

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

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IN RE: SETH’S WAY SOLAR	)	Docket No.
	)	
	)	

**PETITION**

Seth’s Way Solar, LLC brings this petition under Section 10 of The Narragansett Electric Company Renewable Energy Growth Program for Non-Residential Customers, RIPUC No. 2152-C (the “Tariff,” approved in PUC Docket 4672), to ask the Commission to allow the Narragansett Electric Company d/b/a National Grid (“Narragansett”) to permit extensions on the deadline for Seth’s Way to achieve operation of its solar project at expected availability and capacity. The extension is necessary because of development and construction delays caused by COVID-19. Seth’s Way has asked Narragansett, and received, an initial six-month extension as provided by Section 3(f) of the Tariff. Subsequently, Seth’s Way elected to further extend its Output Certification for an additional six months. Now, Seth’s Way has approached Narragansett for an additional extension due to continuous hardship caused by COVID-19. Narragansett denied the extension on the grounds that “there are no COVID extensions being granted for any ReGrowth projects other than small scale solar as they do not have the opportunity to request extensions” and that “REG Tariff Section 3(f) doesn’t allow the Company to grant any further extensions to Commercial Scale projects.” Seth’s Way consulted with the Office of Energy Resources who recommended that Seth’s Way petition the Commission to seek this relief.

This extension for a construction project delayed by COVID-19 is needed to serve important public policies including health restrictions essential to the prevention of the spread of COVID-19. The extension also serves the purposes and goals of the Renewable Energy Growth program (“REG”).

## **FACTS**

Seth’s Way is a planned 997 kW solar project at 17 Valerie Drive, West Greenwich, Rhode Island 02917 (the “Project”). Seth’s Way applied for a certificate of eligibility (“COE”) to participate in the REG program and received its certificate of eligibility on January 3, 2018. Under the Tariff, the Project is due to be in commercial operation within 24 months of the date of the certificate of eligibility, or by January 3, 2020, unless that delivery date is extended for cause. Seth’s Way exercised its two lawful six-month extensions making its commercial operation date, January 3, 2021. Seth’s Way’s developer, Navisun, LLC, acquired Seth’s Way from the original developer that applied for the COE on April 9, 2020. Upon acquiring Seth’s Way, Navisun intended to construct the Project in the spring of 2020 and become operational by the fourth quarter of 2020. Navisun immediately started working on finalizing the Project’s design and acquiring the required building permits.

### **1. Industry-Wide and Governmental Delays due to COVID-19**

Due to delays caused COVID-19, the Project still has not received all the required permits as of the date of filing this petition. Seth’s Way original developer had conditioned approval for the Project in 2018 and 2019. On March 18, 2019, the West Greenwich Planning Board approved Seth’s Way Development Review Permit Application provided 1) the Town Planner’s comments were met; 2) Final Approval is done “administratively;” 3) Seth’s Way provided a decommissioning bond; and 4) Seth’s Way provided a buffer planting bond.

See **Exhibit A**. Until all conditions are met for the Development Review Permit, Seth's Way cannot receive its building permit. Navisun sought to satisfy the outstanding conditions during a global pandemic.

In June 2020, Navisun initiated contact with the Town of West Greenwich's Planning Department to fulfill the conditions required for the Development Review Permit. As a preliminary submission, ESS Group submitted the re-developed plans to the Planning Department on July 10, 2020. On July 17, 2020, West Greenwich's Planning Department requested the proposed subdivision for the abutting property, which was originally submitted in January 2020, be shown on the permitted set of plans. Seth's Way amended the re-developed plans and submitted the Final Development Plan Review package to the Planning Department on August 14, 2020. On September 17, 2020, the West Greenwich Planning Board approved all conditions on the Project's Development Plan Review. However, Seth's Way still has not been issued a Building Permit.

West Greenwich's Planning Department required an executed Decommissioning Bond for the project before it would issue a building permit. Seth's Way submitted a Decommissioning Estimate to the Planning Department on August 26, 2020. The Planning Department responded on September 8, 2020 stating it was necessary to show proof of registration with the Rhode Island Secretary of State and authorization by the Rhode Island Department of Business Regulation to offer insurance in Rhode Island. Seth's Way responded with the Rhode Island Certificate of Compliance from Navisun's surety on September 28, 2020. A final surety bond was executed on October 26, 2020. The month-long delay to obtain the surety bond was beyond Seth's Way's control.

Ultimately, Navisun’s pursuit of the conditions to receive its Development Review Permit—and ultimately its building permit—were stalled by last spring’s COVID-19 shutdowns. The West Greenwich Town Hall closed for a period due to public health concerns delaying all relevant permits and the insurance agency was operating remotely. On March 28, 2020, Governor Raimondo signed Executive Order (“EO”) 20-14 which instituted a stay and work from home order. On April 10, 2020—the day after Navisun acquired the Project—EO 20-23 extended the stay and work at home order. On May 8, 2020, EO 20-32 lifted the stay and work at home order but still encouraged “working remotely to the greatest extent possible.” Any person who was capable of working remotely was encouraged to continue working remotely. On May 29, 2020, EO 20-40 reopened office-based businesses limited to fifteen (15) workers on site while still encouraging employees to work remotely. On June 29, 2020, EO 20-50 initiated Phase II of reopening the Rhode Island economy and expanded the number of workers allowed on site in office-based businesses to 66% of workers. The 66% limitation remains in force to date.

As a result, West Greenwich’s Town Hall has been closed to the public and Seth’s Way received limited review and comments regarding the Project and experienced unavoidable delays in obtaining permits. Projects that commence construction are ineligible for the REG program. Navisun now cannot complete construction by the required certification date so it cannot proceed on Seth’s Way and preserve its right to apply for a certificate of eligibility in future REG program years (if necessary). Construction will commence as soon as possible should the Commission grant the requested extension.

In addition to the Governor’s emergency orders, Seth’s Way experienced unavoidable delays with its product suppliers. In June, Seth’s Way’s general contractor, Duane Moulton of

CMK Construction, told Navisun about potential product delivery and logistics delays from required work restrictions due to COVID-19. Specifically, Moulton stated that the lead times to acquire any racking and alternating current (“AC”) equipment—like transformers, AC panel boards, and SEL Relays—were approximately 20 to 24 weeks. Multiple suppliers, vendors, and contractors provide Navisun this equipment and all experienced delays due to COVID-19. Many suppliers declared COVID-19 a force majeure event. Navisun already had in its possession the solar panels and inverters for the Project. However, Navisun did not possess all the racking and AC equipment it required and did not order the equipment prior to acquiring final approval for its permits, to avoid unrecoverable losses. Coordinating shipments of the racking and AC equipment from multiple entities, which could not guarantee timely delivery due to the pandemic, with an unknown permitting timeline added another level of risk and uncertainty that hindered Seth’s Way’s ability to timely achieve its commercial output.

## **2. Narragansett’s Delay in Denial of Request**

On March 27, 2020, Narragansett declared its own force majeure indicating that it will be stalled in performance of its statutory obligations regarding the interconnection of renewable energy projects. According to its website, “days declared as a Force Majeure Event extends the applicable time frames to measure the Company’s performance.” Narragansett’s force majeure due to COVID-19 acknowledges the difficulties the industry has been experiencing during the pandemic.

On August 20, 2020, Seth’s Way contacted Narragansett to request an extension to achieve the Project’s output to account for delays caused by COVID-19 per the process outlined in PUC Order No. 23843 from PUC Docket 5029 (the “Order”). Seth’s Way informed Narragansett of the permitting and construction delays described above. After getting no

response for two weeks, Seth's Way contacted Narragansett on the status of its request on September 2. Seth's Way contacted National Grid again on September 16, 2020, after another two weeks without an update. On September 16, 2020, Narragansett, acknowledged its delay in responding to the request and said it placed the extension request on a meeting agenda with Narragansett's counsel. On September 24, 2020, and again on October 2, 2020, Seth's Way contacted Narragansett for any further updates from the meeting with its counsel.

On October 5, 2020, Narragansett asked that Seth's Way draft a letter "explaining explicit details pertaining the construction and supply chain delays by [October 9, 2020]." Seth's Way submitted the letter to Narragansett on October 27, 2020.

On October 28, 2020, Narragansett denied the extension request on the ground "there are no COVID extensions being granted for any ReGrowth projects other than small scale solar as they do not have the opportunity to request extensions" and that "REG Tariff Section 3(f) doesn't allow the Company to grant any further extensions to Commercial Scale projects." Additionally, Narragansett shared its conclusion that the Order did not apply to Seth's Way, despite its enrollment in 2018, because the Project had actually participated in the third enrollment period of the 2017 program. Narragansett took two months to issue this decision, to Navisun's disadvantage.

Counsel for Seth's Way conferred with Narragansett counsel on November 10, 2020, at which time Seth's Way resolved that this petition was needed.

## **ARGUMENT**

Seth's Way asks the Commission to authorize Narragansett to extend the Project's deadline for commercial operation for two reasons. First, the grant of Seth's Way's requested extension is

consistent with public policy goals and imperatives. Second, the Commission has granted similar relief to REG projects and extended those projects' output deadlines.

Like all other industries, the renewable energy industry is severely impacted by COVID-19. Refusing timeline relief creates pressure to undertake practices that violate public health policy imperatives. This unforeseen and obstructive public health pandemic warrants flexibility for development and construction schedule delays to protect public health.

The grant of an extension on these facts is also consistent with the purposes of the REG law. Those purposes are to “facilitate and promote installation of grid-connected generation of renewable energy; support and encourage development of distributed renewable energy generation systems; reduce environmental impacts; reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; diversify the state’s energy generation sources; stimulate economic development; improve distribution system resilience and reliability; and reduce distribution system costs.” The statutory goal for REG project production is forty (40) megawatts of enrollment in the 2017 program year. The only program year that Narragansett exceeded the REG program’s 40 MW goal was the 2019 program year. Every other program year, including the year this project was enrolled (2017), Narragansett undersubscribed the REG program which severely undercuts the purposes and benefits, both monetary and environmental, the program is designed to achieve. The refusal to extend the deadline for delivery of this Project due to COVID-19 undermines achievement of that goal. Therefore, fairness and equity calls for flexibility in development and construction schedules based on a totally unforeseeable public health crisis. Deadline flexibility for the COVID-19 pandemic promotes renewable energy development projects and all the ancillary benefits intended from the REG law.

Narragansett never intended the extension provisions to account for such unforeseen circumstances, such as a pandemic that produces industry-wide effects and delays. Rather, the extension provisions in the Tariff are considered reasonable to allow applicants to remedy unforeseen project development delays within their control, like the requirements outlined in the proposed projects' impact studies. *See* Docket No. 4536-A, Joint Rebuttal Testimony of Corinne M. DiDomenico and Jeanne A. Lloyd at 3 (Fe. 9, 2015). A global pandemic is an unforeseen event that is outside of the applicants control and was not contemplated in the development of the Tariff. Seth's Way, throughout its two lawfully allowed six-month extensions, has experienced prolonged delays and undue hardship due to COVID-19. As a result, Seth's Way has been unable to achieve its output deadline.

The Commission has granted such equitable relief for small- and medium-scale REG projects in the 2018 enrollment year affected by the COVID-19 pandemic. At its June 4, 2020 Open Meeting, the Commission approved a 120-day extension to the deadline for affected projects to achieve their output. The Order states,

[T]he existence of a global pandemic and its effects on the economy, supply chain, work rules, and permitting timelines represents an extraordinary event that would suggest the need for limited accommodations to meet the purposes of the Renewable Energy Growth Program. The Petitioner provided sufficient facts to support its request based on factors outside of its control resulting from the pandemic.

Order at 2–3. Equity calls for similar relief for affected REG projects in other enrollment years. The Order allowed relief under the Tariff in response to an extraordinary event—COVID-19—with broad, industry-wide effects as the petitioner in that matter provided sufficient facts demonstrating the petitioner's hardship. Similarly, Seth's Way has exhausted all administrative avenues of relief and has demonstrated, with detail, the hardship caused by the pandemic. The hardship Seth's Way endured was beyond its control and merits relief.



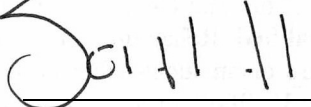
The intensity and duration of the pandemic and the scope of the government and industry delays were not foreseen or foreseeable when the Commission published the Order. Six-months after the Order, the spread and severity of COVID-19 is increasing in Rhode Island. The Commission granted limited relief to small- and medium-scale projects due to the extraordinary effects COVID-19 is having within the energy industry. Granting Seth's Way request for relief during the same extraordinary event is equitable.

**REQUESTED RELIEF**

For these reasons, Seth's Way asks that the Commission order Narragansett to allow Seth's Way a 210-day extension on the required deadline for commercial operation to receive its building permit and purchase the racking and AC equipment with prolonged lead times.

**SETH'S WAY SOLAR, LLC**

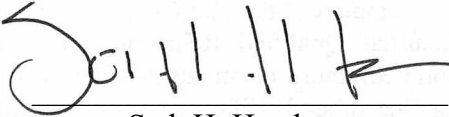
By their attorneys,  
**HANDY LAW, LLC**



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**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2020, I delivered a true copy of the foregoing document to National Grid by electronic mail.



Seth H. Handy

# Exhibit A

TEL: 401-392-3800  
FAX: 401-392-3805



MAILING ADDRESS  
280 VICTORY HIGHWAY  
WEST GREENWICH  
RHODE ISLAND 02817-2113

RECEIVED FOR RECORD  
Mar 22, 2019 01:52P  
West Greenwich, R.I.  
ERIN LIESE  
TOWN CLERK

March 22, 2019

8-12 STEARNS SQUARE LLC  
39 NOOSENECK HILL ROAD  
WEST GREENWICH, RI 02817

OAK SQUARE DEVELOPMENT LLC  
119 BRAINTREE STREET – SUITE 211  
ALLSTON, MA 02134

Attn: Jonathan Kent

Attn: John Typadis

Re: **SETH WAY SOLAR – ON AP 6, LOT 21-6; LIMITED SOLAR POWER UTILITY**

**DEVELOPMENT PLAN REVIEW**

Dear Jon and John,

At their regular meeting on March 18, 2019, the Planning Board voted (4-0) to Approve the following:

MOTION to APPROVE the Development Plan Review Application for a 0.998 megaWatt Solar System on 3.6 acres of the 15.96 acre parcel, AP 6, Lot 21-6. The plans have been prepared by ESS Group of Waltham, MA dated February 14, 2019 and revised as of March 11, 2019.

The Approval is granted subject to the following Conditions:

1. Per the Town Planner comments, dated February 22, 2019;
  - Fire Marshall approval is required
  - Pesticides cannot be used for planting maintenance, or any other purpose
  - Solar panels shall be crystalline or an approved equal
2. Final approval will be done Administratively
3. A decommissioning bond shall be provided, in an amount acceptable to the Town Planner, in a form acceptable to the Town Solicitor. The consultant has agreed to cost estimate revisions based on the Town Planner comments dated February 22, 2019
4. A buffer planting bond shall be provided, to remain in place for 2 years, in an amount equal to 15% of the cost of labor and materials so install the plantings.

The Findings of Fact are:

- a. Renewable energy systems of this magnitude do not adversely affect the rural character of the Town.
- b. The siting of the system will minimize visual impacts on abutting residential zones and abutting public roads.
- c. This Land Development project is in compliance with the Land Use and Economic Development Elements of the Comprehensive Plan.
- d. Access to the Solar System array will be through Seth Way, a private right-of-way.
- e. The Zoning Board of Review granted a Special Use Permit for this project on November 20, 2018.
- f. The initial application for this project was substantially complete in June of 2018 and is exempt from the Solar Ordinance adopted by the Town Council on December 12, 2018.

Any person or party aggrieved by this Decision may APPEAL to the Board of Appeals (Zoning Board of Review) in accordance with the Land Development & Subdivision Regulations. The Appeal must be filed within twenty (20) days of this posting – Friday March 22, 2019.



David E. Provonsil,

Town Planner

Cc: Town Clerk

Building Official