February 18, 2022

VIA EMAIL AND HAND DELIVERY

Luly Massaro
Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888
luly.massaro@puc.ri.gov

Re: Revity Energy LLC

Dear Ms. Massaro:

Enclosed for docketing, please find the original and five copies of the Petition of Revity Energy LLC for Declaratory Judgment.

Thank you for your assistance in this matter.

Regards.

Nicholas L. Nybo
Senior Legal Counsel
REVITY ENERGY LLC

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Enclosure.

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STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: REVITY ENERGY LLC'S REQUEST FOR INTERPRETATION OF SECTION 5.3 OF R.I.P.U.C. NO. 2244 AND R.I. GEN. LAWS § 39-26.3-4.1 REGARDING THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID'S AUTHORITY (IF ANY) TO ALLOCATE, IMPOSE, AND COLLECT COSTS FOR THIRD-PARTY DEVELOPER SELF-PERFORMED INTERCONNECTION WORK	Docket No. __________

PETITION OF REVITY ENERGY LLC

Petitioner, Revity Energy LLC ("Revity"), by and through its undersigned counsel, hereby petitions the Rhode Island Public Utilities Commission (the "Commission"), pursuant to R.I. Gen. Laws § 42-35-8 and Section 1.11(C) of the Commission Rules of Practice and Procedure, for a declaratory judgment regarding the rights and obligations of an interconnection customer under Section 5.3 of R.I.P.U.C. No. 2244 (the "Interconnection Tariff") and R.I. Gen. Laws § 39-26.3-4.1 with respect to self-performed interconnection work and allocation of related costs, as described further in this Petition. As and for its Petition, Revity states and alleges as follows:

INTRODUCTION

Revity hereby requests a declaratory judgment interpreting the Interconnection Tariff and applicable law as barring The Narragansett Electric Company ("National Grid") from requiring, as a condition to authorizing interconnection under the Interconnection Tariff, an interconnection customer to pay a portion of the costs incurred by an unrelated interconnection customer for work that was self-performed by that unrelated developer.

Interpretation of the Interconnection Tariff is not a novel subject for the Commission; however, in this instance, the need for such interpretation has arisen to clarify the ability of National Grid to allocate and/or collect interconnection costs from an interconnection customer

for work being performed and paid for by another customer interconnecting to the National Grid distribution system.

Over the past few years, National Grid has begun to authorize qualified renewable energy developers to self-perform interconnection work (at the developer's sole cost), which developer then "contributes" that work to National Grid. Until recently, and in a manner consistent with the Interconnection Tariff, National Grid adopted and implemented the following policy: Where a private developer, on its own initiative, requests to self-perform the required interconnection work and thereby replaces National Grid's role in the construction process, (a) the self-performing developer is required to pay all costs of construction for the self-performed work, (b) National Grid will not force any subsequent developer seeking to interconnect to those new facilities to reimburse the self-performing developer for its cost of construction, and (c) all matters related to the socialization or allocation of construction costs between the self-performing developer and any subsequent developers is a commercial matter between those private parties resolved to be in the marketplace without intervention by or oversight from National Grid.

National Grid now purports, without public notice or any revision to the Interconnection Tariff, to have changed that policy to allow National Grid, on a "case by case" basis, to insert itself into the cost-socialization process and both allocate to and recover from future developers (as a condition to receiving approval to interconnect under the Interconnection Tariff) a portion of the costs incurred by the self-performing developer. National Grid proposes to exercise this self-conferred right without any obligation on its part to (i) review, with proper due diligence and prior to commencement of installation, whether the scope and methods for installation are in accordance with industry standards, or (ii) confirm that the budget for installation is reasonable based on market information (*e.g.*, bids from other qualified contractors) and, post installation, to verify the

accuracy, necessity, and reasonableness of the costs incurred by the self-performing developer. Neither state law nor the Interconnection Tariff authorize National Grid to assume this role; instead, consistent with the Interconnection Tariff and as has been evidenced by National Grid's long-standing policy, the cost-sharing for self-performed interconnection work should remain an industry matter addressed through private negotiations between the relevant market participants, which participants possess the proper economic incentives and market knowledge necessary to promote an efficient result.

National Grid has stated that it now intends to apply (and to Revity's knowledge, through direct discussions with National Grid management, is currently applying) this new policy on a "case-by-case" basis. This "case-by-case" application, without any guidelines, *per se* constitutes "discrimination in respect to any service in, affecting, or relating to . . . the distribution of electricity" in violation of R.I. Gen. Laws § 39-2-4, in that it potentially demands "a greater . . . compensation for any service rendered or to be rendered by it, in, or affecting, or relating to . . . the distribution of electricity . . . or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions" in violation of R.I. Gen. Laws § 39-2-2(a). In short, National Grid's proposed application of this new policy subjects Revity and other interconnecting project developers in Rhode Island to an undue and unreasonable prejudice and disadvantage in violation of R.I. Gen. Laws § 39-2-3.

Aside from National Grid's inconsistent application of the Interconnection Tariff, the problem with the "new" policy is that, where National Grid is not incurring the costs for interconnection in the first instance, the utility has no meaningful incentive to deploy the internal

(and, if warranted, external) resources required to responsibly scrutinize costs for their accuracy, reasonableness, and necessity. Indeed, the costs demanded may not always be reasonable and just, and at times are unjust and unreasonable in violation of R.I. Gen. Laws § 39-2-1(a).

National Grid's new interpretation of the Interconnection Tariff results in a situation where the utility has no incentive (and indeed no obligation) to scrutinize costs and yet it has decided to throw its considerable weight behind the collection of those same costs for the benefit of a developer who voluntarily decided to self-perform to the exclusion of other subsequently reliant developers. The self-performing developer elected to proceed with the knowledge of National Grid's long-standing policy of not inserting itself in cost-sharing for private developer self-performed installations. State law and the Interconnection Tariff allows National Grid to recoup only those costs ***incurred by National Grid*** as a result of interconnecting new energy generation facilities. But where a developer voluntarily decides to privately perform interconnection work there is no such legal or regulatory authority that allows National Grid to allocate to or collect those costs from other developers. Rather, the self-performing developer must do so without the added benefit of having National Grid acting as its debt collector that conditions its issuance of approval to interconnect under the Interconnection Tariff on the payment of those third-party costs. Revity hereby requests a declaratory order to that effect.

PARTIES

1. Revity is a duly registered Rhode Island foreign limited liability company organized under the laws of the state of Delaware with its principal place of business located at 117 Metro Center Boulevard, Suite 1007 in Warwick, Rhode Island.

2. National Grid is a gas and electric distribution company as defined in R.I. Gen. Laws § 39-40-2.

JURISDICTION

3. The Commission has jurisdiction over this matter pursuant to its authority "to hold investigations and hearings involving the rates, tariffs, tolls, and charges" as stated in R.I. Gen Laws § 39-1-3(a) and its authority to issue declaratory rulings "interpret[ing] or appl[ying] a statute administered by the agency or state whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner" under R.I. Gen. Laws § 42-35-8(a). This Petition seeks a declaratory judgment interpreting the rights and obligations of Revity (or any other like interconnecting customer) as well as National Grid's scope of authority under Section 5.3 of the Interconnection Tariff and R.I. Gen. Laws § 39-26.3-4.1(a) regarding cost allocation for interconnection projects self-performed by private developers.

4. The Commission also has "exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering [energy] to the public in intrastate commerce . . . ." R.I. Gen. Laws § 39-1-1(c).

5. "Once the PUC adopts a tariff, it becomes the standard for determining the duties and obligations between a regulated public utility and its customers." *Laprocina v. Lourie*, 250 A.3d 1281, 1286 (R.I. 2021). "[W]here an agency interprets a tariff or rate contract, its interpretation must be reasonable." *Verizon New England, Inc. v. Maine Public Utilities Commission*, 509 F.3d 1, 8 (1st Cir. 2007); *see also Great N. Ry. Co. v. Merchants' Elevator Co.*, 250 U.S. 285, 291 (1922) ("[W]hat construction shall be given to a railroad tariff presents ordinarily a question of law which does not differ in character from those presented when the construction of any other document is in dispute."). Regulatory and statutory interpretation must be **consistent with and informed by past practices**. *See Ave. Nursing Home & Rehab. Centre v. Shah*, 112 A.D.3d 1178, 1183, 977 N.Y.S.3d 774, 779 (2013) (emphasis supplied). Such

interpretation must also give words "their plan and ordinary meaning." *Powers v. Warwick Public Schools*, 204 A.3d 1078, 1086 (R.I. 2019).

FACTS AND TRAVEL

6. Section 2.0 of the Interconnection Tariff authorizes National Grid to permit a private developer to self-construct interconnection facilities but also acknowledges that, barring some other express agreement with National Grid, once that work is completed, National Grid is the exclusive owner and operator of those facilities.[1]

7. Once National Grid owns the facilities, it is obligated to interconnect a qualifying facility as necessary to accomplish purchase and sale. 18 C.F.R. § 292.303(c)(1).

8. Historically, National Grid has taken the position that, where a private developer has opted to self-perform the civil interconnection work and National Grid incurs no costs for the work, National Grid will assume no role and has no authority in allocating, collecting or otherwise socializing interconnection expenses arising from the work.

9. For example, in 2019, Revity's affiliate self-performed common path duct bank work for a project on Laten Knight Road in Cranston, Rhode Island. Prior to Revity commencing this interconnection work, Revity asked National Grid to structure a cost-sharing regime with a subsequent developer (Hope Road Solar/Enerparc) for its share of the costs to complete the duct

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[1] Section 2.0 of the Interconnection Tariff provides, in relevant part, as follows:

> The interconnection of the Facility with the Company EDS must be reviewed for potential impacts on the Company EDS under the process described in Section 3.0 and meet the technical requirements in Section 4.0, and must be operated as described under Section 6.0. In order to meet these requirements, an upgrade or other modifications to the Company EDS may be necessary. Subject to the requirements contained in this Interconnection Tariff, the Company or its Affiliates shall modify the Company EDS accordingly. Unless otherwise specified, the Company will build and own, as part of the Company EDS, all facilities necessary to interconnect the Company EDS with the Facility up to and including terminations at the PCC. The Interconnecting Customer shall pay all System Modification costs as set forth in Section 5.0.

bank work also utilized by that subsequent developer. National Grid's position, at that time, was that the Interconnection Tariff did not allow National Grid to enforce costs sharing for donated property (because National Grid did not incur any costs).

10. After the interconnection work was completed and National Grid took ownership over the interconnection facility, Hope Road Solar/Enerparc was granted access to the interconnection path but refused to contribute its *pro rata* share of the costs thereof when Revity requested payment for the same. Hope Road Solar/Enerparc's basis for not participating was its reliance on National Grid's (now former) long-standing position on self-performance and cost-sharing.

11. Revity contacted National Grid, a second time, to request assistance with cost-sharing for the Laten Knight Road interconnection and National Grid's position remained, first, that National Grid was legally obligated to interconnect Hope Road Solar/Enerparc and, second, that cost-sharing between developers was a private commercial matter outside the scope of National Grid's regulatory purview.

12. R.I. Gen. Laws § 39-26.3-4.1(a) provides that "[t]he electric distribution company may only charge an interconnecting, renewable energy customer for any system modifications to its electric power system specifically necessary for and directly related to the interconnection" and R.I. Gen. Laws § 39-26.3-4.1(c) provides as follows:

> If an interconnecting, renewable energy customer is required to pay for system modifications and a subsequent renewable energy or commercial customer relies on those modifications to connect to the distribution system within ten (10) years of the earlier interconnecting, renewable energy customer's payment, the subsequent customer will make a prorated contribution toward the cost of the system modifications that will be credited to the earlier interconnecting, renewable energy customer as determined by the public utilities commission.

13. The Interconnection Tariff was amended in September of 2021.

14. Prior to the amendment, Section 5.3 of the Interconnection Tariff provided, in relevant part, as follows:

> The Interconnecting Customer shall only pay for that portion of the interconnection costs resulting solely from the System Modification required to allow for safe, reliable parallel operation of the Facility with the Company EPS; provided, however, the Company may only charge an Interconnecting Customer for System Modifications specifically necessary for and directly related to the interconnection. The Interconnecting Customer shall also be responsible for **all costs reasonably incurred by Company** attributable to the proposed interconnection project in designing, constructing, operating and maintaining the System Modifications.
>
> . . .
>
> Effective for Renewable Interconnecting Customer Applications filed on or after July 1, 2017, if a Renewable Interconnecting Customer is required to pay for system modifications and a subsequent renewable energy or commercial customer relies on those modifications to connect to the distribution system within ten (10) years of the earlier Renewable Interconnecting Customer's payment, the Company will require that the subsequent customer make a prorated contribution toward the cost of the system modifications and will credit such amount to the earlier Renewable Interconnecting Customers as determined by the Commission.

(Emphasis supplied).

15. The 2021 amendment arose from National Grid's October 22, 2020 Tariff Advice Filing pursuant to Rule 810-RICR-00-00-1.10(C) of the Commission's Rules of Practice and Procedure through which National Grid proposed to revise Section 5.3 as follows:

> 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 EPS; provided, however, the Company may only charge an Interconnecting Customer for System Modifications specifically necessary for and directly related to the interconnection. The Interconnecting Customer shall also be responsible for **all costs reasonably incurred by the Company** attributable to 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 EPS, or resulting from the Facility operating in conjunction with any existing Facilities or other proposed Facilities that precede the Facility in the interconnection queue.

(RIPUC Docket No. 5077) (underlined emphases in original; bold emphasis supplied).

16. On March 9, 2021, National Grid hosted a meeting with Revity and the National Grid ombudsman to discuss how to protect developers from the unchecked inflation of underground self-performance costs by competitors. The meeting concluded without resolution.

17. On April 22, 2021, Timothy R. Roughan, Director of Regulatory Strategy for National Grid, provided written testimony to the Commission which explained that the revision to Section 5.3 would add "specificity about System Modification payment obligations" for the purpose of "clarify[ing] Interconnecting Customer System Modification payment obligations."

18. On August 13, 2021, Revity emailed National Grid seeking clarification of National Grid's policy regarding underground cost-sharing for civil self-performed work and the procedure for how a developer would interconnect to underground civil work self-performed by a competing developer. Specifically, Revity explained that it was "greatly concerned of an abusive process from the self-performing developer if this is not controlled properly."

19. On September 2, 2021, National Grid transmitted the final version of the new Interconnection Tariff and Section 5.3 of the final Interconnection Tariff (effective September 1, 2021) ultimately read as follows:

> The Interconnecting Customer shall only pay that portion of the interconnection costs resulting 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. **<u>The Interconnecting Customer shall also be responsible for all costs reasonably incurred by the Company</u>** 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.

. . .

> As appropriate, to the extent that subsequent Interconnecting Customers benefit from System Modifications that were paid for by an earlier Interconnection 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.

(Emphasis supplied).

20. Revity is now developing an approximately 40 MW photovoltaic solar energy system (PSES) on Weaver Hill Road in West Greenwich, Rhode Island. There are two other private developers (Green Development, LLC and Energy Development Partners) developing PSES projects in close proximity to Revity's project all with over-lapping interconnection paths.

21. National Grid issued an Impact Study for the Weaver Hill Road system modification project reporting an estimated cost for civil distribution work of approximately $16,136,861 for 20,000 lineal feet of the common interconnection path for the projects. National Grid has represented that the estimated budget was based on its prior experience with similar project work.

22. National Grid granted Green Development's request to self-perform the civil distribution work for the common path. National Grid allowed Green Development to proceed with self-performing the duct bank installation without receiving a project budget that would have allowed for appropriate scrutiny to determine "reasonable costs" (*i.e.*, a competitive bid process) and for socialization with participating developers (Energy Development Partners and Revity).

23. With respect to that self-performed interconnection work for the Weaver Hill projects, in January of 2021, National Grid informed Revity that it has elected to change its policy

regarding self-performed interconnection work and will now be collecting the pro rata share of that work through Revity's forthcoming Interconnection Services Agreement(s) (ISA(s)). On August 4, 2021, National Grid submitted to Revity for signature an initial ISA which reflected Green Development's interconnection costs but (surprisingly) contained the following language governing Revity's own self-performed interconnection work: "**To the extent additional customers benefit from this portion of the work in the future, National Grid will not have the responsibility to share the costs of construction or operation of this portion of work between or among the Customer and such additional customers**." (Emphasis supplied). Only after Revity's prompt objection to this apparently discriminatory treatment was the objectionable provision was removed by National Grid in a subsequently revised ISA.

24. Revity informed National Grid that Revity has secured a bid from a recognized, Rhode Island-based, National Grid-approved duct bank civil construction firm (Rosciti Construction) with 65 years of experience in the State, and with extensive experience on National Grid projects, and that Rosciti proposed to do the necessary Weaver Hill common path work, in accordance with all applicable specifications raised by National Grid estimators and in accordance with the design specifications provided to Revity, for $4,377,410. In other words, the estimated cost provided by National Grid ($16,136,861) is approximately four times greater than the cost estimated by Rosciti.

25. Given the magnitude of this discrepancy, Revity has consistently and repeatedly, throughout 2021, requested documentation from National Grid reflecting the costs estimated by National Grid for the Weaver Hill interconnection project.

26. On October 1, 2021, after several discussions with National Grid regarding this matter beginning in June, Revity transmitted correspondence to Green Development inviting a

discussion regarding costs of the civil interconnection work for the West Greenwich projects and to share bid proposals from qualified duct bank installation contractors. Green Development did not respond.

27. On November 4, 2021, Revity transmitted correspondence to National Grid expressing its position that "neither Rhode Island law nor the Interconnection Tariff contemplate any such authoritative role for National Grid where (as here) National Grid has allowed a developer, at the developer's own request, to self-perform the distribution work." The correspondence further stated that "[n]either the Interconnection Tariff nor state law provides National Grid any authority to collect or distribute pro rata cost-sharing contributions where a private developer voluntarily elects to perform the civil interconnection work for its own benefit."

28. The November 4 correspondence further requested that National Grid provide copies of any documents relevant to cost-sharing, including detailed support documents and calculations for the civil work budget.

29. On December 16, 2021, representatives of National Grid and Revity conducted a conference call during which National Grid again explained that National Grid has changed its cost-sharing policy for self-performed interconnection work.

30. With respect to this new cost-sharing policy, National Grid stated that it intended to apply the new policy on a "case-by-case" basis.

31. Following that conference call, on December 23, 2021, Revity transmitted another correspondence to National Grid requesting (again) any documentation reflecting Green Development's approved duct bank design and/or budget costs or any documentation reflecting that National Grid has at least made some good faith efforts to try to gather this information.

32. The December 23 correspondence reiterated as follows:

> Revity's experience as a self-performing developer (as well as information that we have received from another developer in the Rhode Island market) reflects that National Grid has ***never*** (to Revity's knowledge) involved itself in cost-allocation and recovery for self-performed interconnection work prior to this Project. Both of you have relayed that National Grid has decided to change its policy on this issue; however, it was also relayed on the call that application of this new policy will be decided on a case-by-case basis. As a result, general notice of this change has not been provided to either the development community or the Rhode Island Public Utilities Commission ("RIPUC"). In this regard, since National Grid's Interconnection Tariff was revised through ordinary RIPUC procedures in September 2021, without any documentation of National Grid's material change in policy or its impacts on rates, tolls, and charges, it is unclear to us when National Grid elected to change the policy since September. We would appreciate it if National Grid could clarify what (if any) procedures were undertaken to provide notice of the change to stakeholders and the RIPUC.
>
> Revity has invested approximately $2,000,000 in this Project and is entitled to know exactly why National Grid has decided to apply this new policy to us, and the extent to which we are now being treated differently than other market participants. Additionally, to the extent that the new policy is being administered *ad hoc*, it is not clear under what circumstances National Grid will be enforcing the new policy and, under what circumstances, National Grid will demur. Having been a self-performing developer on a past project where National Grid adamantly refused to assist in cost-socialization with subsequent interconnecting customers, and where National Grid even stated that its existing Tariff did not allow National Grid to enforce or apply such a procedure, these are questions of significant concern to Revity (especially as Revity plans to self-perform interconnection construction on its future projects). In fact, Revity is aware of a few scenarios where this same issue has recently arisen, and National Grid has uniformly taken the position that self-performed work is donated property and that any cost-sharing should be handled privately between the developers.

33. On January 20, 2022, National Grid released to Revity a document from Green Development reporting a total interconnection cost of $14,231,676.19 (for 31,100 lineal feet of work of which 17,200 relate to the Revity common path duct bank section) and a subsequently revised reporting of $14,690,427 (to purportedly include costs overruns) on February 4, 2022. National Grid has still failed to explain how and when it revised its interconnection cost-sharing policies. Due to the incompleteness of what was provided, it is still unclear which portion of these

costs would be allocated to Revity, let alone to what extent they are accurate, necessary, and reasonable.

34. The proposed costs for the Weaver Hill interconnection, to date, have been as follows:

National Grid's Impact Study	$16,136,861 for 20,000 lineal feet	$806/ft
Green's Cost Reporting	$14,690,427 for 31,100 lineal feet	$472/ft
Revity's Construction Estimate	$4,377,410 for 15,900 lineal feet	$275/ft

35. On August 4, 2021, National Grid presented Revity with draft ISAs for the Weaver Hill projects and is proposing that Revity be responsible for its full allocable share of the common path interconnection costs and corresponding deposits based on Green Development's submitted budget.

36. The initial draft of Revity's ISA provided for Revity's self-performance of an approximately 3,000-foot manhole and duct system (separate from Green's common path work) with the following limitation:

> **Civil construction (work anticipated to be completed by Revity, with exception of first approximate 600 feet of duct bank on Weaver Hill Road, unless installed by Revity or Revity and EDP by agreement)**
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> . . .
>
> - Install MH and duct system (~3000 feet) from proposed riser pole on Hopkins Hill Road to 3-way MH on Hopkins Hill Road. National Grid to provide civil design including drawings to Customer to construct this portion. **<u>To the extent additional customers benefit from this portion of work in the future, National Grid will not have the responsibility to share the costs of construction or operation of this portion of work between or among the Customer and such additional customers.</u>**

(Underlined emphasis supplied). National Grid removed the language in a subsequently revised ISA after Revity's objection to the discriminatory treatment.

37. As of the date of this Petition, Revity has 21 interconnection applications under review by National Grid, totaling 130 MWs, that face the uncertainty of being subjected to this policy change, depending on which side of National Grid's case-by-case policy such applications may fall.

LEGAL ARGUMENT

38. There is no legal authority for National Grid to insert itself into the cost-socialization process where all interconnection work is being performed at the direction, custody and control of a private developer, especially where National Grid (a) has not incurred those costs, and (b) has stated that it intends to collect costs only on a "case-by-case" basis which, on its face, raises serious concerns regarding the potential for discriminatory application.

39. The pre-September 2021 Interconnection Tariff allowed National Grid to "charge an Interconnecting Customer for System Modifications specifically necessary for and directly related to the interconnection" to include "all costs **reasonably incurred by the Company** attributable to the proposed interconnection project in designing, constructing, operating and maintaining the System Modifications."[2] (Emphasis supplied).

40. The pre-September 2021 Interconnection Tariff required "that the subsequent customer make a prorated contribution toward the cost of the system modifications and [the Company] will credit such amount to the earlier Renewable Interconnecting Customers as determined by the Commission."

[2] Section 1.2 of the Interconnection Tariff defines "System Modifications" as "[m]odifications or additions to Company facilities that are integrated with the Company EDS for the benefit of the Interconnecting Customer."

41. The Interconnection Tariff, as amended in September 2021, now reads (in relevant part) as follows:

> 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.

42. Both the pre- and post-September 2021 Interconnection Tariffs authorize National Grid to collect costs "incurred by" National Grid and the term "incur" has been judicially defined as "[t]o suffer or bring on oneself (a liability or expense)." *Matter of Arbitration Between United Public Works, AFSCME, Local 646, AFL-CIO and Dep't of Transportation*, 487 P.3d 302, 306 (Haw. 2021) (quoting Black's Law Dictionary (11th ed. 2019)). "Incur" has also been defined as "to acquire or come into (something usu. undesirable); sustain" or "to become subject to as a result of one's actions; bring upon oneself." *Travelers Cas. & Sur. Co. v. Maplehurst Farms, Inc.*, 18 N.E.3d 311, 315 (Ind. 2014) (quoting THE AMERICAN HERITAGE COLLEGE DICTIonary 689 (3rd ed. 2000)). "Clearly, the word 'incur' connotes taking on a liability."[3] *U.S. ex. rel. Humphrey v. Franklin-Williamson Human Service, Inc.*, 189 F. Supp. 2d 862, 871 (S.D. Ill. 2002).

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[3] The United States Tax Court has articulated the various definitions of "incurred" as follows:

> We consider dictionary definitions of "incurred" to inform ourselves of the definition that Congress may have intended. Webster's Third New International Dictionary (1993) defines "incur" as to "become liable or subject to: bring down upon oneself", which is reflective of the definition in Black's Law Dictionary 782 (8th ed. 2004): "To suffer or bring on oneself (a liability or expense)." To become subject to is to become "vulnerable to. Subjected." Webster's Tenth Edition Merriam Collegiate Dictionary (1997).

43. When National Grid actually incurs the costs of interconnection in the first instance, it has a financial incentive (and, frankly, a legal obligation) to make sure the interconnection costs are reasonable. Subsequent interconnecting customers are protected by that incentive. When there is a private developer (and, in this instance, one with an affiliate civil construction company) performing the interconnection work, there may be no financial incentive (and certainly no legal obligation) on the part of the self-performing private developer to make sure that interconnection costs are reasonable.

44. Section 5.3 of the amended Interconnection Tariff also provides as follows:

> As appropriate, to the extent that subsequent Interconnecting Customers benefit from System Modifications that were paid for by an earlier Interconnection 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

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The sixth edition of Black's Law Dictionary contained the following more expansive definition of "incur":

> Incur. To have liabilities cast upon one *by act or operation of law, as distinguished from contract*, where the party acts affirmatively. To become liable or subject to, to bring down upon oneself, as to incur debt, danger, displeasure and penalty, and to become *through one's own action* liable or subject to. *Com. v. Benoit*, 346 Mass. 294, 191 N.E. 749, 751. [Black's Law Dictionary 768 (6th ed. 1990); emphasis added.]

The definition in the sixth edition reflects the distinction between bringing a liability upon oneself by contract (i.e., voluntarily agreeing, expressly or impliedly by act, to be liable—obligated by express or implied-in-fact contract) and subjecting oneself to a liability by act or operation of law (i.e., having the liability imposed by operation of law without consent as a result of one's own action—implied-in-law contract or quasi-contract).

The meaning of "incur" is not limited to "to agree to be liable for", as respondent argues. While the concept of incurred costs, expenses, and attorneys' fees might include a contractual obligation, it is a broader concept that includes other obligations not necessarily arising from agreed-upon contractual relationships. The word "incur" has a broad range which can be seen in its synonyms: "sustain, experience, suffer, gain, earn, collect, meet with, provoke, run up, induce, expose yourself to, lay yourself open to, bring upon yourself." COLLINS ESSENTIAL THESAURUS (2d ed. 2006).

Dixon v. Commissioner of Internal Revenue, 132 T.C. 55, 76 (2009)

> assessments may occur for a period of up to five years from the Effective Date of the earlier Interconnecting Customer's Interconnection Service Agreement.

(Emphasis supplied).

45. "Refund" has been defined as "[t]he return of money to a person who overpaid, such as a taxpayer who overestimated tax liability or whose employer withheld too much tax from earnings" and as "money returned to a person who overpaid." Black's Law Dictionary (11th ed. 2019). The term refund, as used by the Interconnection Tariff, only makes sense as a return of funds by National Grid to a previous interconnecting customer for a prior overpayment made by such previous customer to National Grid for earlier interconnection costs following contribution from a subsequent interconnection customer. That term does not support the idea that one interconnecting customer would directly pay another interconnecting customer for the costs incurred by the latter customer for earlier self-performed work. In other words, a subsequent customer would generally have no reason to receive any payments from an earlier self-performing customer in the ordinary business course, and so having never had received any form of payment from the self-performing customer to begin with, the subsequent customer would have no prior payments capable of "refunding" back to the self-performing customer.

46. R.I. Gen. Laws § 39-26.3-4.1(c) provides as follows:

> If an interconnecting, renewable energy customer is required to pay for system modifications and a subsequent renewable energy or commercial customer relies on those modifications to connect to the distribution system within ten (10) years of the earlier interconnecting, renewable energy customer's payment, the subsequent customer will make a prorated contribution toward the cost of the system modifications **<u>that will be *credited* to the earlier interconnecting, renewable energy customer</u>** as determined by the public utilities commission.

47. Black's Law Dictionary defines the term "credit" as "[a] deduction from an amount due; an accounting entry reflecting an addition to revenue or net worth." Black's Law Dictionary

(11th ed. 2019).[4] R.I. Gen. Laws § 39-26.3-4.1(c) clearly sets forth a regime whereby a subsequent interconnecting renewable energy customer will make a prorated contribution that will be **credited** by National Grid to an earlier interconnecting customer who paid the full amount for the interconnection work. In the case of a contribution made by a subsequent interconnecting customer to a self-performing developer, National Grid never charged or collected interconnection cost payments from the self-performing developer and there is no interconnection cost account for the self-performing developer to be "credited." The Petitioner submits that the foregoing is another instance where the language of R.I. Gen. Laws § 39-26.3-4.1(c) expressly contemplates National Grid's involvement in cost-socializations only where National Grid incurred the costs in the first instance. This interpretation is consistent with National Grid's past practice.

48. Last year, in *In re: Reconsideration of Interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii)* (Docket No. 5145), the Commission analyzed whether R.I. Gen. Laws § 39-26.4-2(5)(ii) allowed a single eligible net-metering system to be owned and operated on behalf of more than one public entity. The Commission recognized that "the practice that has been in place since 2016 to allow an eligible net metering system to allocate net metering credits to multiple Special Entities is not inconsistent with the purposes of the statute." *Order* at p. 6. The Commission noted that a ruling contrary to past practice "had the potential to disrupt a market that had, for some period of time, already relied upon the interpretation requested by the Petition." *Id.* at p. 2. The Commission thus chose the interpretation that "would harmonize the statute with the current practices and not disrupt the market for Special Entity net metering." *Id.* at p. 5.

[4] Alternatively, a "debit" (the definitional counterpart to "credit") means "[a] record that in financial accounting shows money to have been spent or to be owed; esp., in bookkeeping, an entry made on the left side of a ledger or account, noting an increase in assets or a decrease in liabilities," and for bookkeeping purposes reflects "[a] sum charged as due or owing; esp., a decrease in the amount of money in a bank account." Black's Law Dictionary (11th ed. 2019).

49. Here, the renewable development industry has relied upon National Grid's past practices of abstaining from cost-sharing and this change in policy has the potential to disrupt the market for interconnection civil work.

50. Moreover, R.I. Gen. Laws § 39-26.3-4.1(a) provides that "[t]he electric distribution company may only charge an interconnecting, renewable energy customer for any system modifications to its electric power system specifically necessary for and directly related to the interconnection" and the Commission has recently interpreted this statutory provision as "making clear that the interconnecting customer may only be charged for costs **it is causing**" National Grid and so, "[i]n the event the customer seeking the extension of distribution facilities to serve a new facility **causes** a cost in excess of the future revenues [National Grid] expects to receive from the customer, that customer is directly responsible for the excess costs." *In re: Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission Sys. Costs & Related Affected Sys. Operator Stud.*, No. 4981, 2020 WL 2486927, *18 (Apr. 14, 2020) (emphases supplied).

51. National Grid has not explained how it can interpret the current Interconnection Tariff (or state law) as allowing it to insert itself into the cost collection process when it is not incurring any of the costs for the interconnection civil work, let alone how it can demand or collect potentially unjust or unreasonable charges or amounts in connection with the interconnection.

52. Instead, National Grid claims to have revised its policy and, furthermore, National Grid claims to be applying this new policy on a "case-by-case" basis without any explanation of which cases it will be applied and which cases it will not be applied. These actions are unlawful.

53. R.I. Gen. Laws § 39-1-27.6(c)(5) states that "[a]ll employees of the electric distribution company must apply all tariff provisions in a fair and impartial manner that treats all

customers (including those of an affiliated nonregulated power producer) in a nondiscriminatory manner."

54. Rhode Island law prohibits "discrimination in respect to any service in, affecting, or relating to . . . the distribution of electricity" (*see* R.I. Gen. Laws § 39-2-4) and further bars the utility and its agents from demanding "a greater . . . compensation for any service rendered or to be rendered by it, in, or affecting, or relating to . . . the distribution of electricity . . . or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions." R.I. Gen. Laws § 39-2-2(a). The utility cannot subject any of its interconnection customers (including but not limited to Revity) to an undue and unreasonable prejudice and disadvantage. R.I. Gen. Laws § 39-2-3.

55. Applying interconnection policies on a case-by-case basis, without any explanation of the factors to be weighed in deciding application, is *prima facie* evidence of discriminatory application in violation of these statutes.

56. Moreover, there is a process through which National Grid could adopt a new interconnection tariff governing its actions, which the company has repeatedly done before, but in this case the utility has not followed that process.

57. R.I. Gen. Laws § 39-1-27.6(e) states that "[t]he electric distribution company must maintain in a public place, and file with the commission, current written procedures implementing the standards of conduct in such detail as will enable customers and the commission to determine that the electric distribution company is in compliance with the requirements of this section."

58. Section 9.4 of the Interconnection Tariff states that "[w]hen the Company is considering changes that are likely to materially impact proposed Facilities or future applications in this Interconnection Tariff, the Company shall provide a draft of the proposed changes to its standards to the ITSC and Interconnecting Customers with potentially impacted applications prior to those changes going into effect." National Grid's new cost-sharing position could increase Revity's costs for the project by more than $5,000,000. This is a material change in policy on which Revity and its affiliates materially relied to their detriment.

59. The Commission's Rules of Practice and Procedure require National Grid to proceed through the "tariff advice" process if it wishes to change its policy:

> Public utilities may file tariffs adding new services, providing for new rules, or otherwise adding to their tariff schedules without amending existing tariffs by tariff advice. Public utilities may also file minor changes to existing schedules by tariff advice. The tariff advice must include a letter of transmittal from the utility listing all tariff pages changed or added by the tariff advice and stating briefly the reason for filing the tariff advice. If existing tariffs are changed, the advice must contain two legible copies of each changed page, one showing all the changes with appropriate symbols for deletions or additions (see "Public Utilities Commission's Guidance on Formatting Tariffs"), and one showing the pages after the changes as they will appear in the new tariffs.

810-RICR-00-00-1.10(C)(1).

60. National Grid rightfully went through the tariff advice process in 2021 to change Section 5.3. Indeed, that change reaffirmed that National Grid can only involve itself in cost-collection when National Grid has itself actually "incurred" the interconnection costs. There was extensive testimony given and filings made during that matter (Docket No. 5077) and at no point was there any discussion of National Grid expanding its cost-sharing authority beyond interconnection costs actually incurred by National Grid. This tariff advice process occurred

contemporaneously with National Grid being regularly confronted by and being in repeated discussions with concerned developers[5] on this very issue.

61. Again, setting aside the procedural maladies attendant to National Grid's *ad hoc*, unilateral policy change, it is fundamentally inequitable for National Grid to force upon an interconnection customer costs that have nothing to do with National Grid's relationship with that customer. National Grid has no incentive to scrutinize a private developer's budget because National Grid will not have to pay the costs nor does it have any legal obligation to the ratepayer to do so. In turn, the self-performing developer has no incentive to be reasonable with the costs because it now knows that National Grid will assume the mantle of its debt collector. Indeed, the cost documents provided to date with respect to the West Greenwich interconnection reflect substantial (and unnecessary) overtime expenses incurred for the project without any justification for the expedition. National Grid's position cannot coexist with applicable law when this system would have the utility demand and collect unjust and unreasonable charges in an unreasonably discriminatory manner.

62. As a practical matter, the only reasons why a developer would elect to self-perform interconnection work is (i) if the developer believes that it can do the work more efficiently than National Grid or (ii) it has a separate profit-motive in the work (*e.g.*, the developer has an affiliated construction company). In either event, self-performance provides some benefit to National Grid because it alleviates National Grid from having to expend time and resources (including that of technical personnel) on the civil work – but if National Grid is not going to be involved in the civil work then it should not be involved in the collection of invoices for that work. In any event, National Grid absolutely cannot be involved in demanding or collecting unjust or unreasonable

[5] See Paragraphs 15 through 19, *supra*.

amounts for such work, nor can it apply this policy so unevenly as to constitute unreasonable discrimination against a customer.

63. Indeed, the initial draft ISA presented by National Grid to Revity for this same project provided that, with respect to the portion of interconnection work that Revity intends to perform, “National Grid will not have the responsibility to share the costs of construction or operation of this portion of work between or among the Customer and such additional customers.” National Grid removed the language when Revity objected to its discriminatory treatment but as of the date of this filing Revity has still not received any reasonable assurances that National Grid will diligently pursue subsequent interconnecting customers to Revity’s interconnection work such that Revity will receive cost-sharing treatment equal to that of National Grid’s treatment of Green Development on the Weaver Hill cost-sharing issue previously described above throughout this Petition.

64. Developers must be treated equally with respect to the exact same project, and all costs demanded or collected by the utility must be just and reasonable.

WHEREFORE, Revity Energy LLC respectfully requests that the Commission issue a Declaratory Judgment, declaring as follows:

A. Pursuant to R.I. Gen. Laws § 39-26.3-4.1 and the Interconnection Tariff, as well as past practice, National Grid is not authorized to participate in or otherwise enforce the allocation, collection or socialization of costs incurred by a private developer in the self-performance of the civil work for the interconnection required for newly installed PSES projects; and,

B. All civil interconnection work and related equipment (including all rights, title and interests in and to same) self-performed by a private developer, once completed, is presumed to be automatically donated, assigned, and conveyed by the developer (or its affiliate, as the case may

be) to National Grid and, thereafter, National Grid has a legal obligation to interconnect any subsequent facility as necessary to accomplish the purchase and sale of electricity generated therefrom.

REVITY ENERGY LLC

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