delays must be revised to accurately and completely reflect the statute. For example, third party delays are only warranted when and if they cannot be resolved by the Company's commercially reasonable efforts. As one other example, Note 7 should discuss the statutory process for acceptance of an application for interconnection and notification of any incomplete elements (see R.I. Gen. Laws §39-26.3-4.1(d)). The Commission should generally ensure absolute consistency here.
- Any language allowing extension of Company time frames for matters beyond its control should go both ways, allowing the interconnecting customer more time for constraints beyond its control (e.g., extending time to sign interconnection agreement an pay for interconnection if permitting challenges arise for the project).
- Has National Grid ever issued any rules regarding how their queue system works for interconnection? They should be included with this tariff. In the absence of such rules, NERI fears that it will be administered arbitrarily to the disadvantage of interconnecting customers (an ombudsman might be able to help with that).

8) Table 2 Fee Schedules (Sheet 30):

- The notes for this table must incorporate the requirement that National Grid must audit all interconnection projects upon completion, true up actual costs to estimated costs, and reimburse the customer for any estimated costs that exceed actual costs per the order in Docket 4483 (November 12, 2014 Order). It is not enough to only include such language in the form agreements – it must be in the tariff as well to increase clarity and transparency. This provision should note that the audits will be issued within 90 days of National Grid's completion of its interconnection work and any resulting refunds will be issued within 45 days of the audit (Order 22957).

- The notes and all forms of application should also include description of the process that customers must pursue in order to become eligible for the IRS safe-harbor establishing an exemption from the CIAC tax on interconnection. It should include a statement that National Grid will hold all taxes paid by customers after December 23, 2014, and refund the tax if an when any alleged uncertainty is resolved regarding the safe-harbor (National Grid's proposed settlement approved by Commission December 23, 2014, see Order 22957). Despite the Commission's final order in Docket 4483, National Grid has conceded that at the very least it is uncertain as to the applicability of that exemption to distribution system interconnection. Putting aside the fact that National Grid should not assess or be allowed to assess the tax in the absence of certainty regarding the application of an IRS established exemption (failed burden per R.I. Gen. Laws §39-3-12), customers should be fully informed of their rights and ability to pursue the exemption as long as there is any ambiguity as to its possible application. In the absence of transparency, customers will likely forego their rights and their costs of interconnection may be unnecessarily inflated in conflict with state and federal policy.
- For clarity and transparency, Note 5 should include the statutory requirement that "Any system modifications benefiting other customers shall be included in rates as determined by the public utilities commission."

9) System Modification Costs (§5.3 Sheet 39): This language needs correction to directly and only reflect the language of the statute that National Grid may only charge an interconnecting renewable energy customer "system modifications to its electric power system specifically necessary for and directly related to the interconnection" (R.I. Gen.

Laws §39-26.3-4.1(d)) and that "Any system modifications benefiting other customers shall be included in rates as determined by the public utilities commission." The inserted first sentence should be removed – it is confusing relative to the statutory language and raises the possibility of administration toward a contradictory purpose. Beyond the statutory mandate, it's very important for the Commission to integrate the first of the Regulatory Assistance Project's three key ratemaking principles throughout this tariff and police it very vigilantly – "A customer should be able to connect to the grid for no more than the cost of connecting to the grid." Smart Rate Design, Lazar & Gonzalez (July 2015), p. 6 (see http://www.raponline.org/knowledge-center/?_sf_s=smart%20rate%20design)

10) Separation of Costs (§5.4 Sheet 40):

- This section needs revision to be consistent with the statutory language on cost allocation as referenced above (definition of "system modification" and "system improvement," clear reproduction of statutory standard, remove "Affected Systems" language).
- Also, the stricken language that was moved to section 5.3 should be restored in this section. National Grid attempts to use it to redefine System Modifications allocated to the interconnection customer while it was always intended to describe/define System Modifications that are not to be allocated to the interconnecting customer. This language belongs in section 5.4 rather than 5.3. R.I. Gen. Laws §39-26.3-4.1 now only makes Rhode Island's intent clearer with regard to this.
- Beyond that, it is critically important for the Commission to ensure that the distinction between system improvements and system modifications is administered transparently,

fairly and appropriately. As just one example of that, the Commission should clearly determine the basis upon which National Grid could legally bill interconnecting renewable energy customers for upgrades made to any elements of the transmission system. Our understanding is that this pertains to the removal of the proposed tariff clauses related to "Affected Systems." The transmission system very clearly benefits other customers so it is hard to imagine any circumstance under which National could justify billing improvements to the transmission system to an interconnecting renewable energy customer.

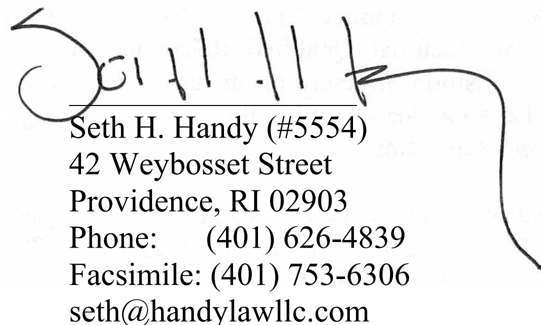
*Conclusion*

For these reasons New Energy Rhode Island objects to the proposed tariff revisions and respectfully asks the Commission to grant the relief addressed herein.

**NEW ENERGY RHODE ISLAND**

By their attorneys,

**HANDY LAW, LLC**



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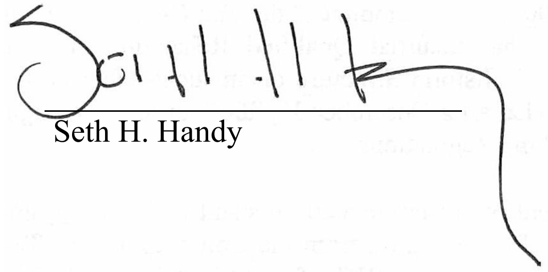

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