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March 10, 2022

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

Re: Revity Energy LLC Petition for Declaratory Judgment – Docket No. 5235

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company d/b/a National Grid (the Company), enclosed are the Company's Response in the above-captioned matter.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

John K. Habib

John K. Habib, Esq.

Enclosures

cc: Docket No. 5235 Service List

**Revity Energy LLC - Petition for Declaratory Judgment – Docket No. 5235**
**Service List Updated 3/7/2022**

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**STATE OF RHODE ISLAND**

**PUBLIC UTILITIES COMMISSION**

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| Revity Energy LLC Petition for Declaratory Judgment | ) | Docket No. 5235 |

**RESPONSE OF THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID**

The Narragansett Electric Company d/b/a National Grid ("Narragansett" or the "Company") hereby responds to the Petition of Revity Energy LLC ("Revity") seeking a declaratory judgment pursuant to R.I. Gen. Laws § 42-35-8 and Section 1.11(C) of the Rhode Island Public Utilities Commission ("Commission") Rules of Practice and Procedure (the "Petition"). Revity's Petition asks for a declaration from the Commission that Narragansett's Standards for Connecting Distributed Generation, R.I.P.U.C. No. 2244 (the "Interconnection Tariff") does not allow Narragansett to require cost sharing for System Modifications[1] costs associated with civil work self-performed by another Interconnecting Customer, even if a subsequent Interconnecting Customer benefits from that System Modification. Petition at 1.

Narragansett acknowledges that Section 5.3 of the Interconnection Tariff, which includes certain look-back and cost sharing provisions, does not explicitly address situations in which an Interconnecting Customer self-performs civil work and donates those facilities to Narragansett. However, as explained further herein, cost sharing in these circumstances is equitable and consistent with the intent of the Interconnection Tariff. Accordingly, Narragansett requests that the Commission deny Revity's Petition and instead find that Interconnecting Customers are responsible for the costs of the System Modifications specifically necessary for and directly related

[1] Capitalized terms not defined herein are intended to follow the terms as defined in the Interconnection Tariff.

to the interconnection, including when portions of such System Modifications are constructed directly by another Interconnecting Customer and donated to Narragansett for the benefit of other Interconnecting Customers.

## I. NATURE OF THE PROCEEDING

This is a petition for a declaratory judgment pursuant to R.I. Gen. Laws § 42-35-8 and Section 1.11(C) of the Commission Rules of Practice and Procedure. R.I. Gen. Laws § 42-35-8 states that an individual "may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner." R.I. Gen. Laws § 42-35-8(a). Commission Rule 1.11(C) provides that "a petition for a declaratory judgment pursuant to R.I. Gen. Laws § 42-35-8 shall set forth the rule or statutory provision in question and shall state in detail, with appropriate citations, whether the rule or provision should or should not apply." Further, R.I. Gen. Laws § 42-35-8 provides that within 60 days of a petition being filed, "an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration."

An administrative declaratory ruling under Section 42-35-8 has been held to be the administrative counterpart of the Uniform Declaratory Judgments Act ("UDJA"), R.I.Gen. L. § 9-30-1. Liguori v: Aetna Casualty and Surety Co., 119 R.I. 875, 8821-883 (1978). Under the UDJA, the decision to grant declaratory relief is "purely discretionary." Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket School Committee, 694 A.2d 727, 729 (R.I. 1997); see also Employers' Fire Ins. Co. v. Beals, 103 R.I. 623, 628, (R.I. 1968) ("Thus, even if the complaint contains a set of facts which bring it within the scope of our Declaratory Judgments Act, there is no duty imposed thereby on the Court to grant such relief, but rather the Court is free to decide in the exercise of its discretion whether or not to award the relief asked for.").

Prior to filing its Petition, Revity also initiated the Dispute Resolution Process pursuant to Section 9 of the Interconnection Tariff through a letter to Narragansett dated November 4, 2021. Revity's November 4, 2021 letter escalated the same issues raised in its current Petition to the Good Faith Negotiation process under Section 9.1 of the Interconnection Tariff, which allows a party to submit a request in writing to elevate a dispute to a Vice President or senior management with sufficient authority to make a decision.

Section 9 of the Interconnection Tariff further describes the Dispute Resolution Process as follows:

> The Dispute Resolution Process is a multi-stage process described below. The dispute resolution process is appropriate where there is a factual dispute over whether a rule, regulation or tariff has been violated. The dispute resolution process is for project-specific disputes; it is not a forum to challenge an existing policy, rule, regulation, tariff provision, or executed ISA. Neither a third-party mediator/arbitrator nor Commission staff can propose a resolution that shifts costs properly allocated to an Interconnecting Customer under the tariff to the general body of customers. Interconnection issues within the Commission's jurisdiction, which require a Commission ruling on issues of law or tariff interpretation, are not appropriate for the Dispute Resolution Process, and must be addressed through a Petition under the Commission's Rules of Practice and Procedure.

Revity's Petition is artfully pleaded to present its dispute as an issue of tariff interpretation and challenge of an existing policy or tariff provision to be addressed by a Petition under the Commission's Rules of Practice and Procedure. At the same time, however, Revity attempts to introduce factual issues and disputes in its Petition that are inappropriate to raise in this Petition.

More specifically, the entirety of communications pursued through the Section 9 Dispute Resolution Process fall within Rule 408 of the Rhode Island Rules of Evidence, which prohibits the admission of evidence of conduct or statements made in compromise negotiations. R.I. R. Evid. 408; Votolato v. Merandi, 747 A.2d 455, 461 (R.I. 2000). The purpose of excluding such evidence is to facilitate an atmosphere of compromise among the parties and to promote alternatives to litigation. Votolato, 747 A.2d, at 461.

Addressing a very similar alternative dispute resolution process under the Massachusetts Standards for Interconnection of Distributed Generation and the comparable Section 408 of Massachusetts Guide to Evidence, the Massachusetts Department of Public Utilities has held that statements made in the context of the dispute resolution process are inadmissible. Request of NSTAR Electric Company d/b/a Eversource Energy for an Adjudicatory Proceeding, D.P.U. 21-16, Order on Appeal of Hearing Officer Ruling at 8-10 (2021). The Massachusetts Department of Public Utilities reached this decision in consideration of Section 408 of Massachusetts Guide to Evidence and its "legitimate interest" in requiring participation on the multi-stage dispute resolution process and "to encourage parties to settle matters under their terms without resorting to formal Department resources." Id. at 8.

Well-established policies intended to encourage good faith negotiation in the Dispute Resolution Process and willingness to compromise as well as the blackletter law of Rule 408 should be applied by the Commission to protect the Dispute Resolution Process. As such, statements made by Revity on page 3 of its Petition alluding to alleged statements made "through discrete discussions with National Grid management," as well as statements made by Revity in paragraphs 23, 29, 30, 31, 32 and 52 of its Petition are inappropriate for admission and should not be considered by the Commission. In consideration of the confidential nature of Narragansetts' good faith negotiations under Section 9.1 of the Dispute Resolution Process, Narragansett will neither confirm nor deny Revity's allegations in those statements.

## II. FACTS

Narragansett provides the following facts and background for further context of its position in this matter.

1. On or around October 18, 2019, Revity submitted interconnection applications for

seven projects with an aggregate capacity of approximately 40.7 MW.[2] The projects are located in close proximity to each other at 18 Weaver Hill Road in West Greenwich, Rhode Island. The projects are referred to as the "Weaver Hill Road" projects.

2. The Weaver Hill Road projects are proposed to interconnect to Narragansett's electric distribution system ("EDS") via the Kent County Substation, 34.5 kV distribution feeder 3309.

3. Within several months of Revity's submission of the Weaver Hill Road project interconnection applications, Narragansett received interconnection applications from two other developers, Green Development, LLC and Energy Development Partners ("EDP"), proposing an additional 20 MW project by Green Development and 10 MW by EDP to also interconnect via the Kent County Substation, 34.5 kV distribution feeder 3309.

4. Green Development, LLC's interconnection applications were submitted on or around January 28, 2019. Green Development's projects were included in the ASO#1 queue and received ASO approval in May 2020. The projects received a final Distribution System Impact Study on June 30, 2020 and executed Interconnection Service Agreements ("ISA") on July 22, 2020.

5. EDP submitted its interconnection application on or around December 18, 2018. However, EDP's project was deferred to the ASO#2 queue and received ASO approval in March 2021. EDP's project is currently undergoing restudy at the distribution level and has not been issued an ISA.

6. Revity's Weaver Hill Road projects were placed in the ASO#2 queue and received ASO approval in February 2021. The Weaver Hill Road projects received a final Distribution

[2] The projects are under the following work order numbers: 246616, 246614, 246609,246610, 246606, 246617, 281561.

System Impact Study on April 22, 2021. Revity has not executed ISAs for the Waver Hill Road projects, in part due to the present controversy at issue in Revity's Petition.

7. Interconnecting Green Development, EDP and Revity's projects requires installation of approximately 35,600 feet, or 6.74 miles of underground duct banks and supporting manholes to house underground cables connecting the projects to the point of interconnection at the Kent County Substation. Green Development's projects are located the furthest away from the Kent County Substation as compared to EDP and Revity's proposed projects.

8. The Distribution System Impact Studies prepared by Narragansett for Revity's Weaver Hill Road projects and Green Development's projects estimated the total cost for the duct bank at approximately $16.3 million.

9. Approximately 53.29 percent of the duct bank is a common path that will be relied upon by all three parties. Of the common duct bank path, Revity's Weaver Hill Road projects account for approximately 67 percent of the shared projects on a pro rate megawatt basis.

10. Narragansett allows Interconnecting Customers to self-perform limited civil work (but not electrical work), such as duct bank construction, on the Company's EDS to alleviate construction resource constraints, and in recognition that certain Interconnecting Customers or their contractors have adequate expertise to complete civil work and may be able to do so at reduced costs. Revity does not dispute that such self-performance of civil work is permitted under Section 2.0 of the Interconnection Tariff. Revity Petition at 6, ¶ 6, n. 1.

11. When Narragansett allows self-performance of civil work, it does so under conditions that: (a) once the work is completed, the facilities are donated to Narragansett such that Narragansett is the exclusive owner and operator of the facilities; (b) that the Interconnecting Customer and/or its contractors coordinate with the Company to review civil design parameters

and requirements and the schedule of work; and (c) that all materials provided and civil work performed are in strict conformance with the Company's provided civil design plans.

12. In this case, Green Development requested and was granted authority to self-perform the civil work for the duct bank. Because Green Development's projects are located furthest from the point of interconnection, Green Development agreed to construct the entire length of the duct bank, including the common portion that will benefit Revity and EDP. Green Development has provided a cost estimate for the entire duct bank of $14,231,676, representing a roughly $2 million cost savings as compared to Narragansett's estimate.[3]

13. Narragansett established the civil design parameters and requirements for the duct bank and oversaw its construction in strict conformance with the Company's design plans. Narragansett's design requirements ensured that the duct bank was constructed to standards adequate to support the EDP and Revity Weaver Hill Road projects. The duct bank is substantially complete at this time.

14. As Green Development had executed ISAs for its projects as of July 22, 2020, and neither Revity nor EDP have executed ISAs at this time, it would have been untenable to require Green Development to wait for Revity or EDP to construct any of the common duct bank path.

15. On or around February 1, 2022, Narragansett sent Revity revised draft ISAs for its Weaver Hill Road projects. The latest draft ISAs identify Revity's common duct bank cost responsibility for its 40,700 kW Weaver Hill Road projects at a total of $5,081,320, which is based on the approximately 53.29 percent common path of the duct bank, and Revity's pro rata megawatt share of 67 percent of the common path.

[3] There is no evidence to suggest that Revity's $275/ft cost estimate meets Narragansett's design standards.

16. Revity will also be responsible for self-performing civil work associated with an additional portion of duct banks that will only benefit its Weaver Hill Road projects at this time. Narragansett acknowledges that a prior draft of the ISAs indicated such work would not be eligible for cost sharing, but this language was included in error and Narragansett has since removed that language.

## III. DISCUSSION

### A. Standard Of Review.

Revity's Petition asks the Commission to interpret the cost sharing provisions in Section 5.3 of the Interconnection Tariff. The Rhode Island Supreme Court has explained that "all tariffs should be interpreted in accordance with equity and good conscience regardless of the specific language in which they may be couched." Narragansett Elec. Co. v. Pub. Utilities Comm'n, 773 A.2d 237, 242 (R.I. 2001).

Similarly, applying principles of statutory interpretation by analogy, the "ultimate goal is to give effect to the purpose of the act as intended by the Legislature." Progressive Cas. Ins. Co. v. Dias, 151 A.3d 308, 311 (R.I. 2017); citing Cummings v. Shorey, 761 A.2d 680, 684 (R.I. 2000); GSM Industrial Inc. v. Grinnell Fire Protection Systems Co. 47 A 3d 264, 268 (R.I. 2012). Clear and unambiguous terms are interpreted according to their plain and ordinary meaning. Raiche v. Scott, 101 A.3d 1244, 1248 (R.I. 2014). "However, the plain meaning approach must not be confused with 'myopic literalism'; even when confronted with a clear and unambiguous statutory provision, 'it is entirely proper for us to look to the sense and meaning fairly deducible from the context.'" Id., quoting Alessi v. Bowen Court Condominium, 44 A.3d 736, (R.I. 2012); see also In re Brown, 903 A2d 147, 150 (R.I. 2006); O'Connell v. Walmsley, 156 A.3d 422, 426 (R.I. 2017); Ryan v. City of Providence, 11 A3d 68, 71 (R.I. 2011) ("it would be foolish and myopic literalism to focus narrowly on one statutory section without regard for the broader context.").

### B. Cost Sharing For Self-Performed Civil Work Is Equitable And Consistent With The Intent Of The Interconnection Tariff.

Section 5.3 of the Interconnection Tariff addresses cost sharing by Interconnecting Customers who later benefit from System Modifications constructed for another Interconnecting Customer.

> **5.3 System Modification Costs.** The Interconnecting Customer shall only pay for that portion of the interconnection costs resulting solely from the System Modifications required to allow for safe, reliable parallel operation of the Facility with the Company EDS; provided, however, the Company may only charge an Interconnecting Customer for System Modifications specifically necessary for and directly related to the interconnection, excluding modifications required on the Transmission infrastructure. The Interconnecting Customer shall also be responsible for all costs reasonably incurred by the Company attributable to:
>
> > a) The proposed interconnection project in designing, constructing, operating and maintaining the System Modifications required to allow for safe, reliable parallel operation of the Facility with the Company EDS, or
> >
> > b) Resulting from the Facility operating in conjunction with any existing Facilities, or
> >
> > c) Other proposed Facilities that precede the Facility in the interconnection queue.
>
> At the time that the Company provides an Interconnecting Customer with any Impact Study or Detailed Study, the Company shall also provide, along with that Study, a statement of the Company's policies on collection of tax gross-ups. As appropriate, to the extent that subsequent Interconnecting Customers benefit from System Modifications that were paid for by an earlier Interconnecting Customer, subsequent Interconnection Customers who benefit from those same System Modifications may retroactively contribute a portion of the initial costs, which may be refunded to the earlier customer. In this scenario, the Company may assess a portion of the costs to such subsequent Interconnecting Customers, which will be refunded to the earlier Interconnecting Customer if collected. Such assessments may occur for a period of up to five years from the Effective Date of the earlier Interconnecting Customer's Interconnection Service Agreement.

Narragansett does not dispute that Section 5.3 is silent on cost sharing for self-constructed and donated civil facilities. However, Revity relies on an analysis of the definitions of "incurred," "refunded" and "credited" in Section 5.3 to argue that cost sharing of self-performed and donated

civil facilities is not permitted by the Interconnection Tariff. In making this argument, Revity overlooks the broader context of the Interconnection Tariff and Section 5.3 and the equity issues at play.

The language in Section 5.3 provides that costs are to be collected from the later Interconnecting Customer benefiting from shared System Modifications, and to be refunded to the customer who first paid for the System Modifications. ("As appropriate, to the extent that subsequent Interconnecting Customers benefit from System Modifications that were paid for by an earlier Interconnecting Customer, subsequent Interconnection Customers who benefit from those same System Modifications may retroactively contribute a portion of the initial costs, which may be refunded to the earlier customer."). The focus should thus be on the benefit to an Interconnecting Customer and whether an earlier Interconnecting Customer paid for that benefit. It should not matter whether the first Interconnecting Customer paid Narragansett to construct the System Modifications, or if that Interconnecting Customer paid for the work directly under a self-build authorization and later donated the property to Narragansett. In either case, the Interconnection Tariff acknowledges that the first customer should be refunded a portion of the costs attributable to System Modifications that benefit later Interconnecting Customers.

Narragansett's position is also consistent with the definition of "System Modification," which is defined as "[m]odifications or additions to Company facilities that are integrated with the Company EDS for the benefit of the Interconnecting Customer." Interconnection Tariff, Sheet 9. Because self-constructed civil facilities are donated to Narragansett such that Narragansett is the exclusive owner and operator of the facilities, they are integrated with the Company EDS even though they are constructed by the Interconnecting Customer directly.

Moreover, addressing an earlier but similar version of Section 5.3, the PUC decided that the "distributed generation interconnection process should balance the State's policy to encourage renewable distributed generation with the need to ensure a safe and reliable electric distribution system. The Commission finds that the proposed tariff revision to Section 5.3 achieves this balance by providing a fair and equitable allocation of system upgrade costs associated DG interconnection costs." Wind Energy Development, LLC et al., Docket No. 4483, Order 22957 (2017). The PUC approved the Section 5.3 cost sharing language on this basis.

On a similar basis, Revity's reliance on the Episcopal Diocese of Rhode Island decision is misplaced. Revity suggests the PUC's decision in that case concluded that "interconnecting customer may only be charged for interconnection costs that it is causing National Grid." Revity Petition at 20, ¶ 50. Revity implies this language supports its reliance on the meaning of "incurred" in Section 5.3. In fact, the PUC's decision in Episcopal Diocese rested on the longstanding principles of cost causation, which provide that System Modification costs should be assessed to the customer causing the costs. Episcopal Diocese of Rhode Island, Docket No. 4981, at 18-19 (2020). The PUC expanded on this in a footnote, explaining the following:

> The policy behind allocating to customers the costs they cause to the electric system is to send price signals to customers. The absence of such price signals would result in the development of renewable energy that may not be cost-effective. As previously discussed, projects that will not provide investors with a return on their investment are not likely to be built. Allowing renewable energy developers to escape the cost of transmission system modifications resulting from connecting their project to the distribution system by simply passing those costs on to all other customers would provide no incentive to only develop projects that are cost effective for both the investor and the general body of ratepayers. Such a decision would increase the cost of renewable energy to Narragansett's ratepayers without a record supporting such a cost shift.

Episcopal Diocese of Rhode Island, Docket No. 4981, at 19, n. 41 (2020).

The above rationale also supports Narragansett's cost-sharing proposal. In this case, for example, there is no dispute that Revity needs to have a duct bank constructed to support the

interconnection of its Project. If Green Development were not already constructing a duct bank in the area, Revity would have either had to pay Narragansett to construct the duct bank, or Revity would have to construct the duct bank itself (in fact, Revity has argued that it should be allowed to do so). The reason Narragansett is proposing for Green Development to construct the duct bank and share common costs with other Interconnecting Customers is simply because Green Development was the first of the common projects in this area to proceed to an ISA and construction. Having Green Development construct a duct bank large enough to serve all customers in this area is a matter of efficiency and practicality. If Revity were not required to make any contribution for the costs of the duct bank, as Revity argues, Revity would escaping these costs and would become a free rider on Green Development's construction. This would be an unjust result by shifting costs to Green Development and not sending an accurate price signal to Revity. Cost sharing, as proposed by Narragansett, addresses this problem in a practical and efficient manner and is consistent with the intent of the Interconnection Tariff.

Revity's attempt to describe Narragansett as a "debt collector" in this circumstance also misses the mark. See Revity Petition at 4, 23. Instead, Narragansett's authorization of self-performed civil work is more analogous to Narragansett retaining a contractor. That is, Narragansett has identified the need for the duct bank through its normal Distribution System Impact Study process. The Company has established design standards for the work and has supervised and enforced those standards. Green Development, in turn, is contractually obligated through its executed ISAs to complete the civil work pursuant to Narragansett's standards. The Interconnection Tariff does not contain any provisions that restrict Narragansett's ability to contract for civil work in this manner.

### C. Narragansett Has Not Engaged In Discriminatory Practices.

Revity argues that Narragansett is applying the Interconnection Tariff in a discriminatory manner in violation of R.I. Gen. Laws § 39-2-4 by applying cost sharing for self-performed work on a case-by-case basis. Revity Petition at 21. The practice of allowing self-performed civil work is relatively new and the Company's administration of details around the practice is evolving as the Company gains experience with allowing self-performed civil work. This does not make Narragansett's administration of the Interconnection Tariff discriminatory.

As an initial matter, Revity's reliance on language in an outdated draft ISA purporting to prevent Revity from future cost-sharing for portions of the duct bank that Revity will self-build for the benefit of its Weaver Hill Road project alone is not evidence of discriminatory practices. Narragansett has withdrawn that provision, as Revity acknowledges.

Additionally, the cost sharing provision of Section 5.3 is permissive. It provides that cost sharing may be permitted "[a]s appropriate…" and that "the Company may assess a portion of the costs to such subsequent Interconnecting Customers, which will be refunded to the earlier Interconnecting Customer if collected." Interconnection Tariff, Section 5.3 (emphasis added). This language acknowledges that cost sharing may not always be appropriate or required.

In the case of Revity's prior self-performed common duct bank on the Laten Knight Road in Cranston, Rhode Island was for a much smaller-scale duct bank. At the time of executing an ISA for the Laten Knight Road, the line extension was intended to be overhead and constructed entirely by Narragansett. However, after executing the ISA, local permitting requirements drove Revity to change the design to an underground line. Construction of the projects was completed in mid to late 2019, when the Company was at an earlier stage of its experience with self-performed work. Notwithstanding the foregoing, Narragansett is willing to discuss compensating Revity for the pro rata share of the duct bank costs attributable to Enerparc's project.

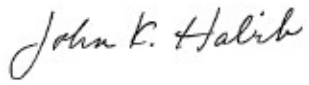
Conversely, this case presented a series of three applicants seeking to interconnect over 70 MW in a consolidated area with over 6 miles of underground duct bank. All proposed projects were known at the time of preparing Distribution System Impact Studies. The scale of the duct bank required for construction is significant. Installing duplicate duct banks for each developer is not reasonable and is likely not possible due to local permitting restrictions. Therefore, coordinating this work and requiring cost sharing is the most reasonable solution.

## IV. CONCLUSION

Narragansett, responding to requests from the development industry, has allowed Interconnecting Customers to self-perform certain civil work in an attempt to reduce construction scheduling constraints and costs to support more efficient solar development in accordance with Rhode Island's state policy goals. As self-performed work is permitted in increasingly complex and large-scale projects, challenges such as those presented in Revity's Petition are likely to arise. While the Interconnection Tariff may not address each and every challenge squarely, its provisions "should be interpreted in accordance with equity and good conscience regardless of the specific language in which they may be couched." Narragansett Elec. Co. v. Pub. Utilities Comm'n, 773 A.2d 237, 242 (R.I. 2001). Narragansett's proposed cost sharing approach for the Revity Weaver Hill Road projects is an equitable and reasonable solution in this instance and is consistent with the overall intent of the Tariff. For those reasons, Narragansett respectfully requests that the Commission deny Revity's Petition and provide such other and further guidance around cost sharing for self-performed work as the Commission deems necessary.

**Respectfully submitted,**
**THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID**

By its attorney,



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Dated: March 10, 2022