STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs and Related "Affected System Operator" Studies	**Docket No. 4981**

THE EPISCOPAL DIOCESE OF RHODE ISLAND REPLY BRIEF

Two energy futures come before the Commission for decision. In Narragansett Electric Company's future, it fails to plan for an influx of renewable energy and then, feigning surprise, rewards its own business plan by putting all the time burden of such planning and cost of resulting upgrades on local distributed generation projects seeking interconnection to the distribution system. In another, represented by the Episcopal Diocese of Rhode Island, NEP is held to its job of planning for integration of the distributed energy resources provoked by Rhode Island's public policy and funds system improvements far ahead of interconnection requests, allocating the costs of those improvements as provided by settled law. NEC's future benefits its shareholders. The Diocese future benefits our electric system, NEC customers, and our society. That is the Commission's decision on this petition.

NEC puts forward a fallacy that its vision of the future is the only one that protects and provides for the security of our transmission system. This petition does not raise a question of whether the integrity of the transmission system will be protected; it is all about how such protection will be planned and funded. The law and good public policy is clear on that.

NEC's claim that the Commission cannot meddle with NEP's imposition of transmission studies and upgrades on local distributed generation would upend federal jurisdiction and law on the subject. It is undisputed that there is no federal jurisdiction over the Diocese project, which

is not interconnecting to the transmission system and will not transact in ISO markets, net metering all of its produced electricity. Even if ISO or NEC's affiliate NEP did have jurisdiction over this 2.2MW project, the ISO NE Transmission, Markets and Services Tariff (the "ISO tariff")[1] does not require any studies unless ISO found significant impact and required a Proposed Plan Application (PPA) within sixty days, which it did not. Most consequentially, ISO Tariff Schedule 12 would rightly consider any resulting, required improvements "public policy improvements" not allocable to the Diocese, so NEC/NEP's continuing obstruction of the interconnection of the Diocese project for transmission system issues is pointless.

The Commission's decision will cast the fate of the economics of the Diocese's summer camp for inner city children, its efforts to generate low cost clean electricity for its parishes and other religious institutions, and its mission of creation care. The result will greatly impact whether Rhode Island's energy and climate goals - to enhance the security of our energy system, reduce its cost, and clean up our emissions - can and will be met.

The factual issues related to this dispute are before a mediator in Docket 4973.[2] Yet, some facts pending resolution there are salient here. NEC's recent response to the mediator's data request 1-11 informs us that NEC changed its policy to require the submission of Generator Notification Forms to ISO during the impact study phase of a project (rather than upon project completion) on March 1, 2019. NEC filed the Diocese's generator notification form on March

[1] The Diocese produced all tariffs and planning procedures to the Commission with "Diocese Legal" documents.
[2] The Diocese is grateful that the mediator suggested that two legal issues addressed in that dispute resolution petition should be separated out for declaratory judgment for process efficiency sake since declaratory judgment petitions have a 60 day turnaround time and because ultimately the Commission would have had to rule on the legal issues anyway. While the separation requires more effort, the Diocese is most concerned about getting financial certainty on the implementation of its project in 2019 so it can make the required investment to secure the full value of federal tax credits currently available for its project. This declaratory judgment petition is now the only means to such certainty since, with the mediator's critically important help, these unjustified and unauthorized affected system operator studies remain the only source of otherwise unresolvable uncertainty regarding the capital and operating cost of the Diocese project.

28, 2019 (close and precipitous timing). The Diocese filed its interconnection application in January 2018 and paid for its impact studies in June 2018. By state law, NEC is due to issue its impact study within ninety days of payment. R.I. Gen. Laws §§39-26.3-3(d). Ignoring that law (which provides NEC no excuse for late filing of an impact study but provides the Diocese no remedy for that delay), NEC issued the impact study more than a year later, on July 11, 2019. By state law, NEC was due to issue an interconnection services agreement, and commit to an interconnection cost (within plus or minus ten percent), within 200 calendar days from the date of the interconnection application; August 2018. Id. at §39-26.3-4.1(d). Ignoring that law, NEC has yet to issue the Diocese that agreement. If on schedule, NEC would have committed to the cost of the Diocese's interconnection long before it changed its policy on Generator Notification Forms and subjected this project to affected system operator studies that portend potentially devastating capital and operating costs[3] that still could easily kill the Diocese project. By state law, NEC was required to complete construction of this interconnection no later than 360 calendar days from the date of receipt of the interconnection service agreement. If NEC had maintained that schedule, the Diocese interconnection would have been under construction and well on its way to completion by the time NEC changed its policy to require these paralyzing transmission impact studies.

In October 2019, ISO produced a guidance document addressing the grouping for these "cluster studies" thus: "Generally, an accumulation of 20 MW of new and existing DG on feeders that collect up to a given transmission substation will lead to a cumulative impact on the regional transmission system, necessitating a transmission study by the Transmission Owner

[3] Astonishingly, without any tariff on the subject, NEC/NEP indicate that local distributed generation will need to fund both the capital and operating cost of transmission studies resulting from these studies. What a discouraging shadow they seek to cast over our clean energy economy!

under the I.3.9 PPA process."[4] ISO's policy intends a feeder-specific impact analysis. In contrast, in response to the mediator's data request 1-13, NEC states,

> Groups in the Rhode Island study plan were created by National Grid staff representing NEP in coordination with ISO-NE based on transmission area, project status (e.g. post ISA/pre-ISA), size and other factors (e.g. accumulations of DG resources within a transmission area, level of accumulation of DG resources necessitating a transmission study, transmission area stresses).

How does project status have anything to do with a feeder-specific impact? The Diocese submits that grouping projects by pre or post ISA status has much more to do with NEC's interest in avoiding litigation over dishonored interconnection cost commitments. If NEC had processed the Diocese project properly under state law, would it have been grouped differently and avoided the precipitous uncertainty of ongoing impact studies and their unfathomable financial risk? The Diocese believes and has submitted so.

The deadline for issuance of an interconnection services agreement and for NEC's completion of system modifications can only be extended for events beyond the control of the utility, such as third-party delays like those due to ISO requirements not attributable to utility actions, that cannot be resolved despite commercially reasonable efforts. Id. Rhode Island law puts the question of ISO's requirements related to transmission studies and cost allocation at the center of the Diocese dispute regarding delayed interconnection. These questions of fact are in good hands with the mediator, but they also inform, in very important ways, the Commission's resolution of this petition.

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[4] The Growth of Distributed Generation: ISO New England's Role in the Interconnection Review Process (Oct. 2019) (the "ISO Report"), p. 6 [copy produced to Commission with "Diocese Legal" documents].

LEGAL ARGUMENT[5]

I. The Jurisdictional Context Frames This Advocacy.

Transmission system interests fall under Federal Regulatory Commission jurisdiction. FERC regulates "Rates and services for electric transmission in interstate commerce and electric wholesale power sales in interstate commerce."[6] FERC's "bread-and-butter" is regulation of public utility transmission in interstate commerce and sales for resale in interstate commerce: transmission of electric energy in interstate commerce by public utilities, i.e., the rates, terms & conditions of interstate electric transmission by public utilities – FPA 201, 205, 206 (16 USC 824, 824d, 824e). FERC has exclusive jurisdiction over the "transmission of electric energy in interstate commerce," and over the "sale of electric energy at wholesale in interstate commerce," and over "all facilities for such transmission or sale of electric energy." FPA 201(b) (16 USC 824(b)). Federal authority "trumps" contrary state authority. (p. 11)

Most sections in Parts II and III of the FPA provide for FERC authority over the actions of a "public utility." A "public utility" is defined as "any person who owns or operates facilities subject to the jurisdiction of the Commission," i.e., "any person who owns or operates" facilities for "the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce" – e.g., NEP. (p. 13) In contrast, FERC does not have authority over "local" distribution of electric energy, and the rates, terms and conditions of such distribution."(p. 14) Federal law grants states the right to regulate local distributed generation. See e.g., 16 U.S.C. 824a-3(f); 16 U.S.C. 231(a). Rhode Island has been very clear regarding its

[5] NEC repeatedly notes unsupported allegations in the petition. They overlook the mediator's instruction that this petition need not rehash all of the analysis provided in its dispute resolution petition (docket 4973) but could simply identify the legal issues presented for the Commission's decision. Nevertheless, here the Diocese expands on that legal analysis NEC mistakes as missing. The Division's brief eerily echoes NEC's, controversially (for a state agency meant to act as "consumer advocate"), but it (sadly) adds little substance.

[6] See FERC 101, https://www.ferc.gov/about/ferc-does/ferc101.pdf, p. 10 [copy produced to Commission with "Diocese Legal" documents].

expectations of utility interconnection. Our state has long expected NEC to plan to facilitate the interconnection of local distributed generation, to study the impact of those interconnections on the distribution system within a fixed time for a fixed cost, and to construct interconnections within a fixed time period within fixed cost parameters. NEC has not met those expectations; it has regularly bucked them.

ISO knows very well that there is no federal jurisdiction over projects that do not interconnect to the transmission system or participate in ISO's wholesale markets. ISO commonly distinguishes between ISO and state jurisdictional interconnections.[7] ISO presentations on these cluster studies conspicuously stop short of addressing whether NEP/NEC can legally allocate transmission system costs to local distributed generation facilities.[8] As spelled out below, the cost allocation policy in the ISO Tariff also reflects the bounds of federal jurisdiction, providing that state jurisdictional interconnections are not allocated any share of the cost of transmission system upgrades for "public policy improvements." If properly handled according to jurisdictional requirements, only projects subject to federal jurisdiction (those using the transmission system either by interconnecting to it or engaging in ISO markets) are held responsible for transmission upgrades. That approach is not only clearly provided by governing law; it also makes plain common sense – only those directly interconnecting to federal

[7] See e.g., ISO Report p. 2. "A developer proposing to interconnect a DG resource to a state-jurisdictional distribution facility must follow the associated state interconnection process. A developer proposing to interconnect a DG resource to a Federal Energy Regulatory Commission (FERC)-jurisdictional distribution facility must follow the ISO New England interconnection process under Schedule 22 or 23 of the OATT (unless it falls under one of the exemptions identified in Schedule 23). Most of the DG being installed in New England is interconnecting to the lower-voltage distribution system through state interconnection processes, which are administered by the states' electric distribution companies. In these cases, the DG developer is an interconnection customer of the electric distribution company, not the ISO." Although not the subject of this petition, requiring those participating in the forward capacity market to go through a slow ISO interconnection process would a very bad public policy result if it discourages projects from participating in the market which should be better accounting for and planning on our clean energy future.

[8] See e.g., ISO New England Review of Distributed Energy Resource Proposals and Coordination with Distribution Companies (June 21, 2019); ISO Report.

jurisdictional transmission lines or availing themselves of federal jurisdictional markets ought to be obligated to pay for upgrades to federal jurisdictional facilities.

Even if NEC/NEP were right about obligations to study non-jurisdictional projects for transmission system impacts, the real questions here are: i) who is responsible for any such studies, ii) when they are to be done, and iii) if they find impacts, who is responsible to pay for those impacts? If state jurisdictional projects cannot be assessed cost of improvements to the transmission system, then transmission impact studies and cost allocation processes should be advanced by NEP without obstructing and paralizing customers interconnecting to the distribution system without participating in federal markets.[9]

The Diocese asked ISO-NE to resolve this dispute under Section I.6 of the General Terms and Conditions of the ISO Tariff.[10] NEC/NEP claims to be applying the ISO Tariff, at ISO's direction, in a manner that directly impacts the Diocese's non-jurisdictional project, so the Diocese took its dispute directly to ISO. ISO refused to engage in dispute resolution on the ground that the Diocese was not its "customer."[11] If ISO had jurisdiction over the project, the Diocese prays that ISO would have had the good graces to address its dispute over jurisdiction.

[9] The fact that public servants at ISO and the Division of Public Utilities and Carriers stand by and condone NEP/NEC's effort to impose costs and obligations on non-jurisdictional customers is gut-wrenching systemic bias that counters the interests of good policy on energy and climate change. Here it inappropriately and unaffordably burdens the Diocese with advocacy desperately needed to uphold those interests. The imbalance creates a culture that tends toward utility deference just when we most need to scrutinize how utility business models conflict with right public policy. Our Senate delegation recently weighed in on their expectation that, despite the threat to its board's interests and its own job security, ISO must reverse its resistance to a clean energy future provided by distributed energy resources. See letter attached as **Exhibit A**. Onward Christian soldiers, once more unto the breach.

[10] July 25, 2019 Letter of Dennis Burton to Jennifer Recht (ISO General Counsel) [produced to Commission with "Diocese Legal" documents].

[11] August 2, 2019 Letter of Monica Gonzalez (ISO) to Dennis Burton (Diocese) [produced to Commission with "Diocese Legal" documents].

II. Distributed Generation Customers do not Rightly Bear the Burden of NEP's Failure to Plan for the Need to Upgrade its Transmission System to Interconnect Distributed Generation Produced by Longstanding Public Policy.

NEC and NEP failed their responsibility to plan ahead on maintaining the integrity and security of the transmission system and now, craftily and wrongly, seek to impose that burden on unsuspecting and underserving, non-jurisdictional distributed generation customers. The idea that either NEC or NEP could have been surprised by a volume of distributed generation exposes a persistent and gross negligence toward accommodation of Rhode Island's energy policies and its intended energy future.[12] To claim that such surprise now justifies obstructing interconnection of distributed generation projects and handing them a bill for the capital cost and ongoing operations and maintenance of transmission system improvements is deeply and foundationally backwards and unjust.

Back in 2011, FERC Order 1000 set rules for transmission planning, improvements and cost allocation.[13] The Order is designed "to ensure that transmission planning processes and cost allocation methods subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential." It provides that "regional transmission planning could better identify

[12] See e.g., ISO New England Review of Distributed Energy Resource Proposals and Coordination with Distribution Companies (June 21, 2019), pp. 6-7.

[13] FERC "Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities" (July 21, 2011), p. 46 [produced to Commission with "Diocese Legal" documents]. The Diocese team, admittedly new to the world of transmission regulation, invested in reading this 614-page Order and consulted with FERC and experts. It remains unclear to us whether any improvements coming out of the Diocese cluster study (as yet unkown. . .) would be subject to the Order. Nevertheless, Order 1000 makes it plain that FERC occupies the field of transmission planning and cost allocation. The ISO Tariff follows through on the cost allocation policies outlined in FERC Order 1000, even if ISO and NEP do not follow those policies in this context.

transmission solutions for reliably and cost-effectively integrating location-constrained renewable energy resources needed to fulfill Public Policy Requirements such as the renewable portfolio standards adopted by many states." (p. 66) FERC noted that "these reforms will remedy opportunities for undue discrimination by requiring public utility transmission providers to have in place processes that provide all stakeholders the opportunity to provide input into what they believe are transmission needs driven by Public Policy Requirements, rather than the public utility transmission provider planning only for its own needs or the needs of its native load customers." (p.158)

This planning concern was also raised in National Grid's 2014 Rhode Island Infrastructure Safety and Reliability proceeding at the Commission, docket 4539. The resulting Order # 22174 acknowledged National Grid's admission that "partially due to the nature of distributed generation application process, there is little integration of the distributed generation program into the overall planning process." (p. 25). The Commission ordered National Grid to plan for the growth and better integration of renewable energy to "anticipate the growth of distributed generation spurred by, at the minimum existing state policy, programs and market forces."(p. 26) It required long range plans to consider the extent to which the current system is prepared for least cost siting of anticipated generation growth and how planning for load and generation growth together can benefit customers. National Grid has not complied with Commission Order # 22174.

Having focused its resources on investments that better serve its own economic interests, NEP and NEC an have failed to plan for the need to integrate the entirely foreseeable upsurge of renewable energy needed to serve Rhode Island policy. The Diocese prays that the Commission will protect unsuspecting, interconnecting distributed generation customers against newly and

improperly imposed transmission system delays and obligations only needed because NEC and NEP failed to fulfill their planning obligations.

III. Neither ISO's nor NEC's Tariffs Impose Impact Study Planning Requirements on the Diocese Project.

NEC misconstrues the ISO Tariff and its planning procedure and undermines our Rhode Island tariff for distribution system interconnection in seeking to justify the requirement of a transmission planning study for the Diocese project. Under Section I.3.9 of the ISO Tariff, each market participant must submit plans for additions to or changes in facilities that might "have a significant effect on the stability, reliability or operating characteristics of the Transmission Owner's transmission system, the transmission facilities of another Transmission Owner or the system of a Market Participant." Within sixty days of that filing, ISO must notify the Market Participant whether it has determined that implementation of any proposed plan will have a significant adverse effect on the reliability or operating characteristics of the Transmission Owner's transmission facilities, the transmission facilities of another Transmission Owner, or the system of a Market Participant, the Market Participant or Transmission Owner. Unless ISO provides such notice in writing, the Market Participant is free to proceed with the plan. The Diocese has repeatedly asked NEC for any such notice from ISO, without response.[14] The Diocese project is thus free to proceed without transmission study obligations under the ISO Tariff.

Even if ISO had provided the required notice, section 1 of ISO New England Planning Procedure (PP) 5-1, "Procedure for Review of Governance Participant's Proposed Plans,"

[14] NEC produced ISO correspondence in response to the mediator's data requests in docket 4973. It is pretty much illegible as produced, but as far as the Diocese can tell, there was no determination of significant impact or requirement of a PPA before June 2019, as contemplated by the ISO Tariff. Regardless, NEC's failure to respond to the Diocese on this is telling.

describes the process and contains the procedures "Market Participants" must follow to comply with Tariff Section I.3.9.[15] A table describes PPA requirements for all new generation or changes in station output. On that table, new or increased generation of between 1 and 5 MW requires no PPA; only a generator notification form, unless ISO determines potential for significant impact and requires a PPA within 60 days (which it has not).

Even if a PPA had been required of the Diocese project, the PPA requirements are found in PP 5-3 and 5-6. Section 3.1.2 OF PP 5-3 reads: "Level of analysis required - Based on factors such as the size of a generator and/or operating voltage level and connection of a transmission line (radial or networked), four levels of analysis are identified for supporting a particular Proposed Plan Application." It goes on: "In general, if the proposed addition or modification is not listed in Table 1, then no Proposed Plan Application is required; i.e. Level 0. If the proposed addition or modification is listed in Table 1 as requiring a Proposed Plan Application, but it does not affect other Affected Entities, then the application is required for information only; i.e. Level I." Any generation addition or rating change of less than 5MW and Reactive rating change of less than (+/-) 5 MVAR results in a Level 0 Proposed Plan Application, with "no action required." The Diocese's technical team is entitled to rely on the ISO Tariff in planning their project schedule and budget expectations, and that tariff does not require a transmission impact study for a 2.2MW project.

If studies were required, such interconnection studies would not properly include the Diocese project. PP 5-6 defines the scope of studies required under PP5-3 by reference to ISO tariff section II, schedules 22, 23 and 25. Schedules 22 ("Large Generator Interconnection

[15] All relevant planning procedures were produced to the Commission with "Diocese Legal" documents. Diocese counsel now recognizes NEC's point that his petition did regrettably mix up the nomenclature for ISO's "OPs" and "PPs." The imposition of complex transmission rules on distributed generation is indeed new and confounding.

Procedures") and 25 ("Elective Transmission Upgrade Interconnection Procedures") clearly do not apply. Logically and sensibly echoing jurisdictional bounds, Schedule 23 ("Small Generator Interconnection Procedures") does not apply to facilities that will not be used to make wholesale sales of electricity in interstate commerce or to a qualifying facility intending to sell 100% of the Qualifying Facility's output to its interconnected electric utility, both of which exceptions apply to the Diocese per the agreed facts. The Diocese project is not subject to ISO's study requirements, by ISO's own terms.

The Rhode Island Tariff for Distribution System Interconnections ("Standards for Connecting Distributed Generation") in effect at the time the Diocese applied for interconnection, RI Tariff 2163, also did not contemplate these transmission system impact studies. NEC dismisses the Diocese's right to rely on RI Tariff 2163, but Rhode Island law requires NEC to apply all of its tariff provisions in a fair and impartial manner. R.I. Gen. Laws §39-1-27.6(5). Without taking the time and effort to get into all of NEC's (wrongheaded) citations on the subject,[16] it would plainly be unfair for the Commission to regulate the Diocese through a tariff that was not effective when the Diocese planned and applied to interconnect its project.

NGrid's Tariff 2180, "Standards for Connecting Distributed Generation" became effective in September 2018, long after the Diocese applied to interconnect. Tariff 2180 amended the definition of "affected system" in Tariff 2163 as follows:

[16] Nor has the Diocese invested in researching the cases decided under the Rhode Island statute, which would have to support the Diocese's position. Tariffs exist for a good reason – to provide advance notice of the rules of the road. If those administering the rules wish to change their application, they must give notice of such change and allow comment and Commission approval before imposing them on existing economic interests. That is a basic, irrefutable and equitable premise of administrative law; would that it were surprising that NEC challenges it.

> **Affected System:** Any neighboring transmission or distribution EPS not under the control of the Company (e.g.~~i.e.~~, a municipal utility, ~~electric light company~~ or other regulated distribution or transmission utility, which may include Affiliates, or ISO-NE, as defined herein).

Tariff 2180 also amended section 3.4 of Tariff 2163 to add the following:

> The Interconnecting Customer will be directly responsible to the potentially Affected System operators for all costs of any additional studies required to evaluate the impact of the interconnection on the potentially Affected Systems; provided, however, the Company may, in its sole discretion, elect to include the additional Affected System study costs in the Company's cost estimates, in which case the Company will detail the separate Affected System study costs, and the Interconnecting Customer will pay such costs to the Company (and will be responsible for any and all actual costs thereof).

Similarly, Tariff 2180 amended section 5.4 of Tariff 2163 ("Separation of Costs") to add this final sentence of paragraph one:

> Interconnecting Customers shall be directly responsible to any Affected System operator for the costs of any system modifications necessary to the Affected Systems.

In contrast, Section 3.4(3)(c) of Tariff 2163 had provided:

> The timelines in Table 1 will be affected if the ISO-NE's Operating Procedure 14 will be required and/or transmission upgrades or studies are needed for Affected Systems. This could occur, without limitation, if the Interconnecting Customer's Facility is greater than or equal to 5 MWs or if the aggregate capacity of Facilities connected (which are on the same feeder and are physically close to each other) is greater than or equal to 5 MWs.[17]

"Affected Systems" was not defined to include any transmission interests when the Diocese applied for interconnection.[18]

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[17] In its customary legal doublespeak, NEC oddly accuses the Diocese of falsely criticizing NEC for not citing ISO OP-14 as the authority for these transmission studies (p. 11). The Diocese did not do that; it merely stated that OP-14 provides a separate compliance obligation and layer of protection for transmission system security and reliability, which it does. NEC's position that OP-14 is irrelevant because it does not apply to projects not participating in ISO markets is highly ironic. They are quite right; the Diocese's election not to participate in ISO markets means no transmission level jurisdiction at all and that NEP/NEC's has no authority to impose its ASO requirements on the Diocese project under any operating or planning procedure. Despite that fact, Diocese counsel has disputed NEC and ISO's application of OP-14 to non-jurisdictional facilities on another project where ISO/NEC ultimately refused to concede, which is why we advocated the issue in the Commission's consideration of tariff 2180. Despite NEC's erudite admission of this jurisdictional quagmire in its brief, NEC's response to the Diocese Petition in docket 4973 actually argued that the Diocese was on notice of this transmission study requirement due to the discussion of OP-14 requirements in this RI tariff 2163 section 3.4. NEC has long been either deceived or deceptive on this point, and ISO either always knew or should have known better.

[18] Indeed, NEC still seeks to amend the RI tariff to insert more language justifying these affected system operators and their costs. With this petition, the Commission can properly thwart those wrongful efforts.

Even were Tariff 2180 applicable to the Diocese project, its amended provisions on ASO studies are preempted by federal law because they clearly conflict with federal policy on transmission planning in ways that, if followed, will egregiously disrupt the federal scheme for transmission system planning. Federal law, FERC rules and the ISO tariff and planning procedures dictate which projects must be studied for transmission impacts and, by those terms, the Diocese project does not require study. There is no basis in the tariffs or the planning procedures to require the Diocese project to be stalled by the pending transmission impact study.

Without ISO notification finding significant impact and requiring a PPA within sixty days of filing the generator notification form that included the Diocese Project, NEC had no excuse to delay the interconnection of the Diocese project on the schedule mandated by R.I. Gen. Laws §39-26.3-4.1, 175 days to interconnection services agreement, and no more than 360 days to completion of interconnection. Those deadlines can only be extended for events beyond the control of the utility, such as third-party delays like those due to ISO requirements not attributable to utility actions, that cannot be resolved despite commercially reasonable efforts. If ISO did not order a PPA for the Diocese project within sixty days of filing of the generator notification form, the interconnection must go on under Rhode Island law. ISO did not provide any such notice and NEC has impeded interconnection of the Diocese project without authorization.

IV. Even is the Diocese Project Were Subject to this Transmission Study NEP Could not Impose Transmission System Costs, so Further Obstruction of Interconnection Serves no Purpose.

Rhode Island law prohibits any tariff provision that would require the Diocese to fund anything more than $10,000 of impact study costs for this project unless additional, audited costs are incurred and assessed to the Diocese once the project is in operation. R.I. Gen. Laws §§39-

26.3-3; 39-26.3-4. There is no exception. Under federal law, state law governs the cost of interconnection. 18 CFR §292.306. NEC's claim that federal law and the RI Tariff authorizes it to impose added transmission impact study costs on distributed generation customers during the transmission study process flies in the face of federal and state law. Therefore, the Diocese asks the Commission to reject it.

Any claim that the Diocese improperly seeks to avoid cost causation principles for transmission upgrades or "cost trap" or otherwise shirk any obligation to provide for the safety and reliability of NEP's transmission system is classically and egregiously fallacious utility doublespeak. It is clearly NEP's obligation to foresee, plan for and properly allocate the costs of transmission system improvements. If FERC Order 1000 and the Commission's order # 22174 did not drive that home, then Rhode Island law and the ISO Tariff must.

FERC Order 1000 unambiguously states:

> The Proposed Rule would require that every public utility transmission provider develop a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the transmission planning process in which it participates. If the public utility transmission provider is an RTO or ISO, then the method or methods would be required to be set forth in the RTO or ISO tariff. . . (p 401)

Then it adds, "We require that a public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation" (p. 405) Finally, in laying out its cost allocation principles on page 484, it reads:

> Regional Cost Allocation Principle 6: A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief or to achieve Public Policy Requirements. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this rule.

FERC orders NEP to undertake an entirely different approach to cost allocation than NEC seeks to impose on these distributed generation customers.

Contrary to NEC's assertion, even ISO's cost allocation provision (presumably developed under FERC 1000's cost allocation principle 6) does not require the Diocese to fund transmission upgrades that may arise out of a transmission impact study. Under ISO's Tariff Schedule 11, any transmission system upgrades that could be related to the Diocese project would not be considered "generator interconnection related upgrades." Categories A (pre 1998) and B (pre 1999) are inapplicable. Once again observing jurisdictional bounds, the cost allocation requirements for Category C are triggered only if/as required to satisfy the Capacity Capability Interconnection Standard or the Network Capability Interconnection Standard, both of which are defined per Tariff schedules 22, 23 and 25. As illustrated above, none of those schedules apply to the Diocese project, which will not engage in wholesale markets and will net meter all of its electricity.

Since the project is not a "generator interconnection related upgrade," Tariff Schedule 12 sets the rules for transmission cost allocation. Per that policy, "public policy upgrades" are to be allocated 70% to transmission customers taking service under the tariff and 30% to the regional network load of each state. Here, the agreed facts establish that the Diocese is not a "transmission customer taking service under ISO's tariff." FERC's allocation of responsibility for public policy improvements to those interconnecting to transmission facilities in ISO markets or engaging in federally regulated markets makes sense. Under ISO's cost allocation schedules and any logical application of cost causation principles, the Diocese clearly cannot be held accountable for the allocation of system upgrade costs on a transmission system it will not use.

ISO's tariff is quite right to consider upgrades arising out of projects like this one "public policy improvements." That classification properly holds NEP to its obligation to plan ahead for integration of renewable energy promoted by Rhode Island policies, with stakeholder input and

per FERC's sound cost allocation policy. It also serves state policy interests by eradicating NEC/NEP's hasty imposition of afterthought obstructions to address unstudied and unknown impacts, all devastating to the schedule, financial (tax credit) planning and cost foreseeability of local projects that provide far more benefit than cost to the transmission system, as well thought through in Commission docket 4600.[19]

NEC's allegation that its NEPOOL Transmission Operating Agreement authorizes any allocation of transmission system impact costs to non-jurisdictional distributed generation projects is also false.[20] Section 3.04(a)(iv) of that agreement gives a transmission operator authority to file under section 205 of Federal Power Act to establish and revise rates or charges for the recovery of the transmission operator's investment in a new transmission facility or a transmission upgrade that enters service after the date of the ISO OATT and the construction of which was not required by, or approved in, an ISO System Plan. Of course, that agreement provides no authorization to charge non-jurisdictional distributed generation projects directly for the cost of transmission upgrades.

Rhode Island's statute on interconnection is also consistent in prohibiting imposition of NEP's transmission system costs on distributed generation interconnections. It reads: "the electric distribution company may only charge an interconnecting, renewable-energy customer for any system modifications to <u>its electric power system</u> specifically necessary for and directly related to the interconnection." R.I. Gen. Laws §39-26.3-4.1(a) That not only limits the scope of modifications NEC can charge to the interconnecting customer (only those solely needed for the interconnection), it also prohibits charges for modifications to anything other than its own

[19] Even if the Commission were to consider implementation of NEC's poorly conceived scheme to impose transmission costs on DG customers, docket 4600 would rightly require a comprehensive cost benefit analysis first. Of course, NEC completely overlooks the benefits of distributed energy resources yet again here. Shame.
[20] Transmission Operating Agreement (Feb. 1, 2005) [produced to Commission with "Diocese Legal" documents].

distribution system. NEC and the Division misconstrue this provision, emphasizing only the last clause ("necessary for and directly related to the interconnection") while completely overlooking the precondition that "its electric power system" does not include NEP's transmission system. Federal law defers to state law on the cost of interconnection for local distributed generation. 18 CFR §292.306. NEP cannot avoid the dictate of state law merely by misreading it. Even if Rhode Island distribution system interconnection tariff 2180 had been in place to govern the Diocese interconnection application (which it was not), its tariff provisions that contradict state law on this subject are illegal and unauthorized.

NEC's brief contends that FERC sets transmission rates and that its cost allocation requirements are outside the Commission's jurisdiction. Then, in its next sentence it claims it can still recover these costs through "retail rate mechanisms, such as Rhode Island's interconnection tariff." (p. 12) It then expands that FERC regards any agreement that sets "rates, terms or conditions for wholesale power sales or transmission service by a public utility or that allocates wholesale power costs to be jurisdictional." (p12) Rhode Island's standards for connecting distributed generation could not set rates for interconnection of wholesale customers because such customers are (evidently) subject to ISO's interconnection process. Nor does that result cause "rate trapping." NEP can recover its costs through ISO processes or through its retail rate mechanisms set in docket 4770. The "filed rate doctrine" does not authorize NEP to pass transmission system improvement charges to customers not subject to FERC jurisdiction through the RI tariff. These arguments are just more doublespeak.

The lack of any authority to impose transmission system upgrade costs on these projects has critically important implications for our clean energy economy. If upgrade costs are not authorized, there is no basis to hold local distributed generation interconnections up pending the

results of transmission impact studies. In an end-point analysis, if distributed generation customers are not responsible for the cost of transmission system impacts why must they be obstructed by these "affected system operator" impact studies? If impact studies were warranted, they must be done under the statutory timelines, as must the construction of the interconnection. NEP can do its own studies (even in parallel if necessary) and properly allocate any resulting costs as public policy improvements under FERC policy implemented through ISO Tariff Schedule 12, without holding up local distributed generation customers. The absence of charging authority dictates that the Commission can allow the clean energy economy to move on at this critical time when projects must make substantial investment to preserve access to the federal tax credit available in 2019, before it is reduced.

If NEP properly wanted to pursue the authority to impose transmission system improvement costs on non-jurisdictional distributed generation customers, it would propose its own tariff at the Commission, establishing foreseeable protocols for this otherwise haphazard process. The Diocese does not expect that, because NEP's facilities are not state regulated but fall under federal law that is plain and clear on how it must handle its transmission planning and cost allocation obligations. So, instead of openly pursuing such authority, NEC and NEP surreptitiously seek to bootstrap their authority to push these costs down on distributed generation through a state distribution system interconnection tariff, trying to make up their own rules on essential implementation elements like queueing and cost-allocation as they go. [21] Beyond this petition, how this issue is handled in tariff revisions will have critically important

[21] The Commission is well aware of other precedent where NEC has sought to impose unauthorized costs on distributed generation to impede its unstoppable competitive surge. Two prominent examples are the proposed access fee addressed in Docket 4568 and the pass through of an alleged interconnection tax from which NEC is exempt (docket 4483 Order #22957, on appeal at the RI Supreme Court). This ploy to push transmission system upgrade costs on distributed generation interconnections, if approved, could be their coup de grace.

policy implications since the unwarranted imposition of study delays and financial uncertainty on distributed generation has a severe thwarting impact on the realization of important state policy goals.[22]

Conclusion

The Diocese prays that the Commission decide on the right energy future for Rhode Island. That future may not serve the interest of NEC and NEP, so strongly asserted through campaign funding, marketing and lawyering funded by ratepayer dollars,[23] but it will serve the State's well promulgated interests in a secure, affordable and cleaner energy future. It will also, incidentally, help the Diocese save a camp that has been instrumental in the lives of many deserving children, enable it to provide lower cost and more reliable energy to religious facilities, and support its transformational mission of creation care.

THE EPISCOPAL DIOCESE OF RHODE ISLAND
By its attorneys,

HANDY LAW, LLC

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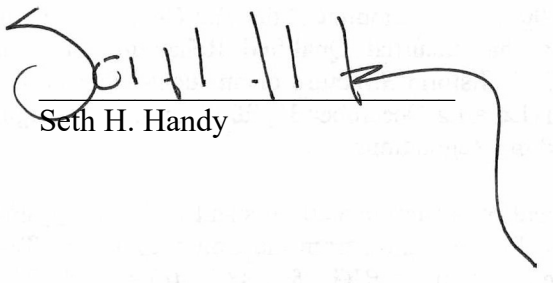
[22] The MA DPU's current position on this matter impedes Massachusetts energy and climate policy. D.P.U. 19-55 Hearing Officer Memo 08 07 19, concluded, "Affected system operator studies are required to ensure the safety and reliability of the electric power system and the Ombudsperson cannot determine whether an affected system operator study is or is not necessary for a certain DG facility." Proper proactive planning by transmission system operators is what must ensure the safety and reliability of our electric power system, not retroactive imposition of planning and impact abatement obligations on non-jurisdictional distributed generation customers. The Commonwealth is considering revisions to its distribution system interconnection tariff to condone these affected system operator studies and charges. That is not only a mistaken concession of state jurisdiction/policy, it also interferes with better-considered, preemptive federal authority. MA DPU's recent panel on this subject was all utility representatives and ISO, including NEC's counsel here – shame.

[23] On November 25, 2019, 10 NEC/NEP employees and lawyers attended the dispute resolution in docket 4973. What a sad and cynical expenditure of effort and ratepayer dollars. They expend such ratepayer resources all while the Diocese cannot begin to afford all of the soft cost of its tortuous interconnection process, including all of its advocacy in these petitions. "We're outmanned and outgunned" by the Brits and, with God's blessing, toward that same result.

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2019, I delivered a true copy of the foregoing document to the service list by electronic mail.



Seth H. Handy

United States Senate
WASHINGTON, DC 20510

November 18, 2019

Gordon van Welie
President and CEO
ISO New England
One Sullivan Road
Holyoke, MA 01040

Dear Mr. van Welie:

We write concerning ISO New England (ISO-NE)'s ongoing fuel security initiative, where ISO-NE is pursuing measures to enhance the region's electricity reliability. However, we have concerns that ISO-NE is not considering the region's environmental and climate goals in this work.

New England states take the threat of climate change seriously and have adopted some of the most ambitious climate and clean energy laws in the country. ISO-NE has a responsibility to facilitate this clean energy transition and help achieve the region's climate goals in a cost-effective manner that ensures reliability and just and reasonable rates for consumers.

Unfortunately, ISO-NE appears to be pursuing a patchwork of market reforms aimed at preserving the status quo of a fossil fuel-centered resource mix. This includes recent market rule changes like Competitive Auctions with Sponsored Policy Resources (CASPR), which forces state-sponsored renewable energy to wait for incumbent fossil fuel generators to retire before these clean resources can enter the capacity market, and the Inventoried Energy Program, which will force consumers to pay millions of dollars to existing, polluting power plants with on-site fuel supplies, such as oil, coal, or liquefied natural gas.

In 2016, New England's electricity stakeholders engaged in a robust conversation on how to blend regional electricity markets with our state climate and clean energy policies. ISO-NE, the New England States Committee on Electricity (NESCOE), and the New England Power Pool (NEPOOL) established an integrating markets and public policy (IMAPP) process to discuss how to integrate climate change policies into the electricity markets established and overseen by ISO-NE. These conversations explored potential new market frameworks for clean energy, as well as possible ways to better value states' clean energy mandates in ISO-NE's markets.

Instead of continuing this engagement with stakeholders, in recent years ISO-NE has charted its own path forward and pursued unpopular initiatives like CASPR and the Inventoried Energy Program. Now, ISO-NE is pursuing as its top priority a new Energy Security Improvements fuel security proposal that again appears to ignore the reliability and other benefits of clean energy, and further delays market reforms that recognize and facilitate state public policies to grow clean energy and address climate change.

ISO-NE should return to the table with stakeholders to develop electricity market frameworks the region needs to tackle climate change, promote innovation, and facilitate clean energy. In July, NESCOE, which represents the perspective of the six New England Governors, wrote to ISO-NE urging relevant stakeholders discuss, "future market frameworks that contemplate and are compatible with the implementation of state energy and environmental a laws."[1] Following the NESCOE letter, the New England Power Generators Association, which represents that largest electric generating companies in NE, wrote supporting the NESCOE request.[2] We have also heard from consumer-owned entities that the current framework must be revisited on a fundamental level.

ISO-NE should heed the call of the states, electricity generators, and others to expand the dialogue beyond the current, too-narrow fuel security reforms to tackle the region's pressing need to achieve the states' ambitious climate goals. To achieve these goals, ISO-NE should dedicate significant planning and markets resources in the coming months to evaluate, help develop, and propose new electricity market structures that recognize, facilitate, and are compatible with state policies. Thus we request that ISO-NE work with NESCOE, NEPOOL, consumer owned entities, and other electricity stakeholders to engage in broader energy conversations about the future of energy in New England.

We look forward to your prompt response.

Sincerely,

Sheldon Whitehouse
United States Senator

Richard Blumenthal
United States Senator

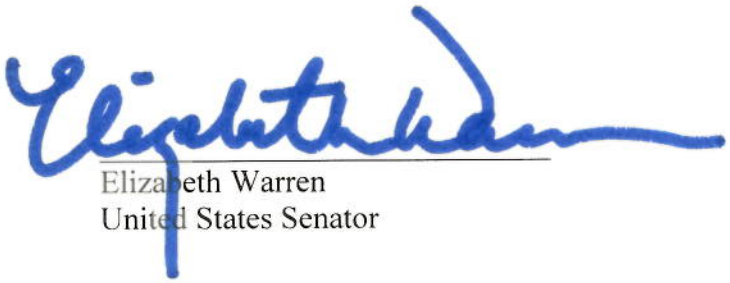
Bernard Sanders
United States Senator

Jack Reed
United States Senator

Christopher S. Murphy
United States Senator

Edward J. Markey
United States Senator

[1] http://nescoe.com/resource-center/2020-workplan-jul2019/
[2] https://nepga.org/2019/08/letter-to-iso-ne-on-review-of-the-future-of-the-new-england-wholesale-markets/



Elizabeth Warren
United States Senator