Laura C. Bickel
Senior Counsel
Legal Department

May 6, 2021

VIA E-FILING & COURIER

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No. 5145 - Petition of Nautilus Solar Energy, LLC For Declaratory Judgment on R.I. Gen. Laws § 39-26.4, The Net Metering Act – Written Comments of The Narragansett Electric Company d/b/a National Grid

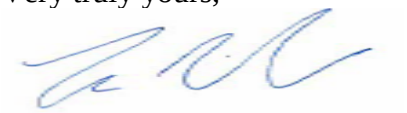
Dear Ms. Massaro:

Please find attached an electronic filing of the written comments of The Narragansett Electric Company d/b/a National Grid in the above-referenced proceeding.

Consistent with the notice issued by the Commission on April 22, 2021, three (3) hard copies will be submitted to the Commission within twenty-four (24) hours.

Thank you for your attention to this matter. If you have any questions, please contact me at 781-907-2126.

Very truly yours,



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Enclosures

CC by e-mail: Docket 5122 Service List

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

In re: Reconsideration of Interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii)	)	Docket No. 5145

INITIAL COMMENTS OF THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID

The Narragansett Electric Company d/b/a National Grid (National Grid or the Company) hereby respectfully submits the following comments in response to the Notice to Solicit Comments issued by the Public Utilities Commission (Commission) on April 22, 2021, in the above-referenced docket.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On January 25, 2021, Nautilus Solar Energy, LLC (Nautilus) filed a petition for declaratory judgment with the Commission seeking interpretation of R.I. Gen. Laws § 39-26.4(5)(ii) (Petition). Nautilus' Petition was docketed as Docket No. 5122. Nautilus' Petition requested a declaratory ruling from the Commission that, under the Net Metering Act, R.I. Gen. Laws § 39-26.4-1 *et seq.*: (1) a single eligible net-metering system may be owned and operated by a renewable-generation developer on behalf of more than one public entity, educational institution, hospital, nonprofit or multi-municipal collaborative; and (2) a group of public housing authorities are eligible to enter into a multi-municipal collaborative for the purposes of entering into a net-metering financing arrangement. Petition at 1. Nautilus explained that it responded to a Request for Proposal (RFP) from Public Housing Association of Rhode Island (PHARI) to enter into one or more net-metering financing arrangements with municipal housing authorities, whereby three Nautilus affiliates would own and operate an eligible net-metering resource on behalf of 11 housing authorities. Id.

at 2. Nautilus stated that "[i]f an eligible net-metering system is only permitted to have a single [h]ousing [a]uthority that can designate accounts as eligible for net metering, then eleven (11) separate eligible net-metering systems would have to be developed in order for all eleven Housing Authorities to be able to participate in net metering at these sites." Id.

On March 3, 2021, National Grid filed a motion to intervene in Docket No. 5122. Also, on March 3, 2021, Green Development, LLC, WED GW Solar, LLC, WED Portsmouth One, LLC, GD Hopkinton Main I, LLC, WED SHUN I, LLC, and WED Green Hill, LLC (together, Green) filed a motion to intervene and accompanying memorandum supporting Nautilus' position. At its open meeting on March 29, 2021, the Commission granted the motions to intervene filed by National Grid and Green.

On April 5, 2021, the Commission issued its Decision and Order No. 24023 regarding Nautilus' petition. The Commission denied Nautilus' first requested declaration but granted its second. With respect to the first issue, the Commission found that the use of the phrases "**a** public entity" and "**the** public entity" (each emphasis added) in R.I. Gen. Laws § 39-26.4-2(5)(ii) are intended to mean the singular. Order No. 24023 at 4.

On April 22, 2021, the Commission issued notice that it opened Docket No. 5145 to reconsider the decision made in Docket No. 5122 regarding the above interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii). The Commission stated that through its investigation it:

> seeks to understand how the various Public Entity Net Metering arrangements that are operational or under contract are structured, and why, in light of the use of the singular by the legislature, allowing the designation of electric accounts to multiple public entities, educational institutions, hospitals, and nonprofits, other than multi-municipal collaboratives is necessary or important from a legal policy or practical perspective.

Docket No. 5145, Notice to Solicit Comments at 2-3.

The Commission requested written comments "to provide facts and rationale for the Commission's reconsideration of its prior interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii)." Id. at 3. The Commission noted that "comments should only apply to Public Entity Net Metering projects where the designated electric accounts are those of public entities, educational institutions, hospitals, nonprofits, or multi-municipal collaboratives that share in a project allocation with another one of the previously listed entities." Id.

II. DISCUSSION

This docket concerns the interpretation of the definition of "eligible net-metering system" under R.I. Gen. Laws § 39-26.4-2(5):

> "Eligible net-metering system" means a facility generating electricity using an eligible net-metering resource that is reasonably designed and sized to annually produce electricity in an amount that is equal to, or less than, the renewable self-generator's usage at the eligible net-metering system site measured by the three-year (3) average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net-metering system site. A projected annual consumption of energy may be used until the actual three-year (3) average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net-metering system site becomes available for use in determining eligibility of the generating system. The eligible net-metering system may be owned by the same entity that is the customer of record on the net-metered accounts or may be owned by a third party that is not the customer of record at the eligible net-metering system site and which may offer a third-party, net-metering financing arrangement or net-metering financing arrangement, as applicable. Notwithstanding any other provisions of this chapter, any eligible net-metering resource: (i) Owned by a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative or (ii) Owned and operated by a renewable-generation developer on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative through a net-metering financing arrangement shall be treated as an eligible net-metering system and all accounts designated by the public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative for net metering shall be treated as accounts eligible for net metering within an eligible net-metering system site.

National Grid recently responded to data requests from the Commission regarding its net metering practice for "Public Entity Net Metering projects" participating in net metering under

subsection (ii) of the above definition. As explained in National Grid's response to Data Request PUC 1-1, it is not National Grid's practice to require a renewable-generation developer developing a net-metering system on behalf of a public entity to submit a copy of the net metering financing arrangement[1] between the developer and participating entity in order to qualify for "remote" or "virtual" net metering.[2] The Company does not review privately-negotiated net metering financing arrangements to determine a customer's eligibility for virtual net metering. Instead, the Company must rely on developers to certify their own eligibility and compliance regarding net metering project ownership and/or financing arrangements within a Remote Net Metering Self Certification form.

[1] "Net-metering financing arrangement" is defined in R.I. Gen. Laws § 39-26.4-2 as an arrangement entered into by a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative with a private entity to facilitate the financing and operation of a net-metering resource, in which the private entity owns and operates an eligible net-metering resource on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative, where: (i) The eligible net-metering resource is located on property owned or controlled by the public entity, educational institution, hospital, or one of the municipalities, as applicable, and (ii) The production from the eligible net-metering resource and primary compensation paid by the public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative to the private entity for such production is directly tied to the consumption of electricity occurring at the designated net-metered accounts.

[2] Under Rhode Island law, aside from "community remote net metering projects," only some entities are allowed to engage in virtual or remote net metering. R.I. Gen. Laws § 39-26.4-2(6), defines "eligible net-metering system site," and states, in part, that, "[e]xcept for an eligible net-metering system owned by or operated on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative through a net-metering financing arrangement, the purpose of this definition is to reasonably assure that energy generated by the eligible net-metering system is consumed by net-metered electric service account(s) that are actually located in the same geographical location as the eligible net-metering system. All energy generated from any eligible net-metering system is, and will be considered, consumed at the meter where the renewable energy resource is interconnected for valuation purposes. Except for an eligible net-metering system owned by, or operated on behalf of, a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative through a net-metering financing arrangement, or except for a community remote net-metering system, all of the net-metered accounts at the eligible net-metering system site must be the accounts of the same customer of record and customers are not permitted to enter into agreements or arrangements to change the name on accounts for the purpose of artificially expanding the eligible net-metering system site to contiguous sites in an attempt to avoid this restriction. However, a property owner may change the nature of the metered service at the accounts at the site to be master metered in the owner's name, or become the customer of record for each of the accounts, provided that the owner becoming the customer of record actually owns the property at which the account is located. As long as the net-metered accounts meet the requirements set forth in this definition, there is no limit on the number of accounts that may be net metered within the eligible net-metering system site."

The Remote Net Metering Self Certification form requires customers to confirm their compliance with R.I. Gen. Laws § 39-26.4-2(5) by certifying that the facility is either: (1) owned and operated by a public entity, educational institution, non-profit, hospital, or municipality within a multi-municipality collaborative; or (2) is owned and operated by a renewable generation developer and located on property owned or controlled by a public entity, educational institution, non-profit, hospital, or municipality within a multi-municipality collaborative through a net metering financing arrangement or other arrangement approved by the Commission, and (a) the facility is located on property owned or controlled by the public entity, educational institution, non-profit, hospital or one of the municipalities, as applicable and (b) the production from the facility and primary compensation paid by the public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative to the private entity for such production is directly tied to the consumption of electricity occurring at the designated net metered accounts. Form Schedule B of the Company's Net Metering Provision Tariff requires the applicant to identify the customer of record for the account, but it does not require the applicant to identify the participant(s) in a net metering financing arrangement.

When an Eligible Net Metering System is owned by a developer on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative pursuant to a net metering financing arrangement, the Company allows the developer, as the customer of record, to allocate net metering credits to the accounts it designates, which may include allocating credits to the accounts of more than one public entity, educational institution, hospital, nonprofit and/or multi-municipal collaborative from a single project, as long as all such designated accounts are held by a qualifying public entity, educational institution, hospital, nonprofit, and/or multi-municipal collaborative. The Company does not allow developers to designate accounts that are

excluded from these categories, such as private corporations or residential accounts, to receive net metering credits. This has been the Company's practice since 2016. Among the 46 total virtual net metering projects that are operating in the Company's service territory today, 12 of them are allocating credits to multiple public entities, educational institutions, hospital, and/or non-profit entities.[3]

National Grid's practice is consistent with the Net Metering Act, which allows a special class of customers limited to public entities, educational institutions, hospitals, nonprofits, or multi-municipal collaboratives to engage in virtual net metering, subject to several conditions. This restriction serves to limit the scale and proliferation of virtual net metering in the state, and ultimately controls the cost to non-participating distribution customers of the net metering program. Under R.I. Gen. Laws § 39-26.4-2(5), developers may own and operate virtual net metering projects on behalf of a public entity, educational institution, hospital, nonprofit and/or multi-municipal collaborative. Developers also may designate accounts to receive net metering credit allocations. Importantly, R.I. Gen. Laws § 39-26.4-2(6) states that, "[e]xcept for an eligible net-metering system owned by, or operated on behalf of, a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative through a net-metering financing arrangement, or except for a community remote net-metering system, all of the net-metered accounts at the eligible net-metering system site must be the accounts of the same customer of record . . . ." The Company reads this definition to mean that such virtual net metering facilities are an exception from the requirement that all net-metered accounts be the accounts of the same customer of record, and that the accounts of more than one "special entity" may receive net

[3] Refer to the Company's responses to Data Request PUC 1-2 and PUC 1-3 for more detail regarding these projects.

metering credits from a single net metering facility, as long as they all would be eligible for virtual net metering, individually. In contrast, allowing eligible entities to designate *any* account without restriction on customer type would subvert the intent of the Net Metering Act's virtual net metering restrictions.[4]

From National Grid's perspective, whether an eligible net metering system is owned and operated by a renewable-generation developer "on behalf of" a single qualifying entity, or multiple qualifying entities is distinct from the ability to designate accounts of multiple qualifying entities to be eligible for net metering. Based on National Grid's interpretation of the Net Metering Act and its practice of allowing such designations for net metering credit allocation, it is unclear if the Commission's decision will result in a significant disruption to the renewable energy development market.

To the extent, however, that the Commission wishes to reconsider its conclusion in Docket No. 5122 that the clause "***a*** public entity" in R.I. Gen. Laws § 39-26.4-2(5)(ii) is only intended to refer to the singular, there appears to be a legal basis to do so. Specifically, R.I. Gen. Laws § 43--4 regarding rules of construction of statutes provides the following provision on singular and plural usage:

> Every word importing the singular number only may be construed to extend to and to include the plural number also, and every word importing the plural number only may be construed to extend to and to embrace the singular number also.

[4] Review of prior iterations of the Net Metering Act further supports the Company's interpretation. The 2011 version of the Net Metering Act only allowed virtual net metering systems to be owned by or on behalf of a municipality or multi-municipal collaborative. In the 2011 version, the definition of "Eligible Net Metering System" included the clause that "any eligible net metering resource: (i) owned by a municipality or multi-municipal collaborative or (ii) owned and operated by a renewable generation developer on behalf of a municipality or multi-municipal collaborative through municipal net metering financing arrangement shall be treated as an eligible net metering system ***and all municipal accounts*** designated by the municipality or multi-municipal collaborative for net metering shall be treated as accounts eligible for net metering within an eligible net metering system site." R.I. Gen. Laws § 39-26.4-2(2) (2011) (emphasis added). Consistent with this language, it is logical that the types of accounts that may be designated as eligible for net metering should be consistent with the types of customers that are eligible for virtual net metering in the first instance.

The rules of construction under Title 43, Chapter 3 of the General Laws "shall be observed, unless the observance of them would lead to a construction inconsistent with the manifest intent of the general assembly, or be repugnant to some other part of the statute." R.I. Gen. Laws § 43-3-2; see also State v. Ros, 973 A.2d 1148, 1165 (R.I. 2009) (applying R.I. Gen. Laws § 43-3-4). It does not appear that R.I. Gen. Laws § 43-3-4 was identified by the petitioner in Docket No. 5122, and the provision does not appear to have been considered in the Commission's Decision and Order No. 24023. To the extent that the Commission is concerned with the impact of its decision on the renewable energy development market, R.I. Gen. Laws § 43-3-4 may be relevant to the Commission's reconsideration. While the plain language of "a public entity" in R.I. Gen. Laws § 39-26.4-2(5)(ii) was reasonably interpreted by the Commission to mean a singular public entity, a broader interpretation in accordance with R.I. Gen. Laws § 43-3-4 would harmonize National Grid's existing credit allocation practices with the net-metering financing arrangement requirements.

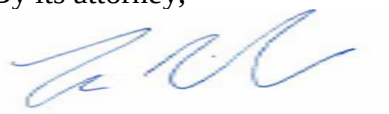
III. CONCLUSION

National Grid appreciates the opportunity to clarify its net metering practices through these comments. As noted herein, when an Eligible Net Metering System is owned by a developer on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative pursuant to a net metering financing arrangement, the Company allows the developer, as the customer of record, to allocate net metering credits to the accounts it designates, which may include allocating credits to the accounts of more than one public entity, educational institution, hospital, nonprofit and/or multi-municipal collaborative from a single project, as long as all such designated accounts are held by a qualifying public entity, educational institution, hospital, nonprofit, and/or multi-municipal collaborative. The Company does not allow

developers to designate accounts that are excluded from these categories, such as private corporations or residential accounts, to receive net metering credits. This has been the Company's practice since 2016. The Company does not review the privately-negotiated net metering financing arrangement in these cases and relies on the customer of record to certify compliance with all applicable net metering requirements. The Company agrees that the Commission's interpretation of the phrase "a public entity" is consistent with the plain language of R.I. Gen. Laws § 39-26.4-2(5)(ii) and expects that in light of the Company's existing credit allocation practices, the Commission's decision may not result in significant disruption to the renewable energy development market. Nevertheless, if the Commission is inclined to reconsider its decision, a broader interpretation would harmonize net metering financing arrangement requirements with the Company's credit allocation practices, and there is a legal basis to do so consistent with R.I. Gen. Laws § 43-3-4.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID,
By its attorney,



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Dated: May 6, 2021