STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE:	**HEXAGON ENERGY, LLC**	**:**	
	PETITION FOR DECLARATORY	**:**	**DOCKET NO. 5060**
	JUDGMENT	**:**	

ORDER

I. Introduction

On August 13, 2020, Hexagon Energy, LLC (Hexagon) filed a Petition for Declaratory Judgment with the Public Utilities Commission (Commission).[1] The Petition sought a finding from the Commission that two of the Petitioner's proposed solar generation projects did not violate certain rules which determine the conditions for projects to submit bids in a utility renewable energy procurement program referred to as the Renewable Energy Growth (REGrowth) Program.[2]

The specific rule in question, referred to as the "anti-segmentation" rule, is set forth in Rhode Island laws and reflected in an applicable utility tariff.[3] In effect, the rule is designed to treat projects of the same renewable technology being built on the same parcel or contiguous parcels as one large project which cannot be bid into the procurement process as two separate projects unless 24 months has passed between the two projects being built and becoming operational.[4]

The project size makes a significant difference, because the bidding rules have ceiling prices which cap the bid price that may be offered. The ceiling price is designed to protect

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[1] All filings in this matter can be accessed at: http://www.ripuc.ri.gov/eventsactions/docket/5060page.html or at the PUC's office at 89 Jefferson Boulevard, Warwick, RI 02888.
[2] The statutory provisions for the program are set forth in R.I. Gen Laws, Chapter § 39-26.6.
[3] R.I. Gen Laws § 39-26.6-9; RIPUC No. 2152-G Sheet 7. The term "tariff" can have different meanings in different contexts. Used in the utility regulation arena, which is governed by the Commission, "tariff" means more than a charge. It also refers to the terms and conditions for service and implementation of other regulations and rules required to provide utility service or implement policy objectives.
[4] R.I. Gen. Laws § 39-26.6-9 expressly prohibits "a project developer [from segmenting] a distributed generation project on the same parcel or contiguous parcels into smaller-sized projects in order to fall under a smaller-size project classification."

ratepayers from over-paying for the renewable energy and to protect bidders of small projects from unfair competition when competing against larger projects with economies of scale. The smaller the project, the higher the ceiling bid price and, conversely, the larger the project, the lower the ceiling bid price. Here, the Petitioner is seeking to be able to bid two projects into smaller class sizes that allow for higher bid prices and, as a consequence, higher costs to ratepayers.

For the reasons given in this Order, the Petitioner's request that the Commission find its proposed projects do not violate the anti-segmentation prohibition is denied.

II. Procedural Travel and Facts

A. Procedural Travel of the Case

The Petition was filed on August 13, 2020. The Commission identified National Grid as an indispensable party and required its participation. National Grid complied and submitted comments. The Commission also sought discovery and requested the Petitioner to file pre-filed testimony to support the facts asserted in the Petition. The Petitioner complied, but at the same time complained about the Commission's request, claiming that the Commission's discovery requests were "not designed to lead to evidence probative of the matter in dispute."[5] In addition, the Petitioner asked the Commission to rule promptly on the request. The Division of Public Utilities and Carriers (Division), an indispensable party in all Commission proceedings, also sought discovery. A discovery dispute arose between Hexagon and the Division, during which the Division complained that Hexagon's discovery responses were unresponsive.[6] In response to the Division's discovery complaint, Hexagon again asked the Commission to reject the discovery

[5] Hexagon Response to Division Data Request(Sept. 9, 2020.
[6] Letter from the Division of Public Utilities and Carriers (Sept. 16, 2020).

requests and rule on the Petition.[7] After considering the information already provided, the Commission then scheduled an open meeting to decide the case.

B. Summary of the Facts

Hexagon has proposed two commercial scale solar projects in the Town of Burrillville on two adjacent lots: 1) a 991 kW of ground-mounted solar installation classified as "CRDG-Commercial Solar" on one parcel, Lot 12 (CRDG project or Superior Solar); and 2) a 991 kW Commercial Solar "carport" on the adjacent parcel, Lot 11 (carport project or Semistream Solar), where the solar panels are placed on top of a structure under which trucks would be able to park. Each of the proposed projects are sized at only 9 kW less than the next size classification (large solar), 1,000 kW. Hexagon stated that the sizing in each instance was set by a local solar ordinance at the time of design and was not because of a desire to fall under a smaller-size project classification.[8] According to National Grid, Hexagon is pursuing separate electrical interconnections for each installation.[9]

The original site layouts for each of the proposed solar installations were provided in discovery.[10] The site layout for the CRDG-Commercial Solar[11] ground mounted installation (CRDG Layout) on Lot 12 shows that the access road to reach this installation from the public way passes directly through Lot 11 upon which the carport installation is proposed to be constructed. Thus, Lot 12 and Lot 11 are linked to the CRDG Commercial Solar installation. In addition, the CRDG Layout shows a branch of the access road on Lot 11 entering the area where the carport

[7] Hexagon's Second Response and Objection to Division's Data Requests (Sept. 17, 2020). Hexagon requested attorneys' fees against the Division to reimburse Hexagon's costs. Even if sanctions were warranted, the Commission does not have the authority to issue such sanctions against the Division. In any event, the request was not granted.
[8] Prefiled Test. of Buzz Becker at 5 (Sept. 4, 2020).
[9] Comments of The Narragansett Electric Company d/b/a National Grid at 1 (Aug. 31, 2020).
[10] Response to PUC 1-1.
[11] As will be explained later in the order "CRDG" is an acronym for "Commercial Remote Distributed Generation."

installation would take place, as shown separately in the site layout for the carport installation (Carport Layout).[12]

Hexagon states in its Petition that the CRDG-Commercial Solar installation on Lot 12 bid into the Renewable Energy Growth 2019 program and was awarded a bid of 20.44 cents per kWh for 20 years.[13] This was slightly under the 2019 ceiling price of 20.53 cents per kWh. Had the project been 9 kW larger, it would have been required to bid in the CRDG-Large Solar class, which had a 2019 ceiling price of 17.42 cents per kWh, or 3.11 cents per kWh less than the Commercial Solar class. Hexagon did not submit any bid for its second carport project in 2019.

If the carport installation is treated as a separate project from the CRDG Commercial Solar ground mounted installation, as requested in the Petition, the carport project would qualify as a Commercial Solar project with a ceiling price of 18.25 cents per kWh in the 2020 program (plus a 6 cent per kWh adder designed to support the carport structure). In contrast, if the two installations fall under the segmentation prohibition, the solar carport project could not go forward for 24 months, unless the CRDG project withdrew its earlier award and the combined installations were awarded bids under the 2020 rules as Large Solar, a portion of which would qualify as a carport.[14] The ceiling prices under the 2020 program are now 15.70 cents per kWh for CRDG-Large Solar and 13.65 cents per kWh for "Large Solar" (plus the 6 cent per kWh adder for a carport). Thus, the applicability of the segmentation rule would substantially reduce the cost to ratepayers for the two proposed solar installations, but likewise substantially reduce the revenue to the project developer for the projects.

[12] The CRDG Layout also contains a text box stating: "79 full panels this configuration (92 shown on concept from Hexagon) Are partial sections acceptable? (looks like more room for panels on the east side)"
[13] Petition at 2.
[14] See Enrollment Rules, section 2.1.5.

According to National Grid and emails provided in discovery by Hexagon, when Hexagon inquired whether it could bid the carport project in November of 2019, National Grid evaluated the two installations against the anti-segmentation exceptions in the tariff and concluded that none of the four exceptions were met, declaring the carport project ineligible to bid unless Hexagon waited 24 months.[15] The Company then later "encouraged" Hexagon to apply to the Commission for relief from the terms of the tariff.[16]

The Petition asserts that the proposed projects fall within the fourth exception to the anti-segmentation prohibition in National Grid's tariff. The tariff states that:

> [s]ubject to the exceptions below, projects proposed by a developer on the same parcel or contiguous parcels will be presumed to have been segmented and only one of the projects will be eligible for a Certificate of Eligibility. An Applicant may appeal the Company's decision to the Commission.
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> Before making its determination, the Company will look for one of the following exceptions to the prohibition on project segmentation:
>
> …iv. If two or more projects are proposed on same or contiguous parcels and their combined nameplate capacity does not total to an amount that exceeds the class nameplate range of the enrollment class of the individual projects.[17]

The Petition also states that National Grid had no objection to the Petition, that even though it did not consider the projects to be improperly segmented it lacked the discretion to interpret its tariff, and that it was not able to approve the enrollment of both projects in the REGrowth Program. Subsequent to the filing of the Petition, National Grid, through counsel, filed Comments. The Comments expressed that if both projects were allowed, both would qualify within the Commercial Solar category. The Comments provided a detailed explanation of why the two projects did not meet each of the listed exceptions. Contrary to Petitioner's assertion, National Grid provided that

[15] Response to Division Data Request 1-9.
[16] Comments of The Narragansett Electric Company d/b/a National Grid at 2.
[17] RIPUC 2152-G Sheet 7.

"[a]dding the nameplate capacity of Hexagon's two projects (991 kilowatts (kW) each) would exceed the maximum capacity allowable as 'Commercial Scale' solar, which the Company perceives to be 'the enrollment class.'" The Company concluded: "[Hexagon] cannot meet any of the exceptions, in full."[18]

III. Discussion

A. The Purpose and Intent of the Renewable Energy Growth Statute

In 2014, the Rhode Island General Assembly enacted the Renewable Energy Growth Program (Program).[19] The purpose of the Program is:

> 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 siting of renewable energy projects in the load zone of the electric distribution company; diversify the energy generation sources within the load zone of the electric distribution company; stimulate economic development; improve distribution system resilience and reliability within the load zone of the electric distribution company; and reduce distribution system costs.[20]

In order to carry out the stated purposes, the law further provides that:

> a tariff based, renewable-energy distributed-generation financing program, hereinafter referred to as the renewable energy growth program, is hereby established with the intention of continuing the development of renewable-energy distributed generation in the load zone of the electric distribution company **at reasonable cost**. The program shall be designed to finance the development, construction, and operation of renewable-energy distributed-generation projects over five (5) years through a performance-based incentive system that is **designed to achieve specified megawatt targets at reasonable cost through competitive processes**. The renewable-energy growth program shall be implemented by the electric-distribution company, and guided by the distributed-generation board, in consultation with the office of energy resources, subject to the review and supervision of the commission.[21] *(emphasis added).*

[18] Comments of The Narragansett Electric Company d/b/a National Grid (Aug. 31, 2020), p. 2.
[19] R.I. Gen. Laws § 39-26.6-1 to 27.
[20] R.I. Gen. Laws § 39-26.6-1.
[21] R.I. Gen. Laws §39-26.6-2.

In short, the purpose of Chapter 26.6 of the REGrowth law is to incentivize the development of renewable energy distributed generation at a reasonable cost to ratepayers.

B. Competitive Bidding and the Purpose of Ceiling Prices

To advance the purpose of incentivizing distributed renewable generation at reasonable cost, the REGrowth Program contemplates bidding to achieve annual targets of different types of renewable generation, i.e., solar, wind, hydro power, and anaerobic digestion. Accordingly, the law requires solicitations that utilize competitive bidding at pre-set ceiling prices for non-residential projects. The ceiling prices provide a limit on how much a particular project can bid to obtain performance-based payments that finance the project. The statutory scheme also relies upon the Distributed Generation Board (DG Board) to propose ceiling prices, developed from a certain set of guidelines. Specifically, the DG Board and the Commission are guided by the following principle found in the law:

> The ceiling price for each technology should be a price that would allow a private owner to invest in a given project ***at a reasonable rate of return***, based on recent reported and forecast information on the cost of capital, and the cost of generation equipment.[22]

The statute establishes different solar project size categories:

> (1) Large scale: solar projects from one megawatt (1 MW), up to and including, five megawatts (5 MW) nameplate capacity;
>
> (2) Commercial scale: solar projects greater than two hundred fifty kilowatts (250 kW), but less than one megawatt (1 MW) nameplate capacity;
>
> (3) Medium scale: solar projects greater than twenty-five kilowatts (25 kW), up to and including, two hundred fifty kilowatts (250 kW) nameplate capacity; and

[22] R.I. Gen. Laws § 39-26.2-5(a)*(emphasis added).* A section in the Renewable Energy Growth laws, R.I. Gen. Laws § 39-26.6-5(d) cross-references R.I. Gen. Laws § 39-26.2-5(a) for purposes of establishing the parameters for the development of the ceiling prices.

(4) Small scale: solar projects, up to and including, twenty-five kilowatts (25 kW) nameplate capacity.[23]

As designed and implemented, the DG Board recommends different ceiling prices for each of the applicable size categories.[24] Typically, due to economies of scale, the larger the project size within the same generation technology group, the lower the unit price needed to finance the project. Each year, the ceiling prices have reflected this principle without exception.[25] For example, the ceiling prices for the 2020 program year are shown below in Table 1. These prices are the unit prices needed for a project at the given size classification to be able to finance and operate "at a reasonable return."

In viewing Table 1, it is important to note the price difference between the "Commercial Solar" and the "Large Solar" categories. A large-scale solar project is capped at 13.66 cents per kWh, while the commercial solar project is capped at 18.25 cents per kWh. This results in a very significant 4.59 cents per kWh differential.

Table 1. 2020 Renewable Energy Growth Ceiling Prices.[26]

Renewable Energy Class	**Eligible System Size**	**Ceiling Price (¢/kWh)**
Small Solar I (15 Year Tariff)	1 to 10 kW DC	29.65
Small Solar II	11 to 25 kW DC	23.45
Medium Solar	26 to 250 kW DC	21.15
Commercial Solar	251-999 kW DC	18.25
Large Solar	1 to 5 MW DC	13.65
Wind	0 to 5 MW DC	18.85
Community Remote – Wind	0 to 5 MW DC	21.65

[23] R.I. Gen. Laws § 39-26.6-7(b).
[24] Common sense application of economic principles suggest that unit prices ordinarily would be different for each project size due to economies of scale and generation capability.
[25] *See* Order No. 23849, App. A (Docket No. 4983) (Jun. 23, 2020); Order No. 23827, App. A (Docket No. 4892) (Apr. 1, 2019); Order No. 23630, Exh. B (Docket No. 4774) (Apr. 1, 2018); Order No. 23771, Exh. A (Docket No. 4672) (Feb.10, 2017); Order No. 23625, Exh. A (Docket No. 4589) (Apr. 1, 2016).
[26] Order No. 23849, App. A (Docket 4983) (Jun. 23, 2020).

Anaerobic Digestion	≤ 5 MW DC	15.35
Small Scale Hydropower II	≤ 5 MW DC	21.45
Community Remote – Commercial Solar	251-999 kW DC	20.99
Community Remote – Large Solar	1 to 5 MW DC	15.70

C. The Prohibition Against Segmenting Large Projects Into Smaller Ones

Because there are significant differentials between the cost per kWh needed to finance a stand-alone small project compared to a large project that can capture economies of scale, the statutory scheme also includes another important provision designed to protect ratepayers and competitors through the bidding processes.

In order to assure that the solicitations cannot be used by participants to bid into smaller size classification and, as a result, obtain a higher price that yields an unreasonably high profit margin for the project that is funded by ratepayers, the REGrowth Program contains a statutory prohibition against large projects being segmented into smaller projects. Specifically, Section 9 states in pertinent part:

> In no case may a project developer be allowed to segment a distributed-generation project on the same parcel or contiguous parcels into smaller-sized projects in order to fall under a smaller-size project classification. . . . Further, a project shall not be considered to have been segmented if:
>
> > (1) There is a lapse of at least twenty-four (24) months between: (i) The commencement of construction of new distributed-generation units on a parcel that is the same as, or is contiguous with, a parcel upon which a distributed-generation project has already been constructed; and (ii) The operation date of the pre-existing project; or

(2) The new project is a different renewable technology.[27]

This segmentation prohibition is extremely important to assure that the ratepayers funding the generation projects are paying a price that is reasonable. The ceiling price parameters are designed to assure that developers obtain a price that allows for the financing of the project with a reasonable return on investment, while at the same time assuring that ratepayers are not over-paying, i.e., paying a price that results in unreasonable returns to the project developers. If large projects segment their projects into smaller projects, it would result in bidders being able to bid prices under ceiling prices that are substantially higher than needed to reasonably finance the generation project. Hence, for the protection of ratepayers, the statute prohibits developers from segmenting projects.

The prohibition against segmentation also protects the integrity of the bidding processes among competitors. If a large project bids against smaller sized projects, the larger project would almost always be able to bid a lower unit price than smaller projects. This would undermine the intent of the statute to properly incentivize smaller sized projects which could never fairly compete because of the economies of scale advantage that the segmented projects would enjoy. For all these reasons, the project segmentation rule plays a vital role in the administration of the REGrowth Program.

D. Enrollment Rules and the National Grid Tariff Provisions

While the statute provides a general prohibition against segmentation, the REGrowth Program is administered through a set of Enrollment Rules and a Tariff that is filed for approval with the Commission at the time the ceiling prices are set. With respect to the administration of the project segmentation prohibition, National Grid has an approved tariff provision which

[27] R.I. Gen. Laws § 39-26.6-9.

unambiguously sets forth the manner in which it is required to enforce the segmentation prohibition.[28] The pertinent language from the tariff provision is quoted below:

> 5. Project Segmentation
>
> Rhode Island law prohibits project segmentation in the REGrowth Program. In no case may a project developer be allowed to segment a distributed generation project on the same parcel or contiguous parcels into smaller sized projects in order to fall under a smaller size project classification. Subject to the exceptions below, projects proposed by a developer on the same parcel or contiguous parcels will be presumed to have been segmented and only one of the projects will be eligible for a Certificate of Eligibility. An Applicant may appeal the Company's decision to the Commission.
>
> Before making its determination, the Company will look for one of the following exceptions to the prohibition on project segmentation:
>
> i. The DG Projects use different renewable energy resources; or
>
> ii. The DG Projects use the same renewable energy resource, but they are: (1) electrically segregated; (2) separately metered; and (3) can demonstrate that 24 months have elapsed between the commencement of operation for one DG Project and the commencement of construction of any additional DG Project.
>
> iii. DG Projects installed on contiguous parcels will not be considered segmented if they serve different Non-Residential Customers and both Customers receive bill credits under Option 2 as defined in Section 8.c.
>
> iv. If two or more projects are proposed on same or contiguous parcels and their combined nameplate capacity does not total to an amount that exceeds the class nameplate range of the enrollment class of the individual projects.[29]

It is important to note that language in the tariff is clear and not ambiguous. It states that "projects proposed by a developer on the same parcel or contiguous parcels will be **presumed** to have been segmented and only one of the projects will be eligible for a Certificate of Eligibility."[30] There are **only** four exceptions that allow the presumption of segmentation to be overcome. The

[28] RIPUC No. 2152-G, Sheet 7, Section 5.
[29] *Id.*
[30] *Id.(emphasis added).*

tariff does not contemplate a general review of the circumstances of the two projects on the same or contiguous parcels, and there is no room for subjective review of the circumstances surrounding a particular project. However, if an applicant believes that the utility has misapplied the tariff provision, there is a right to appeal the utility's decision to the Commission.

E. The Community Remote Distributed Generation Classification

As shown in Table 1 above, there are numerous distributed generation classifications. Two of the classifications fall into the statutorily defined category referred to as "Community Remote Distributed Generation" (also referred to as CRDG).[31] They are listed in Table 1 as "Community Remote – Commercial Solar" (CRDG-Commercial Solar) and "Community Remote – Large Solar" (CRDG-Large Solar). The size classifications for the CRDG match the size classifications in Table 1 for "Commercial Solar" and "Large Solar."

There is no technical system difference between CRDG-Commercial and Commercial Solar. Nor is there a technical system difference between CRDG-Large Solar and Large Solar. CRDG is simply a commercial or large size solar project that is given the right to sell credits to remote customers, much like what occurs in net metering, that match the output of the generating unit. The administration of a CRDG project requires additional administrative costs in connection with allocating and selling billing credits to remote customers. For that reason, the statute allows an adder which results in a ceiling price that is not more than "fifteen percent (15%) higher than the then-in-effect ceiling price for the same technology of the same size as recommended by the board and approved by the commission."[32] In other words, whatever the ceiling price is that is established for either the commercial or large size solar class, no more than 15% will be added to that ceiling price if the project is a CRDG project and will sell billing credits to remote customers.

[31] *See* R.I. Gen. Laws § 39-26.6-27.
[32] R.I. Gen. Laws § 39-26.6-27(e)(2).

The base price upon which the cap is essentially measured is the ceiling price from the same size non-CRDG classification. The purpose of the additional "up to 15%" is to compensate the developer for the administrative costs that will be incurred in selling the billing credits.

This is mathematically illustrated in Table 1, *supra*. Where the Commercial Solar ceiling price is 18.25 cents kWh, the CRDG-Commercial Solar ceiling price is 20.99 cents kWh which is approximately 15% higher than the 18.25 cents kWh for Commercial Solar. Similarly, where the Large Solar ceiling price is 13.65 cents kWh, the CRDG-Large Solar is 15.70 cents kWh, which is approximately 15% higher than 13.65 cents kWh for Large Solar. In sum, there is no technical difference between a ground-mounted project that is classified as a CRDG-Commercial Solar project and a ground-mounted solar project that is classified as a Commercial Solar project. The only difference is the additional amount of money that funds the CRDG project owner's administration and pay out of credits to its off-taker or remote customers.

F. Enrollment Rules for the Carport Pilot

For the first time, the 2020 Renewable Energy Growth Program is offering additional funding for a limited number of projects that install solar in the form of a carport that allows vehicles to park under the solar installation in a parking lot. The Commission approved carports as a part of a pilot program to assess the potential benefit of ratepayers funding carport structures but made no determination whether the benefits actually outweighed the additional costs to ratepayers. While the Commission made no finding that there necessarily were any public policy benefits, the Commission nevertheless allowed a pilot to go forward with a limited allocation of megawatts – allocating a carve-out of 2 MW to the Commercial Solar class and 4 MW to the Large Solar class – being allowed for projects that would be constructed on carports.[33]

[33] Order No. 23849 at 4 (Docket No. 4983) (Apr. 1, 2020).

Under the rules of the pilot program, any bidder desiring to develop a project in the form of a carport is required to bid into the Commercial Solar class or the Large Solar class, as applicable. In other words, the carport project is treated like ordinary ground-mounted solar for bidding purposes. Only after a bid is awarded, is 6 cents per kWh added to the winning bid price to fund the carport structure upon which the solar project would be mounted.[34] The Enrollment Rules also contemplate that a single project can be bid with a carport component and a non-carport component. The utility then calculates the 6 cents carport incentive based on the portion of the project that qualifies as a carport. The Commission also approved the following as the definition of a carport:

> [**T]he portion of** the direct current (DC) nameplate capacity for a Solar DG Project that is installed above a permeable and/or non-permeable existing or new permanent parking area and associated access and walkway areas (as recognized by the local municipal building and/or zoning department), which is installed in a manner that maintains the function of the area beneath the carport."[35] *(emphasis added)*

As contemplated in the rules, if there is a carport in the same location as other solar, it is not necessarily treated as a separate project.

DECISION

To the extent any party, developer, or the utility believes that the current Enrollment Rules and related Tariff needs to be changed, there is an annual opportunity for parties to participate in the proceedings that come before the Commission each year when National Grid and the Distributed Generation Board make filings for the next REGrowth program year. The filings are typically made in October of each year. In those proceedings, parties are free to argue for changes in the Enrollment Rules and the Company's Tariff that is used to administer the bidding and

[34] Enrollment Rules, section 2.1.5
[35] Order No. 23849 at 12 ftnt. 26 (Docket No. 4983).

eligibility criteria. However, seeking a significant change in the eligibility rules in the middle of a program year is neither efficient nor fair to other stakeholders.

In that regard, it is apparent from the discovery process that Hexagon was planning to develop a carport project even before the 2020 program filings were made by the Distributed Generation Board and National Grid in Docket 4983 in October 2019. The Carport Site Layout on Lot 11 bears an apparent "Master Plan Submission" date of "09-12-19."[36] The hearings on Docket No. 4983 did not take place until February 2020 well after Hexagon's initial inquiries. As early as November 6, 2019, Hexagon was in communication with a representative of National Grid who sent the Project Segmentation language of the tariff that was in effect at that time to Hexagon.[37] The emails are clear evidence that Hexagon was aware of the fact that the segmentation issue could disrupt its planned carport project. In fact, a representative of the Office of Energy Resources who was sent a copy of the emails on the same day, informed Hexagon of the 24-month waiting period and that the proposal of whether to include carports in the 2020 REGrowth Program was still pending before the Commission.[38] Hexagon had ample time to address its concerns with the Commission, well after planning for the carport took place and well after Hexagon submitted its bid for the CRDG Commercial Solar ground mounted project. However, instead of introducing this issue during the time the Commission was considering the terms of the 2020 REGrowth Program, it chose to wait and did not file its Petition for a Declaratory Ruling until August 2020. After filing its Petition, Hexagon sought a rapid conclusion in order to be able to participate in the next imminent enrollment. Given the annual rulemaking process and what actually transpired, the Petition is neither timely nor the appropriate means to suggest, request, or otherwise seek an

[36] See site layout document submitted in response to PUC 1-1.
[37] Response to Div. 1-8.
[38] Response to Div. 1-9.

individual exception to an approved tariff. Nevertheless, the Commission will address the substantive merits of the request below.

In this case, the Petitioner is requesting a simple declaration that the carport project is not subject to the project segmentation rule because, according to the Petitioner, it falls within one of the exceptions. However, the effect of the Petitioner's request is to ask the Commission to treat the carport and CRDG projects differently than the rules set forth in the tariff require. The language of the tariff is clear and unambiguous and Petitioner's dissatisfaction with its application does not change this fact. Even National Grid, who apparently supports the idea of applying a new exception to the tariff, does not argue that the tariff is ambiguous. The tariff is clear, and the Company's evaluation of the project against the exceptions led National Grid to conclude that the project was not eligible to enroll until it waited 24 months.

There is no dispute about the factual findings relating to the noted exceptions of the segmentation prohibition embedded in the Company's tariff. In fact, the Petitioner does not actually challenge National Grid's factual determination. The findings are clear: (i) the two projects do not use different technologies because both are solar; (ii) twenty-four months have not elapsed between installations of the two projects; (iii) the "Option 2" bill credits exception is not applicable; and (iv) the combined nameplate capacity of the two projects exceeds the class nameplate range of the Commercial Solar class claimed for each project individually. Hexagon alleges that the fourth exception applies, but such an assertion collides with the unambiguous language of the tariff and the simple math: 991 kW plus 991 kW equals 1,982 kW. The combined nameplate capacity exceeds the nameplate range for the Commercial Solar class which is under 1,000 kW. Accordingly, National Grid applied the terms of the tariff properly to the project and its determination that none of the exceptions apply is affirmed.

The Petitioner relies on the fact that National Grid does not object to its sought-after exception and that National Grid has stated that it has no discretion to interpret its own tariff. This reliance is misplaced for several reasons. First, National Grid applied the terms of the tariff and determined that none of the exceptions were met. The fact that it has no objection to Hexagon's request is immaterial. Second, National Grid did, in fact, interpret its tariff and determined that the project does not qualify for any of the exceptions. Finally, National Grid's assertion that it lacks discretion to interpret its own tariff is illogical. It is self-evident that the Company has the discretion and duty to interpret its own tariffs. Otherwise, it could not conduct business transactions coherently with its customers, consistent with its obligation to serve all customers in a manner that does not unreasonably or arbitrarily discriminate among customers. National Grid might have occasion to interpret the terms incorrectly and be subject to Commission review, but the utility nevertheless must interpret the tariff in the first instance to administer its programs and services rationally.[39]

In considering Hexagon's Petition, the Commission emphasizes that the project segmentation rule is a very important feature of the REGrowth program to assure that ratepayers do not overpay for renewable generation. It is equally important to assure the integrity of bidding for smaller projects that could not typically compete against larger installations that can take advantage of economies of scale. In proposing the rules for enforcing the segmentation prohibition, National Grid proposed tariff conditions that presented a very straightforward way of determining whether the rule applied. The tariff subsequently was approved by the Commission, for *all* developers to follow. It is a clear, simple, and reasonable way to enforce the statutory prohibition. Absent these conditions, the Company would be making subjective judgments about the intent of

[39] When the terms are ambiguous, the utility always has the right to make a filing with the Commission to seek clarification or file to amend the tariff.

developers when a developer planned two projects on the same or contiguous sites, which could have many variations in configuration and history of project planning. In contrast, the prevailing rule is objective and fair to all developers regardless of their size. If two projects are on the same parcel or on continuous parcels, the projects are presumed to be segmented, unless one of four unambiguous and objective exceptions apply.

The recourse for a developer dissatisfied with the Company's application of its tariff provisions is to appeal the Company's decision to the Commission under the existing rules in order to present evidence that shows how the utility incorrectly applied the existing terms of the tariff. However, here the Petitioner is not appealing the decision and explaining why the Company applied the terms of its tariff incorrectly. Rather, Hexagon is asking the Commission to ignore the clear unambiguous language of the tariff and to effectively allow it a new exception never considered nor approved by the Commission. To allow this would be a discriminatory amendment to the tariff terms for one developer, based on criteria that was never put in place when the program rules were approved for uniform application. It would be discriminatory by affording preferential treatment to one developer, and excludes other developers who may have foregone the opportunity to develop projects on contiguous parcels because they clearly understood that any such developments would be rejected under the clear and unambiguous rules that were in place for the 2020 program year.

The implications of granting this exception also are significant, because they would effectively erode the segmentation rule in ways entirely inconsistent with the statute. The primary argument made by the Petitioner is that the CRDG class is an entirely different enrollment class than the enrollment class in which the carport project would bid. And since the carport project would have been required to bid in an entirely separate enrollment class than the CRDG

installation, the segmentation rule should not apply. But if the presence of two different enrollment classes becomes the determining factor for enforcing the segmentation rule, the same logic would apply to ordinary ground-mounted solar enrolled in the Commercial Solar class that happens to be built next to a CRDG Commercial Solar installation. For example, if there is a 991 MW Commercial Solar ground-mounted solar installation located next to a 991 MW CRDG Commercial Solar installation, rather than a carport, each would bid in different enrollment classes, like the Petitioner's preferred carport scenario. If the segmentation prohibition is avoided in that configuration, the project segmentation rule would be avoided in every instance where there is a CRDG-designated project on the adjacent parcel. This would be the case simply because CRDG is always in its own separate enrollment class unless both projects are CRDG and receive the extra approximately 15% adder to cover administrative costs. In such a case, the two segments would be able to bid into smaller-size project classifications and receive the higher ceiling price which would not be in the best interest of ratepayers and would distort the intention of the statute.

Of course, the designation of a project as a CRDG has nothing to do with the technology, construction, or cost of the installation. From a technical perspective, a 991 MW Commercial Solar CRDG project is identical to a 991 MW ground-mounted Commercial Solar project. The designation as "CRDG" is a recognition that the project has a different financing mechanism that has a billing credit feature which adds after-the-fact project administrative costs that the statute allows to be included in the bid price. For these reasons, the fact that one segment is bidding in the CRDG enrollment class cannot be the basis for avoiding the segmentation prohibition without creating a gaping hole in the segmentation rule itself.

The attempted creation of an unacceptable loophole is also apparent by examining the reasons given by National Grid for supporting Hexagon's request. According to the Company, the following facts support an exception:

> (1) the projects were submitted into different REG enrollments, i.e., the third enrollment of 2019 versus the second enrollment of 2020; (2) CRDG and carport are two different use-cases for renewable energy installations, for different hosts, and will serve different customer needs, i.e., bill credits versus payments; (3) the two projects will be sited on land that is separately owned by seemingly unaffiliated parties; (4) the two projects are pursuing separate interconnections, and will be electrically separate; and (5) the two projects are pursuing separate permitting processes.[40]

The lack of forethought put into this reasoning by the Company is puzzling. If these criteria were applied, it would allow ordinary ground-mounted solar to be used in every case where a portion of the project was CRDG. For example:

(1) A developer could easily submit a CRDG project and a separate ground-mounted solar project in separate enrollments;

(2) A CRDG project and an ordinary ground-mounted solar installation also use different financing mechanisms, one is bill credits, the other is payments;

(3) A CRDG project and ordinary ground-mounted solar installation could easily be sited separately on continuous parcels by one developer by simply making separate arrangements with each landowner, as was apparently the case here, given the access road crossing both parcels;

(4) A CRDG project and ordinary ground-mounted solar installation could easily be connected separately; and

(5) A developer could sequence the local permitting process to be sure there is apparent separation.

[40] Comments of The Narragansett Electric Company d/b/a National Grid at 1 (Aug. 31, 2020).

If National Grid's reasoning is followed, it would always allow two projects to be segmented when one component is CRDG, thereby disrupting the purpose of the statutory segmentation rule.

In conclusion, the Commission examined all the facts present in this case and considered the arguments. It found that the language in the tariff is clear and unambiguous and that the combined nameplate capacity of the two projects exceeded that for the Commercial enrollment class negating Hexagon's argument that the fourth exception to the tariff applied. Commissioner Anthony also expressed disappointment with the Company and questioned whether the position it took to encourage the Petitioner to seek an exception to the Company's own tariff was financially motivated.[41]

In sum, the Commission found that Semistream Solar's project to construct a 991 kW carport does not fall within any of the exceptions to segmentation in section five of the Tariff and is not eligible for selection for a Certificate of Eligibility to bid until there is a lapse of at least twenty-four months between: (i) the commencement of construction of the Superior Solar LLC 991 kW ground mounted Commercial Solar installation on Lot 12 and (ii) the operation date of the Superior Solare LLC 991 kW ground mounted Commercial Solar installation on Lot 12.

Accordingly, it is hereby

(23949) ORDERED:

Semistream Solar's project to construct a 991 kW Commercial Solar carport does not fall within the exceptions to segmentation in section five of RIPUC No. 2152-G, Sheet 7 and is not eligible for selection for a Certificate of Eligibility until there is a lapse of at least twenty-four

[41] The utility earns remuneration equal to 1.75% of the total annual payments. Thus, the higher the payments, the greater the profit margin.

months between: (i) the commencement of construction of the Superior Solar LLC 991 kW ground mounted Commercial Solar installation on Lot 12 and (ii) the operation date of the Superior Solare LLC 991 kW ground mounted Commercial Solar installation on Lot 12.

The Petition is denied.

EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 23, 2020 PURSUANT TO AN OPEN MEETING DECISION ON OCTOBER 23, 2020. WRITTEN ORDER ISSUED NOVEMBER 19, 2020.

PUBLIC UTILITIES COMMISSION

Ronald T. Gerwatowski, Chairperson

Marion S. Gold, Commissioner

Abigail Anthony, Commissioner

NOTICE OF RIGHT TO APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.