



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS

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September 16, 2020

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

Re: Docket No. 5060

Dear Ms. Massaro,

The Division of Public Utilities and Carriers (“Division”) writes in response to the Commission’s e-mail dated September 10, 2020 regarding the above-entitled docket.

In Data Request - Set 1 (Div 1-4), the Division requested Hexagon Energy, LLC (“Hexagon”) to provide the Division with a “detailed chronological narrative of the planning, design and execution of the two projects that are subject of the Petition from their inception to the present date.” Hexagon’s response was wholly inadequate, consisting of a limited number of bulleted milestones.

To resolve the inadequacy of the response without excessive time and cost to Hexagon, the Division requested Hexagon and its counsel to provide a more detailed response via a video conference.¹ Hexagon responded in pertinent part: “If you would like to request more information we will consider its relevance to the issue placed before the Commission and

¹ This is the same process the Division has undertaken with National Grid in this docket. Unlike Hexagon, National Grid has agreed to confer with the Division to discuss the projects.

respond accordingly. Otherwise, Hexagon asks that the Division please accept the matters progression to its timely and proper resolution.”

In addition to this non-responsive answer, the limited discovery obtained to date, National Grid’s correspondence dated August 31, 2020 and independent discovery of the Division, have evoked concerns about the Semi-Stream carport project for which Hexagon seeks exception to the prohibition on segmentation contained in the applicable Tariff – RIPUC No. 2152-G (“Tariff”). These concerns arise from, but are not limited to, the following:

- (i) The Semi-Stream and Superior Solar projects do not meet the plain and unambiguous language of Section 5(iv) of the Tariff, *i.e.*, they are located on “contiguous parcels” – Parcel 1 (AP 113, Lot 11) and Parcel 2 (AP 113, Lot 12), and “their combined nameplate capacity [1,982 kW]² . . . exceeds the class nameplate range of the enrollment class of the individual projects”, which National Grid perceives as “Commercial Scale” Solar, presumably 251 to 999 kW.
- (ii) Nowhere in the Petition does Hexagon cite any judicial or regulatory precedent³ to support authority to override the Tariff’s plain and unambiguous terms. Rather, Hexagon opines aggregating the projects’ nameplate capacity is “irrelevant”.
- (iii) National Grid recognizes that it does not have the discretion to “...to allow additional exceptions to the Tariff” and did not do so.
- (iv) Hexagon is the developer of the Semi-Stream and Superior Solar projects that will be located on Parcel 1 and Parcel 2, respectively.
- (v) The nameplate capacity of the Semi-Stream carport (991 kW) is the same as the Superior Solar project’s nameplate capacity (991 kW); the capacity levels for both projects are close to the maximum levels for their respective classes (999 kW each); and the on-site energy use of the carport “does not have adequate load to use one hundred (100) percent of the carport project’s output.”
- (vi) The proposed Semi-Stream carport will be constructed in a rural location, distant from activity that would typically require the utilization of such a carport.

² 991 kW (Superior Solar) + 991 kW (Semi-Stream) = 1,982 kW.

³ In Order No. 23849 at 16-17 in Dkt. 4983, the Commission appears to have barred the very exception to the prohibition on segmentation sought by Hexagon here because “if, combined,” the projects do not “fall into the same size class as they would if proposed separately.”

- (vii) Hexagon indicated that it did not want to wait multiple years to develop the Semi-Stream carport project so as to comply with the 24-month waiting period requirement contained in Section 5(ii) of the Tariff.
- (viii) Superior Solar, LLC and Semi-Stream Solar, LLC, the limited liability companies that presumably will operate and/or own the Superior Solar and Semi-Stream projects, were organized at approximately the same time: March 13, 2019 and February 13, 2019, respectively.
- (ix) The Superior Solar and Semi-Stream limited liability companies have the same principal office address: 722 Preston Avenue, Charlottesville, VA 22903; have the same “authorized signer”, Daniel R. Bulka, Jr.; and possess the same “resident agent”, Coagency Global, Inc., 222 Jefferson Blvd., Warwick RI 02888.
- (x) Daniel R. Bulka, Jr. serves as the Director of Operations for Hexagon.
- (xi) Hexagon’s office is also located at 722 Preston Avenue, Suite 102, Charlottesville, VA 22903, the same address as the office of Superior Solar and the office of Semi-Stream.
- (xii) The same engineering firm, DiPrete Engineering, prepared a detailed “Site Layout Plan” of both the Superior Solar and Semi-Stream projects. In both cases, DiPrete Engineering prepared the respective Site Layout Plans on behalf of Hexagon.
- (xiii) Nowhere, to the Division’s knowledge, has Hexagon disclosed the possible ownership and/or apparent control it has over the Superior Solar and Semi-Stream limited liability companies.
- (xiv) The Articles of Organization of Going Green Realty LLC, the owner of Parcel 1 and on which the Semi-Stream carport will be located, was revoked on July 22, 2019. Going Green Realty LLC, therefore, does not exist as a legal entity.
- (xv) As early as 11/20/2019, Hexagon queried: “These are obviously distinct and not looking to game size categories (we’re parking semitrucks under the carport).”

Division Data Request - Set 2 seeks documentation that will enable the Division (and the Commission) to obtain a broad understanding of the projects’ structure and planning from inception to the present, the parcels ownership, history and relationship to the projects and the interrelationships of the various participants, projects and properties. Only with such an understanding will the Division (and the Commission) be able to make their own independent assessments about whether through developer creation of and control over the Superior Solar and Semi-Stream limited liability companies, the projects seek to evade proper Renewable Energy

Growth Program price categories and the prohibition on segmentation, to the detriment of ratepayers.

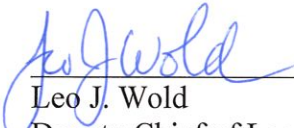
All the data requests contained in Set 2, thus, are reasonably calculated to lead to the discovery of relevant evidence under Rule 26 of the Superior Court Rules of Civil Procedure and comply with the standard enunciated by the Rhode Island Supreme Court for permissible discovery. At no time has the Division's discovery been designed to delay Hexagon's capacity to participate in the current Renewable Energy Growth enrollment as Hexagon alleges in its response.⁴ Nor is Hexagon entitled to attorney's fees as claimed.

If Hexagon has confidentiality concerns related to the data requests, Instruction 1 in Set 2 affords Hexagon ample means to address those concerns. The Division also is more than willing to discuss any concerns Hexagon may have about the breadth and scope of the data requests. Entry into a non-disclosure agreement is a standard practice the Division and parties have also employed in the past to enable the Division to obtain broad access to documentation that enables the Division to fulfill its investigatory role. Lastly, the Division remains willing to conduct a video conference with Hexagon representative(s) and counsel to potentially alleviate some of the burden associated with lengthy narratives and document production. These procedures provide more than ample means to mitigate any concerns the Commission may have about the scope of the data requests or protecting the confidentiality of Hexagon document production.

Based on the foregoing, Hexagon should provide all the information that the Division's has requested in Data Request Div 1-4 (1st Set) and all the documents the Division has requested in Data Requests Div 2-1 through 2-27.

Thank you for your anticipated cooperation.

Respectfully submitted,



Leo J. Wold
Deputy Chief of Legal Services, DPUC

cc: Service List

⁴ The Division observes that Hexagon's pleading received on September 9, 2020 is entitled a "Response", not an "Objection" or a "Motion". Further, please observe that the Commission's *Rules of Practice and Procedure 810-RICR-00-00-1* ("*Rules*") require that "[o]bjections shall include the portions of the data request objected to and shall detail the basis for the objection." *Rule 1.19(c)(3)*. The *Rules*, therefore, impose the burden of identifying the basis of Hexagon's objection to each Division data request on Hexagon, not the Division. Hexagon's "Response" completely fails to comply with this requirement of the *Rules*.