

February 17, 2021

The Honorable David A. Bennett, Chairman
Rhode Island House Committee
on Environment and Natural Resources
State House
Providence, RI 02903

**Re: National Grid’s Comments to Proposed Revisions to R.I. Gen. Law § 39-26.1-7-
Town of New Shoreham Act
Bill H 5357**

Dear Chairman Bennett:

On behalf of National Grid,¹ I write to submit the Company’s comments to Bill H 5357, which includes proposed revisions to R.I. Gen. Laws § 39-26.1-7 (“Proposed Legislation”). National Grid opposes the Proposed Legislation and respectfully urges members of this committee and the Legislature to reject the Proposed Legislation in its entirety.

The Proposed Legislation amends language relating to the Town of New Shoreham Project, and would require that interconnection and standby transformer costs be charged in transmission rates in a manner that socializes the costs throughout Rhode Island. In addition, the amendment requires that National Grid “reimburse the Block Island Power Company or its successor in connection with all funds expended by the Block Island Power Company or its successor in connection with all interconnection and standby transformer costs and National Grid shall socialize all costs of this reimbursement throughout Rhode Island.”

As a threshold matter, the Rhode Island Public Utilities Commission (“PUC”) has already adjudicated this issue regarding the socialization of the interconnection and standby transformer costs in Docket No. 4688, which the Proposed Legislation seeks to alter.² After briefing and a hearing, the PUC ruled 2-1 at its July 27, 2017 Open Meeting that the legislation could not be interpreted to allow a shifting of interconnection costs from BIPCO customers to the Company’s electric distribution customers.³

¹ The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”).

² In Docket No. 4688, the Block Island Power Company (BIPCO) filed a Petition for Declaratory Judgement in which they sought a declaratory ruling that BIPCO’s interconnection and spare transformer costs constituted “related facilities” as that term is used in the Town of New Shoreham statute, R.I. Gen. Laws § 39-26.1-7, and therefore, such costs should be socialized to all Rhode Island electric distribution customers. National Grid objected to BIPCO’s Petition on grounds that, among other things, such an interpretation was inconsistent with Federal Energy Regulatory Commission (FERC) precedent and contrary to the FERC-approved terms of the ISO New England Inc. Transmission, Markets and Services Tariff (ISO-NE Tariff).

³ See Open Meeting Tr. at 28. A written Order has not yet been issued in this docket.

As more fully discussed below, National Grid opposes the Proposed Legislation on federal preemption and constitutional grounds.

Federal Preemption Issues

Interconnection of transmission facilities and allocation of costs in transmission rates are subject to the jurisdiction of the FERC under the Federal Power Act. Subsection (f) of the Town of New Shoreham statute recognizes FERC's jurisdiction over the ratemaking and cost allocation proposed by the statute.⁴

Pursuant to FERC ratemaking principles and the ISO-NE Tariff approved by FERC, costs to connect a customer receiving local transmission service are generally charged to the applicable transmission customer under what is known as a Local Network Service Agreement between the customer, the Company's transmission affiliate, New England Power Company ("NEP"), and ISO-New England Inc. ("ISO-NE"). NEP is a public utility subject to the jurisdiction of FERC that owns transmission facilities located in New England. NEP's primary business is the transmission of electricity at wholesale to electric utilities and municipalities in New England. NEP operates transmission facilities that it owns directly as well as certain transmission facilities owned by its distribution affiliates in New England pursuant to integrated facilities agreements under NEP's FERC Electric Tariff No. 1 (Tariff No. 1). NEP acts as the transmission provider for itself and its New England distribution affiliates, including the Company. All of NEP's transmission facilities, including those owned by its New England distribution affiliates, are subject to the operating authority of ISO-NE and are available for open access transmission service under the rates, terms and conditions of the ISO-NE Tariff. Pursuant to state law, the Company owns all National Grid USA transmission facilities located in Rhode Island. Pursuant to Schedule III-B of Tariff No. 1, NEP operates and controls the transmission facilities of itself and its distribution affiliates, including the Company, on an integrated basis. Schedule III-B of Tariff No. 1 includes a formula rate under which NEP reimburses the Company for NEP's use of the Company's facilities to provide FERC jurisdictional transmission service.

In establishing the applicable rates to be charged to a local transmission customer under the ISO-NE Tariff, NEP is guided by whether such facilities qualify as Direct Assignment Facilities under the "sole use" test. Direct Assignment Facilities are facilities or portions of facilities that are constructed for the sole use/benefit of a particular transmission customer. Interconnection facilities built for a transmission customer like the Block Island Power Company ("BIPCO") exist for the sole use and benefit of the interconnecting customer. No other customer shares in the use of or benefit of these facilities; therefore, under the terms of the ISO-NE Tariff and FERC precedent, such costs are appropriately the direct cost responsibility of the interconnecting customer and should not be socialized throughout Rhode Island. Similarly, a

⁴ R.I. Gen. Laws § 39-26.1-7(f) provides that, "[t]he revenue requirement for the annual cable costs shall be calculated in the same manner that the revenue requirement is calculated for other transmission facilities in Rhode Island for local network service under the jurisdiction of the federal energy regulatory commission."

spare transformer serves no other purpose in the New England control area; therefore, NEP would treat that transformer as a Direct Assignment Facility. Notably, in Docket No. 4688, the PUC accepted the Company's argument that BIPCO's interconnection facilities were solely used facilities that were of no benefit to any other customers, except BIPCO customers.⁵

Under the Federal Power Act, FERC has sole jurisdiction over NEP's transmission rates and the allocation of costs for facilities built to interconnect transmission customers. FERC has exercised its jurisdiction by accepting the relevant provisions of the ISO-NE Tariff. If the Company were now required, through the Proposed Legislation, to reimburse BIPCO for its interconnection and spare transformer costs and then socialize those costs throughout Rhode Island, this would upset the already accepted cost allocation method, requiring the agreements to be modified and such modifications to be submitted to FERC for approval. Also, the Proposed Legislation serves no legitimate public purpose. FERC's longstanding policy on sole-use facilities up to the point of interconnection would indicate that it is not in the public interest to socialize the cost of interconnection facilities that are for the sole-use of a wholesale customer. This policy has been in place for decades. Furthermore, allowing BIPCO to bypass the requirement that sole-use facilities be the direct cost responsibility of BIPCO would treat BIPCO, as a wholesale customer, differently from other wholesale customers, unduly discriminating against other customers, which is prohibited under the Federal Power Act and FERC. Such treatment would also unfairly shift costs of BIPCO's sole use facilities from BIPCO's customers to all electric distribution customers in the state.

The Proposed Legislation ignores the fact that FERC's jurisdiction overrides the Town of New Shoreham statute with respect to cost recovery for transmission facilities, not the other way around, and accordingly, violates the federal preemption doctrine.

Constitutional Issues

In addition to the federal preemption issues reference above, the Proposed Legislation arguably may violate the Separation of Powers Clause, Art. 5 of the Rhode Island Constitution, and the Contract Clause, Art. 1, §10 of the U.S. Constitution and Art. 1, §12 of the Rhode Island Constitution. As discussed above, the PUC already ruled against the socialization of the interconnection and standby transformer costs in Docket No. 4688. The retroactive application of the Proposed Legislation would effectively overrule the PUC's decision in that docket. The Separation of Powers Clause prohibits the legislature from exercising judicial or quasi-judicial functions that are reserved exclusively to an administrative agency or the courts.

In addition, requiring the Company to retroactively reimburse BIPCO for all interconnection and standby transformer costs, and to socialize such costs throughout Rhode Island would substantially impair the existing service agreements that BIPCO representatives executed to implement the transmission cost recovery under the existing Town of New Shoreham statute, and which FERC accepted. The contract clauses of both the Rhode Island and

⁵ See Open Meeting Tr. at 25.

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United States Constitutions limit the power of the government to enact laws that either modify its own contracts or impair the obligations of a private party to a contract. As discussed above, modifying the cost allocation method with respect to existing service agreements would require such modifications to be submitted to FERC for approval. There is no legitimate public policy for doing so, and, therefore, such modifications are not reasonable or appropriate in light of existing FERC policy and precedent.

Accordingly, National Grid respectfully requests that you consider these comments when reviewing the Proposed Legislation and reject it in its entirety.

Thank you for your attention to this matter. If you have any questions, please contact me at 401-474-8127.

Sincerely,

A handwritten signature in black ink that reads "Michael Ryan". The signature is written in a cursive, slightly slanted style.

Michael F. Ryan