STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

REVITY ENERGY, LLC PETITION FOR DECLARATORY JUDGMENT	Docket No. 5235

GREEN DEVELOPMENT'S POST HEARING COMMENTS

By its attorneys, Green Development, LLC ("Green") provides these comments on policy matters addressed at the end of oral argument when its counsel had to be excused for another court appearance. While Green has submitted (and submits) that these administrative/policy issues are beyond the scope of the declaratory judgments sought in this case and are, therefore, not currently before the Commission, the Commission has stated that such matters are important for the Commission to consider moving forward. In that spirit, and with the hope of helping with the Commission's deliberations, Green provides these supplemental comments.

i) Cost Assessment and Allocation for System Improvements

The Chair, Commissioner Anthony and Ms. Wilson Frias asked Rhode Island Energy (RIE, which will be used here to depict both the current Company and its predecessor) questions about requiring interconnecting renewable energy customers to build excess system capacity and who assumes the risk of that capacity. RIE responded that it commonly requires such customers to overbuild to its standards or expectations despite whether such overbuilding is needed to interconnect the customer's renewable energy project.[1] The Commission need not address such policy to answer

[1] RIE's counsel stated that it approaches construction on its system with the priority of "safety and reliability" while the development community is focused on "time and money." As one example, he notes that a 4-way duct bank is RIE's minimum standard and must be constructed to serve potential future load even if only 2-way duct bank is needed to interconnect a project. However, RIE's underground standards include a design configuration for a 2-way duct bank. The

Revity's second request for declaratory judgment (which is whether Revity is entitled to access self-performed upgrades donated to RIE whether or not they share the cost of those upgrades), but if there is any uncertainty as to the answer, such uncertainty ought to be addressed and resolved in a future, transparent and broadly accessible regulatory proceeding.

Green strongly disagrees with RIE's answers to this line of questioning and disputes its policy. Both the statute and the tariff are clear that an interconnecting renewable energy customer may only be charged for "system modifications" (upgrades necessary to interconnect that customer's project) and may not be charged for "system improvements" (upgrades benefitting RIE's system or its other customers). RIE and its predecessor's refusal to administer this distinction carefully and clearly costs Rhode Island's renewable energy industry, its energy policy goals, and its ratepayers dearly.

Ms. Wilson Frias asked RIE what happens when an interconnecting renewable energy customer is forced to overbuild the electric distribution system to RIE's standards (e.g., to build a 4-way duct bank when only a 2-way duct bank is required)[2] but no other load or generation customer makes use of the excess capacity. RIE responded that the renewable energy customer foots the bill for such an overbuild and is only repaid for such overbuilding if and when another customer uses it. Green disputes that policy as inconsistent with the statute and tariff and fundamentally inequitable and unreasonable overcharging. Neither the statute nor the tariff authorizes RIE to charge an interconnecting renewable energy customer for upgrading the electrical system to RIE's standards

23kV duct bank to extend the 2232 circuit to the Coventry Wind Turbines was designed, approved by Narragansett, and customer self-installed, as a 2-way duct bank because that was all that was required for the interconnection. The 2-way duct bank provides both primary and spare conduit so there is no safety and reliability distinction between a 2-way and a 4-way duct bank. The addition of excess conduit is not necessary for safety or reliability, it only serves as pathway for the Company's interest in accommodating additional, future load.

[2] The Commission should also note that such overbuilding comes with much more substantial cost implications than might be expected because depth of construction has major cost repercussions (basically not just linear but exponential cost implications).

regardless of whether all such upgrades are needed to interconnect that customers system.[3] If RIE wants to overbuild its system in anticipation of future system benefit, RIE must fund the cost of any such overbuild; it may not charge its renewable energy customer for those costs. RIE's admission that it has been doing so is a matter of substantial public interest and concern because it very fundamentally frustrates the economics of our renewable energy industry. That industry is favored by Rhode Island policy expressly because locally sourced renewable energy promises to enhance reliability/security, lower costs and reduce emissions.

This concern also arises in Revity's effort to raise ambiguity in section 5.3 of the tariff on cost sharing. RIE's promulgation of a tariff that is so clearly inconsistent with the statutory language on the cost sharing obligation in section 4.1(c), purports to allow RIE discretion to administer cost sharing if and when it wants to do so regardless of the clear fact that the statute requires it.[4] RIE now admits that tariff ambiguity must be "cleared up" to provide consistency with the statutory mandate. However, since 2017, when this cost sharing provision became law, RIE could its tariff language as a justification for not administering (or agreeing to) cost sharing in situations where cost sharing was

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[3] There is only one exception authorized by our statute. That is only when RIE appeals to the Commission for a determination that its already identified need to improve the electric system is being accelerated by the work required to interconnect a customer (section 4.1(b)). In that one, specific instance, RIE may first charge the renewable energy customer for the upgrade and then reimburse the customer when the upgrade would have otherwise been required for other customers. Green and its counsel are unaware of any situation in which RIE has invoked and the Commission has approved the application of this statutory provision or reimbursed any renewable energy customers for such accelerated system improvements. The lack of transparency on the electrical system and RIE's control of all the information about the system makes it virtually impossible for a renewable energy developer to prove when RIE claims "system modifications" for what are properly considered "system improvements." That is one reason why the industry has proposed to give a neutral ombudsman visibility onto the system and capacity to oversee RIE;'s decision making on interconnection.

[4] These are not the only instances in which RIE has been allowed to administer the law in a manner that contravenes its clear language, overcharging local renewable energy projects in a manner that threatens the economics and Rhode Island's energy and climate policy. See also ACP Land LLC et al v. National Grid plc et al, Case 1:21-cv-00316-MSM-LDA (D.R.I.) (motion to dismiss denied); In Re: Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Docket NO. 4981 Transmission System Costs and Related "Affected System Operator" Studies, SU-2020-0106-MP (R.I.)(appeal pending).

not only equitable but also mandated by law (for all system improvements whether company constructed or self-performed). Here again, renewable energy developers do not have transparency to determine whether and when RIE has exercised such administrative discretion inappropriately (to deny cost sharing where it should have been required), but any such breaches would hurt the renewable energy industry, ratepayers and Rhode Island's energy policy.

These concerns are only amplified in the context of obligations for transmission system investments. As addressed in Green's legal memorandum, the parties to this docket have agreed to the fact that RIE has identified the Weaver Hill Road substation and related work as infrastructure upgrades that are needed to maintain RIE's current level of service. Agreed fact 36 states:

> On December 21, 2021, Narragansett filed the FY 2023 Electric Infrastructure, Safety, and Reliability (ISR) Plan. In it, Narragansett identifies required upgrades in the Central RI West Area to extend portions of the 35kV system and install a new substation at Weaver Hill Road to relieve existing distribution circuit concerns on the 54F1 and 63F6.

RIE has thus admitted that "asset condition concerns" require replacement or upgrades in the Central RI West region and proposes to extend the 35kV system and install a new modular substation at Weaver Hill Road to relieve pressure on the 54F1 and 63F6 circuits.[5] Neither the law nor equitable cost allocation policy should allow RIE to charge Revity, Green or EDP for any system improvements required for existing service requirements, as proposed to be addressed in RIE's 2023 ISR. It is self-evident that requiring local renewable energy developers to fund such substantial system improvements that so evidently benefit all of RIE's customers is an economic kill switch for

[5] 2023 Electric Infrastructure, Safety, and Reliability Plan Annual Filing (December 20, 2021), p. 36 (see http://www.ripuc.ri.gov/eventsactions/docket/5209-NGrid-Book1-Electric%20ISR%20FY2023%20Plan%20(PUC%2012-20-21).bates.pdf)

much (if not all) of Rhode Island's renewable energy industry and, consequently, for Rhode Island's renewable energy and climate policy.[6]

In all of this context, there is not and ought not to be any distinction between whether any such upgrades are constructed by RIE or self-performed by the interconnecting renewable energy customer. In either case the upgrades are charged to the interconnecting renewable energy customer and paid to RIE, either in cash or by in-kind contribution of the upgrade.[7] Given RIE's continued confusion and now evident misadministration of the statute and tariff provisions on the assessment and allocation of investments in system improvements, Green submits that the Commission should conduct discovery and resolve proper administration of such investments in the improvement of our shared electric system.

ii. Amending Procedure Moving Forward.

The Commission and its staff questioned the appropriate process for amending policies for self-performance, cost assessment and cost allocation moving forward. RIE said it is working on developing standards for self-performance and stressed that such standards ought to be adopted internally outside the tariff; that they will only be released to the public for review and comment with the understanding that RIE will make any final determinations entirely at its own discretion. Given the discussion in section (i) above, it may not surprise the Commission that Green is not at all comfortable with that approach. RIE claims that such standards do not rise to the level of tariff

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[6] It is also important to note that RIE has had and has economic interests in supply alternatives (be it the value of infrastructure investments that can be avoided by locally sourced alternatives or its vested interests in natural gas business, utility scale renewable energy alternatives and even economic incentives for specific programs for local renewables like the REG program as opposed to net metering) and thus cannot be allowed the benefit of any presumption that it will maintain neutrality in the exercise of its monopoly control over access to our electrical system.

[7] Green submits that even Revity does not have an interest in the distinction they have sought to draw between payments made to RIE, charges issued by RIE, or in-kind contributions in this context of self-performed upgrades. If there were any distinction, Revity would be supporting the right to self-perform construction without any legal promise or protection of compensation for the contribution of self-performed upgrades.

treatment because they do not implicate the provision of electrical service to customers. That proclamation only further illustrates the size of this problem.

Rhode Island law and policy is clear that interconnecting renewable energy customers are not only RIE's customers entitled to receive electrical service under the same equitable terms as any other customers; it actually elevates such customers to a preferred, policy priority level.[8] RIE still refuses to acknowledge the transition from a one-way electrical system to its essential role in facilitating and implementing our multi-directional energy future. Given this highly problematic outlook and dynamic, Green has major concerns about allowing RIE to develop and adopt any such policies without full transparency, opportunity to comment and amend, all subject to Commission approval.

Even the Division's offer of recommendations and suggestion that it alone review such policies and procedures is inadequate to protect the interests of the renewable energy industry and Rhode Island policy. As is generally the case, the Division does not and cannot represent all interests in such standards. As just one example of (many) unrepresented interests, local renewable energy developers have distinct experience and interests that are not represented in the recommendations from the Division's consultant. While the recommendation that self-performed construction must be conducted only by RIE's preapproved contractors may portend to serve some nominal interest in safety and reliability (which is already governed by strict construction standards), it promises to limit access to the competitive market for such services in ways that may benefit RIE but are most likely to make the construction more costly and less timely to the detriment of the developers, ratepayers and Rhode Island policy. The Division's recommended requirement that all benefitting parties approve a self-performed construction plan and budget before commencement of construction allows the non-

[8] In fact, the general assembly has proposed self-performance standards in legislation pending this session. That bill (H8220/S2689) has already passed the Senate. What could be a more evident indication of public interest in this element of RIE's electric service?

performing but benefitting developers (e.g., Revity in this case) too much leverage and control over the construction schedule, budget and process, effectively allowing them a kill switch.

The tariff is the proper place for any such policies and procedures. A tariff proceeding must be open and transparent for participation by all who want to weigh in, because such policies and procedures deeply impact all of us. As Green has submitted (and submits), such procedure is not called for in this declaratory judgment docket, but it will be needed to address the substance through appropriate procedure moving forward.

Thank you for your consideration of these supplemental comments on future policy matters raised in these proceedings. Green hopes they are of good use to the Commission and welcomes the added opportunity for the other parties to this docket to respond to their substance.

Respectfully submitted,

GREEN DEVELOPMENT, LLC

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I sent a true copy of this document by electronic mail to the Commission and the attached service list and mailed the original pleading and 6 photocopies to the Commission.

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