

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: The Narragansett Electric Company :
d/b/a Rhode Island Energy Tariff Advice to Amend : **Docket No. 23-05-EL**
the Net Metering Provision – Proposal for Administration :
of Excess Net Metering Credits :

ORDER

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I. Introduction

On February 15, 2023, The Narragansett Electric Company d/b/a Rhode Island Energy (Rhode Island Energy or Company) made a tariff advice filing¹ to amend the Company’s net metering tariff (Net Metering Tariff)² which contains the terms and conditions relating to the Company’s administration of its net metering program that is established in R.I. Gen. Laws § 39-26.4-1 *et seq* (the Net Metering Statute).³

Net metering is a statutorily mandated billing mechanism that applies to customers that are self-generating with eligible renewable generation. It requires the utility to provide bill credits on the electric accounts of those customers when the self-generated electricity in a given billing period is not being consumed at the customer’s site and, instead, some or all of it is delivered into the electric grid. The Net Metering Statute also includes a feature where eligible renewable generation can be located remotely from eligible customer electricity accounts and the bill credits for electricity delivered into the grid can be allocated from the account where the generation is located to other electric accounts of customers that meet the specific eligibility requirements under the Net

¹ See Commission’s Rules of Practice and Procedure, Rule1.10(c). The rule states in part: “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.”

² Net Metering Provision, R.I.P.U.C. No. 2257, effective 2023.

³ R.I. Gen. Laws § 39-26.4-1 *et seq*.

Metering Statute. The allocation of credits allows the participating customers to use the credits to lower payments on their electric bills.

The utility accumulates the monetary value of the net metering credits applied to the net metering accounts over the course of the year and recovers the net amount of the lost revenue through a net metering charge assessed on all ratepayers. As designed, the net metering program incentivizes the deployment of renewable generation by having all ratepayers fund the bill credits and, in turn, the total costs of the net metering program.

The net metering billing mechanism has two elements that define the netting process and determination of the value of net metering to participants. First, each customer's meter is read approximately twelve times per year to establish monthly net consumption or generation, as is the common practice for all customers. For months in which consumption is greater than generation, the Company's meter will record net usage and charges are applied to that consumption equal to the charges that would apply to any other customer in the rate class. For months in which generation is greater than consumption, the Company's meter will record net generation and a statutorily defined Renewable Net Metering Credit is applied to each kilowatt-hour of net generation resulting in cash credit on the customer's bill.⁴

Second, the statute requires that at the end of a billing period, for any generation that is determined to be in excess of 100% and below 125% of the net metering customer's on-site usage, it should be credited at a statutorily defined (and lower-valued) Excess Renewable Net Metering Credit. No credit is provided for generation above 125% of consumption.⁵ While the Company

⁴ For any net metering system, the resulting cash credit can be used against past, current, or future charges associated with the electric account where the generation physically occurs. For some net metering systems associated with special customers enumerated in the Net Metering Statute, the cash credit may also be transferred to other eligible electric accounts that are different and remote from the location where generation physically occurs.

⁵ The statute does not specifically determine a credit value for generation in excess of 125% of on-site usage. The Company's tariff specifically provides zero credit for such generation.

reads bills monthly as described above, the Net Metering Tariff adopts a calendar year for the purposes of annual reconciliation. Thus, in order to determine whether generation has exceeded the statutory 100% or 125% thresholds, the Company must compare the net sum of twelve months of consumption and generation (based on the monthly meter reads). Since all net generation is initially paid a full Renewable Net Metering Credit during the monthly billing process, the Company must apply a reconciliation *charge* to customers whose generation exceed the 100% or 125% thresholds, and this lowers the credit paid for those kilowatt-hours of generation to the statutory Excess Renewable Net Metering Credit or to zero, as appropriate.

The Company's tariff advice filing aims to address past non-compliance issues related only to this second element of Net Metering – the annual reconciliation for net generation in excess of 100% or 125% of the customer's annual consumption.⁶ During several previous one-year periods, the Company's implementation of the annual reconciliation process was inconsistent with the Company's tariff on file with the PUC, which resulted in overcompensation of certain net metering customers. This overcompensation was funded by all ratepayers through the Net Metering Charge.

This docket and Order addresses only the prospective resolution of the non-compliance and does not address the consequences to the Company, if any, arising out of its past non-compliance.

⁶ The non-compliance occurred when the Company (The Narragansett Electric Company) was owned by National Grid USA and was doing business as "National Grid." The Company is now owned by PPL Corporation and is doing business as "Rhode Island Energy."

II. Parties to the Proceeding and Contested Matters

A. Parties

After the Company's filing was made on February 15, 2023, the Commission established a deadline for interventions of May 5, 2023, in a published schedule. Timely motions to intervene were filed by MassAmerican Energy LLC d/b/a Gridwealth Development (Gridwealth or MAE) and Revity Energy LLC (Revity).

Gridwealth is a renewable energy developer, financier, and long-term operator of distributed generation resources with a "target market" of commercial and industrial sites for solar photovoltaic and battery electricity storage systems.⁷

Revity is a company in the business of developing utility-scale photovoltaic solar energy systems. Revity states that it has numerous projects that participate in the net metering programs.⁸ No objections were filed to the motions and, therefore, Gridwealth and Revity were granted intervention.

The Division of Public Utilities and Carriers (Division) and the Office of Energy Resources (OER) are parties as a matter of statutory right.⁹

B. General Summary of the Case and the Commission's Decision

The Company proposed the amendments to its Net Metering Tariff to assist in its initiative to bring the Company into compliance with the Net Metering Law and the Company's related tariff obligations, commencing with a reconciliation of all net metering accounts for calendar years 2022 and 2023. The Division, acting in its capacity as ratepayer advocate filed testimony

⁷ Gridwealth Motion to Intervene at 1.

⁸ Revity Motion to Intervene, at 1.

⁹ OER filed a notice of intervention on May 3, 2023. There is no requirement for the Division to file such a notice.

supporting the Company's proposal. OER did not advocate any particular position, except to encourage a communication plan and other protective measures for net metering customers before the initiative is implemented.

Revyty raised a legal challenge, maintaining that certain key provisions of the Net Metering Statute do not apply to the class of net metering facilities to which Revyty belongs. Revyty also objected to some of the proposed tariff amendments, arguing that they were either unnecessary, ineffective, or needlessly burdensome. Revyty also argued for implementation of any new rules to commence prospectively only, beginning in 2024.

Gridwealth criticized the Company, argued for certain enhancements to the value of certain net metering credits being provided to net metering customers, objected to some of the same administrative provisions to which Revyty also was objecting, and recommended the Commission appoint a third-party program administrator for net metering.

This Order addresses these issues in dispute. In summary, for the reasons described herein, the Commission accepts some of the tariff amendments proposed by the Company, rejects other amendments, modifies some, and requires additional conditions to be added. The Commission cancels the existing Net Metering Tariff and requires a new Net Metering Tariff with terms consistent with the Commission's decisions set forth in the body of this Order. The Commission sets an effective date for the new Net Metering Tariff to commence implementation of the new terms and conditions for calendar year 2024.

By cancelling the existing tariff and establishing prospective application commencing in 2024 only, the Commission effectively settles credits for all net metering accounts as of the end of 2023 without adjustments or reconciliations to any net metering customer accounts. While the

Order addresses the issues prospectively, it leaves open the possibility of further regulatory investigation by the Division that could address issues of accountability for the Company arising out of the Company's non-compliance that occurred during the years prior to 2022, if the Division determines in its sole discretion to pursue the matter further pursuant to its independent investigatory authority.

III. The Net Metering Program

A. Net Metering Generally – Two Configurations

The net metering program consists of a complicated set of billing rules applied to customers who are either self-generating or being served through the net-metering provisions that allow generators to transfer credits to remote accounts. The rules address how participants should be billed and credited for the production and consumption of electricity associated with their respective arrangements.

In general, there are two configurations of net metering that are allowed under the Net Metering Statute. One configuration involves a customer who has eligible renewable generation located on the same site where electricity is being consumed. In those cases, the customer is self-generating and “self-supplying electrical energy and power at the net metering system site.”¹⁰ In this configuration, both the generation of and actual consumption of electricity is occurring on the customer side of the utility's electric meter used for billing purposes. Hence, this configuration of net metering is typically referred to in the industry as “behind-the-meter” net metering.

¹⁰ Pre-filed Testimony of Russell Salk and Briggs, at 6.

A second configuration of net metering involves an eligible renewable generator not located on the same site as the customers who are receiving some or all of the bill credits. The generator's site in this configuration is often referred to as the "host site." The owner of the generator, or "host site," produces electricity that is delivered directly into the grid. While the generator typically has a small quantity of on-site consumption for lighting, security, and minor on-site operation associated with the generation (also referred to as "station service"), the output of the generation electrically functions like that of a traditional generator that is built for the purpose of delivering electricity into the grid for sale in the electric markets.¹¹ However, instead of the power being sold by the generator in the electric market, the Net Metering Statute stipulates that the generator earns transferable net metering credits from the utility for every kilowatt-hour of electricity that is delivered into the grid. The utility takes the power and re-sells it into the electric market at spot market prices to offset part of the cost of the net metering program being funded by the wider ratepayer population.

The market price of electricity is typically lower than the value of the billing credits being earned under the net metering program by the owner of the generation. Thus, the net metering crediting mechanism provides out-of-market revenue to the owner of the generation to facilitate the financing of the renewable generation project. This type of net metering configuration is referred to in the industry by several different synonymous names, such as "virtual net metering," "stand-alone," or "remote net metering."

¹¹ In some instances, there can be a customer account on-site receiving billing credits, along with accounts which are remote from the generation site.

B. Types of Virtual, Stand-Alone, and Remote Net Metering Configurations

Within the Net Metering Statute itself, there are two types of “virtual,” “remote,” or “stand-alone” net metering configurations: (1) projects serving certain non-residential customers remotely which are eligible under the statute, and (2) projects which the statute identifies as “community remote” net metering, serving at least one account relating to low or moderate-income housing remotely. These two types share similar features. The physical configuration is the same and each has the right to transfer billing credits. However, they differ in the type of customers that are eligible to receive transfers of credits. Under the first category, the eligible customers are specified in the statute to be public entities such as government entities, non-profit entities, educational institutions, and the like, as well as commercial and industrial (C&I) customers who were legislatively added to the eligible class during the 2023 legislative session.¹² The second type of remote net metering labeled in the statute as “community remote” net metering contains provisions that require at least one of the credit recipients to be associated with low or moderate-income housing, as well as other requirements.¹³ Community remote net metering was not directly addressed by any party in these hearings, but the decision in this Order would apply to community remote arrangements. During the hearings, the terms “stand-alone” and “community remote” net metering were used to distinguish the two net metering systems, even though community remote net metering is a type of “stand-alone” project.¹⁴

¹² See R.I. Gen. Laws § 39-26.4-2(6). The C&I customers were added to the Net Metering Statute, along with other amendments not relevant to the issues in this proceeding. See P.L. 2023, ch. 300, § 1, effective June 24, 2023; P.L. 2023, ch. 301, § 1, effective June 24, 2023. (S 0684 Substitute A, enacted 6/24/2023, *An Act Relating to Public Utilities and Carriers – Net Metering.*)

¹³ See R.I. Gen. Laws § 39-26.4-2(1).

¹⁴ Unless the context indicates otherwise, this Order also uses the two terms to make the same distinction – “stand-alone” refers to a net-metering system serving the public entities and C&I customers as identified above, and “community remote” refers to the net-metering system described above that is used to serve low or moderate-income housing.

C. *Transactional Details of Virtual, Stand-Alone, Remote Net Metering*

In the case of both stand-alone and community remote projects that serve remote customers, it is important to note that – typically – no sale or delivery of electricity takes place from the generator to the participating customers to whom the billing credits are transferred.¹⁵ Rather, the transaction that occurs between the owner of the generation and the recipients of the credits typically consists solely of the sale of billing credits. In each instance, those conducting business in the industry refer to these eligible recipients as “off-takers”¹⁶ or “satellite accounts.”¹⁷ However, in at least one respect, the term off-taker may be a misnomer because remote off-takers do not purchase the electricity from the project. Rather, the only “product” being purchased by the remote off-takers consists of the billing credits.¹⁸ The generator enters into a separate contract with the off-takers and the off-takers agree to pay the generator a price per kilowatt-hour for each kilowatt-hour of billing credits allocated to them. The generator then provides a list of the off-takers to the utility through what is referred to as a “Schedule B.” The utility is required under the Net Metering Statute to assign the value of the billing credits to the off-takers’ electric accounts to off-set the charges that are being assessed for the delivery of electricity at the off-taker’s premises listed on the Schedule B.

The aggregate value of the credits is typically high enough that the off-taker can substantially reduce or effectively eliminate the charges on its electric bill. Thus, the effect of the arrangement results in the off-taker receiving discounted electric service from the utility.

¹⁵ There may be circumstances where there is another electric account on site that actually purchases some of the electricity behind-the-meter, while the balance of the electricity is delivered into the grid which results in billing credits dispersed to other remote accounts.

¹⁶ Hr’g Tr. at 291 (October 25, 2023).

¹⁷ Hr’g Tr. at 135-136 (October 5, 2023).

¹⁸ *Id.*

Typically, the off-taker pays the stand-alone generator for the bill credits at a price that is below the value of the credits. In such cases, the off-taker reduces its electricity costs and the generator uses the revenue stream from the sale of the credits to finance and operate its project, effectively monetizing the electricity generated. For instance, if the credit is worth \$0.20 per kWh and an off-taker buys it for \$0.16, the off-taker can offset \$0.20 of charges on their bill, enjoying a 20% discount. Revenue from selling net metering credits is used to finance and operate the generator's project. For instance, in the above example, the generator would monetize the energy generated by selling the credits for \$0.16 per kWh.

Net metering participants use credits instead of money to pay their electric bills, resulting in lost revenue for the utility. To offset part of the lost revenue, the utility sells energy from stand-alone and community remote systems at wholesale market prices. The utility then recovers the remaining lost revenue from all ratepayers through a uniform net metering charge (Net Metering Charge) paid by all customers, including those not participating in the net metering program.¹⁹

D. Renewable Net Metering Credits

The Net Metering Statute and the Net Metering Tariff of the Company establish two types of bill credits for net metering. As designated in the Net Metering Tariff, one credit applies in the ordinary course when, in a given month, the amount of production of electricity exceeds the amount of consumption in that month, referred to in the Net Metering Statute as the “renewable

¹⁹ R.I. General Laws § 39-26.4-3(c). As the utility more fully describes in its Annual Retail Rate Filing, the Company recovers through a Net Metering Charge the sum of the following: (1) all Renewable Net Metering Credits paid to eligible net metering customers, less any payments for the sale of excess generation; and (2) the difference between the payments made to Qualifying Facilities with renewable generation at the LRS rate and the net proceeds received for energy sold and any capacity payments, if any. *See e.g.*, Docket No. 24-07-EL, 2024 Annual Retail Rate Filing, at 40-43. The utility performs a reconciliation on an annual basis and sets a uniform per-kWh charge on all distribution customers for energy delivered during the next year. The charge is applicable to all customers and is included with the LTC Recovery Factor on customer bills, labeled as the Renewable Energy Distribution charge.

net metering credit” (hereinafter referred to as the “Primary Credits” for purposes of this Order).²⁰ The other is stipulated in the Net Metering Tariff to apply when the amount of generation exceeded the amount of electricity consumed at the eligible account(s) measured on an annual basis, referred to in the Net Metering Statute as the “excess renewable net-metering credit” (hereinafter referred to as the “Excess Credits” for purposes of this Order).²¹ The determination of the Primary Credits and the Excess Credits is specified by the Net Metering Statute to correspond to certain components of the utility’s volumetric rates, but the value of the Excess Credits is mathematically lower than the value of the Primary Credits.

Specifically, the Primary Credits are calculated to be the sum of the utility’s:

Last resort service kilowatt-hour charge;²²

Distribution kilowatt-hour charge;

Transmission kilowatt-hour charge; and

Transition kilowatt-hour charge.²³

In contrast, the Excess Credits only reflect the applicable Last Resort Service charge. Specifically, the definition of an Excess Credit includes a sentence containing a specific directive regarding the rate to be used to establish the Excess Credit, stating:

Such excess renewable net-metering credit shall be equal to the electric distribution company’s avoided cost rate, which is hereby declared to be the electric distribution company’s last resort service kilowatt hour (kWh) charge for the rate class and time-of-use billing period (if applicable) applicable to the customer of record for the eligible net-

²⁰ See R.I. Gen. Laws § 39-26.4-2(22).

²¹ See R.I. Gen. Laws § 39-26.4-2(8).

²² The Last Resort Service charge used for the calculation of the credit is “net of the renewable energy standard charge” which is embedded within the Last Resort Service Rate. See R.I. Gen. Laws § 39-26.4-2(8).

²³ R.I. Gen. Laws § 39-26.4-2(22). There are some adjustments that apply to community remote net-metering systems and other eligibility language not stated here.

metering system or applicable to the customer of record for the community remote net-metering system.²⁴

This Order describes the last resort service rate in a subsequent section below.

E. Size Limitations on Net Metering Systems

For net metering facilities, the Net Metering Statute provides two size limitations. One limits the maximum capacity of an eligible generator to ten megawatts, such that no facility may have a capacity greater than that amount.²⁵ This limitation is straightforward and is not relevant to the case at hand.

However, there is a second limitation that is intended to limit the size of the generation facilities to prevent them from being designed to have a production output that exceeds the amount of the estimated electricity consumption at the accounts of customers eligible to receive the net metering credits. This size limit applies to both behind-the-meter installations and stand alone or virtual systems serving the remote customers eligible under the statute.²⁶ This is implemented within the definition of an “eligible net-metering system.” The pertinent language follows:

“Eligible net-metering system” means a facility generating electricity using an eligible net-metering resource that is reasonably designed and sized to annually produce electricity in an amount that is equal to, or less than, the renewable self-generator’s usage at the eligible net-metering system site measured by the three-year (3) average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net-metering system site. A projected annual consumption of energy may be used until the actual three-year (3) average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net-metering

²⁴ R.I. Gen. Laws § 39-26.4-2(8).

²⁵ The Commission is aware of the long-standing practice of the utility to allow very large-scale solar wind farms with capacity greater than ten megawatts to be segmented into smaller project sections that are ten megawatts or less. This has resulted in very large-scale projects substantially exceeding ten megawatts participating in the net metering program through the segmented sections. No party has ever challenged this long-standing practice since the inception of virtual net metering in the Net Metering Statute.

²⁶ R.I. Gen. Laws § 39-26.4-2(6).

system site becomes available for use in determining eligibility of the generating system. .
..²⁷

The provision sets forth the manner of determining whether the sizing limitations are met by using the three-year annual average of consumption at the applicable account over the previous three years as an estimate.

The Net Metering Statute, however, reflects a logical understanding that consumption and generation can be variable from time to time and, thus, it is reasonable to assume that projects properly designed at the outset may still, from time to time, have production exceeding consumption. For that reason, the Net Metering Statute still provides for compensation when production exceeds 100% of consumption after the project is operating, up to 125% of consumption. However, the compensation for production between 100% and 125% is specified at a lower credit value.

These statutory crediting boundaries are reflected in the definition of Excess Credits. The relevant provision states in pertinent part:

“Excess renewable net-metering credit” means a credit that applies to an eligible net-metering system or community remote net-metering system for that portion of the production of electrical energy beyond one hundred percent (100%) and no greater than one hundred twenty-five percent (125%) of the renewable self-generator’s own consumption at the eligible net-metering system site or the sum of the usage of the eligible credit recipient accounts associated with the community remote net-metering system during the applicable billing period.²⁸

²⁷ R.I. Gen. Laws § 39-26.4-2(6).

²⁸ R.I. Gen. Laws § 39-26.4-2(8).

As designed in the definition, the Net Metering Statute lowers the value of credits for production that exceeds 100% of consumption, including an upward limit that does not permit any credits to be earned for production that exceeds 125% of consumption.

F. Measuring Consumption and Production to Determine Excess Credits

In theory, making a post-operational calculation to determine the amount of Excess Credits might appear straightforward.²⁹ Yet, for behind-the-meter installations that have only a single meter, the amount of consumption on site is not knowable unless there are two utility meters on the site – one measuring production from the generation and a second measuring consumption at the site separately.³⁰ However, in long-standing historical practice, there is only one utility meter that measures only the net input or output from the location. As configured with only one meter, the readings received by the utility for billing purposes only records what is delivered or received into the grid net of electricity consumed on site.³¹ The terms of the Company’s current Net Metering Tariff specify that the utility may rely upon the three-year average annual consumption of the customer (as measured prior to the net metering installation) as a proxy for estimating on-site consumption for purposes of determining the amount that production exceeds consumption.³² The Company’s existing Net Metering Tariff is described later in this Order.

The consequence of being unable to track actual consumption each year does not exist for stand-alone and community remote net metering facilities with remote accounts receiving credits to which the provision applies, because the consumption at the remote accounts is metered separately from the production meters at the site of the generation. As a result, for those

²⁹ When consumption is equal to or exceeds generation, there would be no need to calculate Excess Credits.

³⁰ Hr’g Tr. at 187-190 (October 5, 2023).

³¹ While installing a second meter at every pre-existing site is possible, it would come at a capital cost to the Company that would ultimately find its way into electric rates charged to all ratepayers.

³² See Section II(5) of the Net Metering Tariff.

configurations, both consumption and production are known and making the calculation is precise. One of the legal issues contested in this case, however, is whether the provision relating to Excess Credits applies to stand-alone facilities in the first instance – an issue which will be addressed below in this Order.

G. Credits Funded by All Ratepayers

Under the net metering program, the utility accumulates the total amount of lost revenue resulting from applying bill credits to the participating electric accounts. This is the revenue that otherwise would have been recovered from the participating accounts for electricity delivered to the accounts by the utility in the absence of the net metering configurations. But the revenue is still needed by the utility to fund its operations. For this reason, when the credits are used to pay down the off-takers' electric bills, the utility needs to recover the lost revenues from another source. The Net Metering Statute provides the right of the utility to recover the lost revenue associated with the credits from all ratepayers.³³ Consistent with the statute, the utility annually tracks the total of net metering credits and recovers those lost revenues, net of energy market revenues associated with the sale of the energy, through a uniform net metering charge that is reflected on the electric bills of all customers (Net Metering Charge). As a result, ratepayers who are not participating in the net metering program pay most of the cost of the discounts that are provided to those customers fortunate enough to be participating in the net metering program.

Since the inception of the net metering program, the total amount of revenue collected from all ratepayers by the Company through Net Metering Charges to recoup lost revenue has grown over time, as the number of net metering projects has increased. The net cumulative amount

³³ R.I. General Laws § 39-26.4-3(c).

recovered from all ratepayers from 2011 through September of 2023 has been over \$206 million.³⁴ As more net metering facilities are added, the cost of the program increases because the amount of lost revenue recovered from all ratepayers in electric rates grows over time. For example, in 2016 the net annual amount recovered from all ratepayers was \$1.3 million.³⁵ By 2023, the annual net amount (through September of 2023) to be recovered from all ratepayers had already grown to over \$67 million for 2023 alone, with three months still left in the year.³⁶

H. Revenue from the Sale of Renewable Energy Certificates

In addition to the revenue the stand-alone and community remote generators obtain from the sale of credits, there is a source of revenue that is not directly funded by ratepayers that the generators may receive to support their projects.³⁷ Each megawatt-hour of electricity produced by an eligible renewable generator produces another market product to which they are entitled to sell in the wholesale market. These are referred to as “renewable energy certificates” or “RECs.”³⁸ These RECs can be sold in the Rhode Island REC market or in the REC market in other states within the New England region. The RECs represent the beneficial environmental attributes from the production of electricity from an eligible renewable energy resource. The entities or persons who purchase and “retire” the RECs obtain the right to claim that they have consumed renewable energy.³⁹

³⁴ PUC 4-3.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Hr’g Tr. at 336-338 (October 25, 2023).

³⁸ *Id.* at 336. See R.I. General Laws § 39-26-4.

³⁹ When the RECs are not transferred to the off-takers of the project, the off-taker has no basis to claim that it has purchased renewable energy because the only product purchased by the off-taker is the billing credit, unless other arrangements are made contractually for the RECs to be transferred as a part of the transaction.

When the revenue from the sale of RECs is considered, the REC revenue effectively compensates the generator for having produced energy which does not emit greenhouse gas (GHG) emissions and has other environmental benefits.⁴⁰ Thus, the RECs reflect a market value of having offset other regional generation sources that would have emitted GHG, such as natural gas units that typically operate on the margin in the New England markets, among other emitting units.

IV. Electric Service Billing and the Variability of Electric Rates

A. Electric Billing System Practices Addressing Variable Rates

The utility's rates change many times during the course of the year.⁴¹ As a result, the utility needs to account for the variability of changes to its volumetric rates when the utility bills its customers to assure that the applicable volumetric rate is being assessed on each bill sent to a customer. While all customers of the utility receive monthly electric bills, it is not possible as a practical matter to issue over 500,000 bills based on the same day every month.⁴² For that reason, the utility issues them in billing cycles. There are 20 billing cycles.⁴³ If a customer account is in "cycle one," then it is billed for all consumption in one calendar month. However, customers billed in all the other cycles typically have some consumption occurring in each of two calendar months spanning the "one month" billing period.⁴⁴

⁴⁰ It is apparent that some behind-the-meter generators may not be participating in this REC market because some installations are producing such small amounts of electricity that the administrative cost of trying to account for the total amount of RECs produced and the cost of participating in the market is either too complex or not worth it. However, foregoing the REC revenue is a choice made by the owner, not a requirement.

⁴¹ The utility assesses both fixed and volumetric charges on a monthly bill. The fixed charge is a flat charge based on a per bill assessment. Volumetric charges are assessed on usage that occurs during the period over which the bill covers.

⁴² Hr'g Tr. at 358-359 (October 25, 2023).

⁴³ *Id.* at 358.

⁴⁴ *Id.* at 359; In this sense, a "billing month" does not typically match a "calendar month."

The Company's current meters are not capable of tracking the days when kilowatt-hour consumption actually occurs. For that reason, when there is a rate change from one month to the next, the utility uses a weighted average of the rate before and after the rate change, weighted by the number of days within the two months to determine the applicable per kilowatt-hour charge.⁴⁵ For example, if a rate increase on a volumetric charge occurs on October 1 and a customer is in a billing cycle that covers September 15 through October 15, the billing system applies a weighted average that effectively assumes half the consumption occurred in September when the rate was lower and the other half of consumption occurred after the rate increased. While this is not precise, it provides a reasonable approximation to assure the customer is assessed the applicable rate for the portion of electricity consumed in each of the two months.⁴⁶

While the metering capability will be substantially enhanced in the future when the utility replaces its current metering system with advanced metering functionality that can track precise consumption in 15-minute intervals,⁴⁷ the current system does not have that sophisticated capability. Instead, the methodology of applying a weighted average calculation is used to determine the applicable rate for the usage occurring over two months when the volumetric rate has changed in the middle of a billing cycle.

B. Determination of Billing Credits

To determine the value of net metering credits, the Net Metering Statute specifies that certain volumetric rates be used for the calculation.⁴⁸ Therefore, changes to those volumetric

⁴⁵ PUC 3-3; Hr'g Tr. at 359-360 (October 25, 2023).

⁴⁶ *Id.* at 359-360.

⁴⁷ On September 27, 2023, the Commission authorized the Company to commence a four-year plan to change its metering system to advance metering functionality. Docket No. 22-49-EL. See https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-11/2249-PUC-OM-V0TES_9-27-23.pdf

⁴⁸ R.I. General Laws 39-26.4-2(22).

charges not only affect the charges for electric usage, but also affect the value of the net metering credits. The most significant changes in volumetric rates of the utility typically occur in April and October. For example, in 2023, the volumetric rates applicable to the calculation of net metering credits for residential customers were:⁴⁹

As of April 1, 2023:

Distribution kWh:	0.06831
Transmission kWh:	0.03342
Transition kWh:	0.00021
Last Resort kWh:	0.09508
TOTAL per kWh:	0.19702

As of October 1, 2023:

Distribution kWh:	0.06525
Transmission kWh:	0.03342
Transition kWh:	0.00021
Last Resort kWh:	0.16908
TOTAL per kWh:	0.26796

As shown above, the change in volumetric rates with the most significant impact on customers is the last resort service rate, which changes on April 1 and October 1.

C. The Last Resort Service Rate

Last resort service refers to the supply of electricity that is purchased on the wholesale market by the Company pursuant to Rhode Island General Laws § 39-1-27.3(c).⁵⁰ It is distinguishable from the cost of delivering the supply. The Company is required to arrange for a last resort power supply for customers who are not otherwise receiving electric service from third

⁴⁹ Attachment RR-3 (October 25-26, 2023), pages 1-2.

⁵⁰ See In Re: The Narragansett Electric Company d/b/a Rhode Energy, Proposed Last Resort Service Rates for the Residential Group for the Period October 2023 through March 2024 and Industrial Group for October 2023 through December 2023, Order No. 24834, September 28, 2023 (Docket No. 23-01-EL)(hereinafter referred to as the “Winter 2023-24 LRS Order”).

party retail suppliers. The Company conducts procurements to secure power supply from the regional wholesale market at prevailing market prices consistent with a ladder procurement plan that has been approved by the Commission.⁵¹ This results in a dollar-cost-averaging approach through periodic purchasing. Procurements seek supply for separate six-month periods spanning April through September (Summer Period) and October through March (Winter Period) for residential and small C&I customers.⁵²

The last resort service rates tend to be a function of what natural gas prices are expected to be in the region during the months for which supply is procured.⁵³ Higher natural gas prices result in higher costs for electricity producers. Natural gas is typically the marginal fuel in New England (the fuel being used by the highest cost generator dispatched to meet demand in New England).⁵⁴ As wholesale electricity spot prices are set at the price of the highest cost generator dispatched, and the price offered by each generator is set largely based on fuel costs, natural gas prices are a primary factor in setting the spot price of wholesale electricity in New England.⁵⁵ As forward prices for electricity are based on expectations of the price of electricity in the future, forward prices for electricity are significantly influenced by forward prices for natural gas.⁵⁶ Accordingly, wholesale electricity prices vary with the expected future supply and demand conditions in natural gas markets.⁵⁷

⁵¹ *Id.* at 3-4.

⁵² Last resort service is purchased for three-month periods for the larger industrial rate classes.

⁵³ In Re: The Narragansett Electric Company d/b/a Rhode Energy, Proposed Last Resort Service Rates for the Residential and Commercial Groups for the Period October 2022 through March 2023 and Industrial Groups for October 2022 through December 2022, Order No.24621, March 7, 2023 (Docket No. 4978)(hereinafter referred to as the “Winter 2022-23 LRS Order”) at 22.

⁵⁴ *Id.* at 9.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Electricity and natural gas prices in New England are typically higher in the Winter Period than in the Summer Period due to high demand for heating.⁵⁸ Natural gas is prioritized for the heating load in the region, leaving much higher spot prices for the purchase of fuel for natural gas generators during that time. Then the summer last resort rate decreases again in April. This same directional variability can be seen in the monthly procurement price trends.⁵⁹

Under the procurement plan, the wholesale supply is purchased at a different price for each month. However, the residential rate is based on the weighted average monthly wholesale cost incurrence over six months to provide a stable six-month rate at the retail level.⁶⁰ For the small commercial and industrial customers (Small C&I), they have a choice to purchase supply at the rate that reflects the actual wholesale monthly price for that rate class, or purchase at the average six-month rate that is developed from the same type of weighted average formulation. By using a weighted average, the costs recovered by the utility from charging the six-month rate instead of the monthly rate results in those recoveries closely corresponding to the cost incurrence associated with the actual monthly procurement cost.

The Small C&I rate is the one that typically applies to stand-alone and community remote generators participating in the net metering program.⁶¹ The last resort rate for Small C&I customers applicable to the calculation of the net metering credits is either the variable monthly rate or the fixed rate, depending upon what choice the customer has made for last resort service.⁶² The

⁵⁸ *Id.*

⁵⁹ See public information regarding rate patterns on PUC website at: https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-04/April%202023%20charts_final.pdf

⁶⁰ The schedules reflecting the determination of last resort rates show how the weighted average is calculated. See Schedule 1, pages 3-5 (Docket No. 23-01-EL). The schedules can be found at: <https://ripuc.ecms.ri.gov/sites/g/files/xkgbur841/files/2023-07/23-01-EL-LRS%20Rates-Effective%2010-1-23-PUC%207-25-23.pdf> (PDF pages 14-15).

⁶¹ See Hearing Transcript -April 14, 2015 at 67. Stand-alone generators typically have a non-residential account for a small amount of consumption on the site. The applicable rate class typically is the Small C&I rate.

⁶² See PUC 4-1.

procurement cost and associated variable rate changes monthly, reflecting the actual wholesale cost of the supply that is embedded in that monthly rate.

D. D. Illustration of the Net Metering Credit Calculation

The components comprising the calculation of the net metering credits for 2023 per kWh are illustrated in Table 1 below for Small C&I customers that chose the variable rate option:⁶³

Table 1:

Calculation of Renewable Net Metering Credit for 2023 - Small C&I Rate Class					
	(a)	(b)	(c)	(d)	(e)
	<i>Last Resort Variable</i>	<i>Distribution</i>	<i>Tranmission</i>	<i>Transition</i>	<i>Primary Credit (a)+(b)+(c)+(d)</i>
January:	0.18636	0.06226	0.03357	0.00018	0.28237
February:	0.18525	0.06226	0.03357	0.00018	0.28126
March:	0.17125	0.06226	0.03357	0.00018	0.26726
April:	0.10388	0.06565	0.02770	0.00021	0.19744
May:	0.10045	0.06565	0.02770	0.00021	0.19401
June:	0.08527	0.06565	0.02770	0.00021	0.17883
July:	0.08979	0.06654	0.02770	0.00021	0.18424
August:	0.08792	0.06654	0.02770	0.00021	0.18237
September	0.08481	0.06654	0.02770	0.00021	0.17926
October:	0.12543	0.06254	0.02770	0.00021	0.21588
November:	0.14116	0.06254	0.02770	0.00021	0.23161
December:	0.17577	0.06254	0.02770	0.00021	0.26622

The Primary Credit includes the last resort service rate, plus the distribution, transmission, and transition charges. In contrast, the Excess Credit value is only the kWh value shown in column (a). Table 1 shows the calculation of the Primary Credit for net metering customers in the Small C&I rate class who choose the variable option for last resort service.⁶⁴ As a result of the variability of volumetric rates, the amount of the net metering credits applied to net-metering systems eligible

⁶³ Attachment RR-3 (October 25-26), pages 5-6. By statutory requirement, the rate is net of the renewable energy charge which is otherwise embedded in last resort rates on the electric bill. Small C&I customers have the option to choose a six-month last resort rate similar to the six-month rate offered to residential customers.

⁶⁴ For customers choosing the fixed last resort rate option, columns (b), (c), & (d) are identical, but the last resort service rate changes in April and October, based on the weighted average of the rates shown in column (a) calculated in two six-month periods.

under the stand-alone and community remote net metering programs change correspondingly. The Company's billing system provides net metering credits that align with these volumetric rates in each billing month, assuring that the value of the credits aligns with the applicable last resort service rate during the month when the net metering system is producing electricity.

V. The Company's Net Metering Tariff

The task of carrying out statutory directives affecting rates and the terms of service often require sets of rules to be embedded in the terms and conditions of the utility's tariffs. The implementation of the Net Metering Statute is no exception. In order to assure that the requirements for participating in the net metering program are published to the public and are administered in a non-discriminatory way, the Company has filed tariff provisions setting forth the rules and requirements for participation, including the specifications for how net metering credits are dispersed in accordance with the Net Metering Statute.

The Net Metering Statute has gone through several iterations over the years. As a result, the Company has filed several versions of its Net Metering Tariff to align with the statutory and regulatory evolution of the program.⁶⁵ With respect to the issues relating to the tariff changes proposed in this docket, paragraph II.(5) of the Company's Net Metering Tariff contains the provisions relating to the disbursement to eligible customers of both the Primary Credits (referred to as the "Renewable Net Metering Credits" in the tariff) and the Excess Credits (referred to as the

⁶⁵ PUC 3-6 (List and red-lined copies of all iterations since the inception of the net metering program).

“Excess Renewable Net Metering Credits” in the tariff).⁶⁶ The first sentence of Section (5) addresses the monthly application of the Primary Credits:

For purposes of administering Sections II(3) and II(4) of this Tariff, on a monthly basis, the Company will apply Renewable Net Metering Credits to the Net Metered Accounts for all kWh generated by the Eligible Net Metering System.

As the above sentence provides, the Primary Credits are applied on a monthly basis which assures that the applicable rate in effect when production occurred is being used to determine the amount of the Primary Credit.

The next two sentences of Section 5 address the application of the Excess Credits:

On an annual basis, the Company will compare kWh generated by the Eligible Net Metering System during the applicable 12-month period to the on-site consumption of the Net Metering Customer or the aggregate consumption of the Net Metered Accounts, as applicable, or to the three-year average aggregate sum of the on-site consumption of the Net Metered Accounts of a Community Remote Net Metering System. If such consumption is less than the kWh generated by the Eligible Net Metering System during the applicable 12-month period, the Company will apply a billing charge to the Net Metering Customer’s account equal to the difference between the Renewable Net Metering Credit and the Excess Renewable Net Metering Credit in effect during the applicable 12-month period multiplied by the difference between the kWh generated by the Eligible Net Metering System and the consumption during the same 12-month period.

These two long sentences in the tariff specify that the Company will perform a reconciliation and adjustment to assure that the cumulative amount of electricity produced over the course of the 12-month period in excess of consumption measured over the entire year is effectively compensated at the lower Excess Credit rate (i.e., an annual reconciliation). In effect, it sets forth the method

⁶⁶ Net Metering Tariff, Paragraph II.(5), R.I.P.U.C. No. 2252. A redlined version showing the proposed changes to the existing tariff was included as an exhibit to the Joint Pre-Filed Direct Testimony of Erica J. Russell Salk and Stephanie Briggs (Exhibit RIE 1).

of determining whether the annual amount of kilowatt-hour consumption is less than the amount of electricity generated by the net-metering system. When the reconciliation determines that production exceeded consumption for the annual period, the tariff specifies that the utility will assess a per kWh charge to recoup the difference between the Primary Credit value already paid to the customer and the Excess Credit value that should have been paid. This tariff language is intended to carry out the statutory directive that any production in excess of consumption over the period be credited at the applicable Excess Credit rate. This is accomplished by charging back the amount of the overcompensation that was over-credited over the course of the 12 months. The tariff specifies the manner of calculating this billing charge.

Specifically, as quoted above, the tariff states that the billing charge is equal to the difference between the Primary Credit and the Excess Credit “in effect during the applicable 12-month period multiplied by the difference between the kWh generated by the Eligible Net Metering System and the consumption during the same 12-month period.” The difference is represented by the Distribution kWh charge, the Transmission kWh charge, and the Transition kWh charge which are components of the Primary Credit but are not included in the calculation of the Excess Credit. These values were illustrated in Table 1 above. Since the applicable last resort service rate for both the Primary Credit and the Excess Credit is the same in each applicable month, the billing charge results in the Company charging back the values of the applicable Distribution kWh charge, Transmission kWh charge, and Transition Charge (identified in columns (b), (c), and (d) in Table 1) to recoup the overcompensation. When those three rates are charged back to recoup the overcompensation paid during each of the applicable billing months, the net metering customer still retains the appropriate applicable value of the last resort service rate for the kWh of Excess Credits as shown in column (a) of Table 1.

There is an additional provision in the last sentence of Section 5 that is designed to apply when production exceeds consumption by more than 25%. This triggers another charge which is designed to recoup any compensation that had been credited at the higher Primary Credit rate to effectuate the statutory requirement that net metering credits cease after production is 125% of consumption.⁶⁷

VI. The Issue of Non-Compliance

Since the inception of the net metering program, the Company has been applying the Primary Credits on a monthly basis to all kilowatt-hours produced that were in excess of consumption during the applicable monthly billing cycle. As the net metering program began to expand in 2015 and the Company filed amendments to the then-effective Net Metering Tariff, the Commission inquired about how the Company was administering the net metering program. During those proceedings, National Grid (the prior owner of The Narragansett Electric Company) represented to the Commission that it had in place processes to implement the provisions relating to Excess Credits.⁶⁸ Four years later, in 2019, during hearings that related to the Company's annual "Retail Rate Filing," a National Grid witness testified that the Company had in place a process to assess Excess Credits.⁶⁹ Thus, the Commission was under the impression that the Company was in compliance with the Net Metering Tariff, including the proviso that required an annual adjustment when production was in excess of 100%.

⁶⁷ See R.I. Gen. Laws § 39-26.4-2(8).

⁶⁸ See, e.g., Docket 4549 Responses to PUC 1-4, 1-7, 2-2, and Hr'g Tr. at 34 (April 14, 2015), In Re: Tariff Advice to Amend RIPUC No. 2099 Net Metering Provision (Docket No. 4549)(2015).

⁶⁹ See Docket 4930 Hr'g Tr. at 57 (March 19, 2019), Narragansett Electric Co. d/b/a National Grid's 2019 Retail Rate Filing (Docket No. 4930)(2019).

However, during later proceedings in 2021, the Commission reviewed accounting data in the Company's schedules that raised questions about the administration of the Excess Credits provision.⁷⁰ Then, at a technical session scheduled to follow up on lingering questions about the Company's administration of the net metering program, the Company conceded that it had a problem with the administration of the Excess Credits and had begun to explore potential solutions.⁷¹ The Commission engaged in further investigation and at an Open Meeting on December 7, 2022, directed the Company to make a filing with the Commission to correct the non-compliance on a prospective basis, but deferred consideration of what action, if any, the Commission would take to address the past non-compliance of the utility.⁷² The non-compliance with the Net Metering Tariff has potentially resulted in millions of dollars of cumulative overcompensation to net metering accounts that might have been recouped through billing charges arising out of the annual reconciliation true-up process specified in the tariff.⁷³ Had the Company followed the Net Metering Tariff, such compliance might have substantially reduced the cost of the program to all ratepayers generally.

It was the discovery of the non-compliance and the Commission's Open Meeting directive that led to the Company making the filing in this docket.

⁷⁰ See Docket 5127 Responses to PUC 1-16 and 5-1, Narragansett Electric Co. d/b/a National Grid 2021 Annual Retail Rate Filing (Docket 5127)(2021).

⁷¹ See Technical Session relating to Docket Nos. 5005, 5127, & 5234, Transcript (April 12, 2022).

⁷² Minutes of Open Meeting Held on December 7, 2022.

⁷³ See, e.g., the estimates of annual Billing Charges might have been assessed from excess generation in the years 2019, 2020, 2021, and 2022, as provided in the original and supplemental responses to Record Request No. 2 (October 5, 2023 hearings)(The figures included in these responses were not vetted during the proceeding and the Commission is not relying upon those estimates for any rate-related decision in this case, but the responses provide a potential order-of-magnitude impact). The Company has agreed that it had not complied with its tariff. Hr'g Tr. at 153-155 (October 25, 2023).

VII. The Company's Proposed Tariff Advice Changes

The main components of the Company's tariff advice filing consisted of several proposals to administer the net metering program and bring the Company into compliance. Each element of the proposal is briefly summarized below:

- (1) A provision which defined the annual reconciliation as applying only to projects that are greater than 25 kW. In effect, the Company proposed to exempt small behind-the-meter and stand-alone generation units from the reconciliation.⁷⁴
- (2) An amendment regarding how the annual reconciliation process already included in the existing tariff would be conducted. The proposal described a method of determining the amount of Excess Credits in the annual reconciliation process by using what the Company refers to as the "volumetric method."⁷⁵ The volumetric method compares the kWh generated by the applicable facility to the estimated amount of kWh consumed by the relevant credit recipients over an annual period (estimated based on a three-year historical average of annual consumption).⁷⁶
- (3) Adding a "Schedule C" to the Net Metering Tariff which shows how the calculation of the Excess Credits would be determined, including the use of an annual average of the volumetric rates applicable to the annual reconciliation.⁷⁷
- (4) Adding a provision which allows the utility, at its election, to cash out a customer's Excess Credits after the annual reconciliation, instead of having a balance linger on the

⁷⁴ See the Redlined Tariff included in the Company's original Tariff Advice filing of February 15, 2023, at 3 ("Redlined Tariff"), the definition of "Eligible Reconciliation Pool."

⁷⁵ *Id.* at 9.

⁷⁶ See also Schedule EJRS-1 to the Direct Testimony of Russell Salk and Briggs.

⁷⁷ Redlined Tariff at 9.

customer's electric bill (unless the customer elects to roll over the credits on the bill).⁷⁸

This included the addition of a new Section II.(12) to the Net Metering Tariff.

- (5) Adding a provision which provides for the Company to credit all distribution customers with any positive balance resulting from the charges assessed during the annual reconciliation process, by netting the collections against the annual Net Metering Charge that is assessed to all ratepayer to recover the costs of the net metering program.⁷⁹
- (6) Adding language to its "Schedule B" that is required to be submitted by project developers before an interconnection is authorized. The proposed language would require that when the customer submits the Schedule B to the Company identifying all accounts to which credits will be transferred, the customer reflects in the Schedule B enough allocations to remote accounts that results in the allocations being "as close to 100% as possible" to the expected production of the generation.⁸⁰ The Company proposed to withhold interconnection until the 100% requirement is met.

The Company also proposed in testimony that it would commence its first annual reconciliation of Excess Credits to cover net metering credits received by customers in calendar years 2022 and 2023.⁸¹

After a technical conference that occurred on August 16, the Company made three modifications to its proposal. The modifications were later reflected in tariff language changes provided to the parties.⁸² They are summarized as follows:

⁷⁸ *Id.* at 11.

⁷⁹ *Id.* at 12.

⁸⁰ *Id.* at 14.

⁸¹ Pre-Filed Testimony of Salk and Briggs, at 15-16 (Exhibit RIE 1).

⁸² PUC 4-2. This date request response included a Revised Redlined Tariff.

- (a) The Company proposed to use a weighted average of the volumetric rates applicable to the annual reconciliation, instead of the annual average of the volumetric rates (as indicated in #3 above).⁸³
- (b) The Company proposed new tariff language to permit off-takers to transfer unused net metering credits to other eligible off-takers.
- (c) The Company proposed language to expressly indicate that the annual reconciliation billing charges would be assessed to the host accounts.⁸⁴

VIII. Procedural History

After the filing was made, an initial procedural schedule was published. On July 7, however, a revised and updated schedule was published that set a date for a technical conference on August 16 for Commission staff and the parties to ask clarifying questions to the Company.⁸⁵ This technical session had the purpose of making the discovery process more efficient and allowing the Commission staff and parties to gain a better understanding of the Company's proposal and responses to the data requests before the formal evidentiary hearings occurred. The schedule also established (i) a deadline of August 25 for pre-filed testimony of the parties in response to the Company's case, (ii) replies on September 1, and (iii) an evidentiary hearing on September 21.

⁸³ See also MAE 2-3 and Rebuttal Testimony of Russell Salk and Blazunas at 5.

⁸⁴ This administrative feature was originally reflected in response to PUC 2-4 and PUC 2-5 which had been submitted on August 24, but later reflected formally in tariff language in PUC 4-2.

⁸⁵ There is a transcript of the informal discussions that occurred at the August 16 technical session (hereinafter referred to as the "August 16 Technical Session Transcript"). The Commissioners did not attend this conference, which was intended for staff and parties only. The transcript has been included in the record of the proceeding in the same way that other documents are included as exhibits since parties have referenced what occurred during that session as a basis for certain assertions and reliance in testimony. Some of the discussion also provided the basis for some of the changes that were made in the Company's proposal.

The period for parties to issue discovery was open from early May through August and never was closed to the parties prior to or during the evidentiary hearings. Some discovery took place between May and August 11. The Division issued one set of data requests on April 12, to which the Company responded on May 3.⁸⁶ The Commission issued its first set of discovery requests in July, to which the Company fully responded in the same month. Gridwealth issued one set of discovery requests on July 21, to which the Company responded on August 11.

The technical conference was held on August 16.⁸⁷ Following the conference, the Commission issued its second set of data requests, to which the Company responded on August 24. On August 22, Gridwealth issued its own second set of data requests.

On August 23, counsel for Gridwealth informally requested by email an extension of time for the filing of its pre-filed testimony that was otherwise due on August 25, which Revity supported by email as well. After receipt of the emails, the Commission suspended the August 25 deadline for Gridwealth and Revity's pre-filing of testimony and instructed Gridwealth and Revity to support the requests for extension with formal motions by August 25. Counsel for the Commission then notified the parties that the motions for extension would be heard for oral argument at a procedural hearing scheduled for August 28.

The Company completed its responses to the Commission's Second Set of data requests on August 24. The motions seeking extensions were filed by Gridwealth and Revity on August 25. In addition to the request for an extension of time, Revity also raised a legal issue for the first time in this docket relating to the interpretation of the net metering statute.

⁸⁶ The Commission uses the terms "data requests" as a reference to the typical discovery permitted in its proceedings. Data requests allow for both questions and requests for documents. Commission Rules of Practice and Procedure, Rule 1.19(C).

⁸⁷ See August 16 Technical Session Transcript.

The Commission then held a hearing for oral argument on the request for an extension of time on August 28, 2023.⁸⁸ At the hearing, the parties agreed to a revised schedule, allowing extensions for the pre-filed testimony, but retaining the evidentiary hearing date for September 21. The parties also agreed that Revity and Gridwealth would file memoranda of law on the legal issue raised by Revity in its motion for extension of time by September 8.

Revity filed its memorandum of law on the issue it raised regarding statutory interpretation on September 8. Gridwealth also filed a memorandum of law. However, the Gridwealth memoranda did not address the legal issue that had been raised by Revity. Instead, the memorandum raised other arguments relating to the Company's billing reconciliation processes.

In accordance with the third revised schedule, Gridwealth and the Division filed pre-filed testimony on September 13, 2023. Neither Revity nor OER filed any testimony.

On September 14, Gridwealth filed a Motion to Require Supplementation of Discovery maintaining that the Company's response to four data requests in the second set of data requests that had been sent to the Company by Gridwealth were nonresponsive – which the Commission interpreted as a motion to compel discovery. The hearing schedule was then revised a third time on September 15, including a change in the evidentiary hearing date to October 5, 2023 to allow additional time for all issues to be considered.

On September 22, 2023, Rhode Island Energy filed pre-filed reply testimony, along with responses to both the legal memorandum of Revity and the motion relating to the discovery issue that had been filed by Gridwealth. On September 27, Gridwealth filed a reply to the Company's response. In the reply, Gridwealth withdrew its request for further discovery with respect to three out of the four data requests which Gridwealth had claimed were unresponsive.

⁸⁸ Hr'g Tr. (August 28, 2023).

On October 2, Revity filed a reply to the legal memorandum of the Company. Evidentiary hearings commenced on October 5. As is customary in Commission proceedings, many “record requests” were made during the hearings.⁸⁹ After the first day of evidentiary hearings, the Commission also issued third and fourth sets of data requests. The Commission also provided copies to all parties of several documents from prior Commission proceedings relating to net metering of which the Commission intended to take Administrative Notice.⁹⁰ The Company responded to the Commission’s data requests and the record requests prior to the continuation of the evidentiary hearings on October 25 and 26. The Commission held its fourth and final day of evidentiary hearings on November 9, 2023. Post Hearing Briefing followed and final replies filed in December.

IX. Pre-Filed Testimony

A. The Company’s Testimony

As is customary in Commission proceedings, the Company included pre-filed testimony in its initial filing.⁹¹ The testimony consisted of the Joint Pre-filed Direct Testimony of Erica J. Russell Salk and Stephanie A. Briggs. The testimony described the reason for the Company’s filing as proposing a “solution to improve the administration of excess net metering credits on a go-forward basis.”⁹² The witnesses referenced the December 7, 2022, Open Meeting of the Commission, indicating that the Company’s filing was a solution in response to the Commission’s directive.⁹³ They described their understanding of the purpose of the Net Metering Statute and

⁸⁹ A record request is an additional means of obtaining written information similar to data requests, but are requested during the evidentiary hearings.

⁹⁰ Hr’g Tr. at 216-218 (October 25, 2023).

⁹¹ Rule 1.21(E).

⁹² Pre-Filed Testimony of Salk and Briggs, at 4 (Exhibit RIE 1).

⁹³ *Id.* at 5.

described the different net metering configurations.⁹⁴ The testimony also explained the different types of net metering credits, how they are to be determined under the Net Metering Statute, and how they are applied on a monthly basis.⁹⁵ It also referred to the crediting for stand-alone configurations that allows for the transfer of credits to “off-taker accounts.”⁹⁶ Ms. Russell Salk and Ms. Briggs further explained in the testimony how the net costs of net metering are recovered from all ratepayers through the Net Metering Charge.⁹⁷

The witnesses briefly addressed the reason for the filing, stating: “The Company has experienced challenges administering net metering. Excess credits have accumulated on net metered accounts for a variety of reasons. This Proposal details the plans going forward to mitigate this in the future.”⁹⁸ The testimony then explained the options for administering the net metering accounts that are available in the Net Metering Statute, including a provision that allows the Company to estimate production or consumption over a 12-month period.⁹⁹

The witnesses summarized the administrative purpose of the proposal, stating:

“The purpose of the Proposal is to establish . . . an annual reconciliation process that would result in more precise calculations and administration of renewable net metering credits (attributable to generation between 0% and 100% of consumption) and excess renewable net metering credits (attributable to generation over 100% up to 125% of consumption) in an administratively efficient manner. In summary, the Proposal seeks to define the implementation process for administration of net metering and mitigate future issues of excess balances.”¹⁰⁰

⁹⁴ *Id.* at 6-7.

⁹⁵ *Id.* at 7-8.

⁹⁶ *Id.* at 8-9.

⁹⁷ *Id.* at 9.

⁹⁸ *Id.*

⁹⁹ *Id.* at 10-11.

¹⁰⁰ *Id.* at 11.

The testimony enumerated the main changes for which the Company was seeking Commission approval. Specifically, (1) approval of the “volumetric method” of reconciling the largest net-metered accounts on an annual basis, (2) approval of the provision that would require an applicant to provide a Schedule B that allocated credits “as close to 100% of the credits as possible before the project receives authority to interconnect,” and (3) permitting a cash out of excess credits at the end of the year.¹⁰¹ The testimony that followed then explained each of these elements of the proposal.¹⁰²

Exhibits were attached to the pre-filed testimony in the original filing, consisting of a redlined version of the proposed Net Metering Tariff and a clean version of the same.

B. Division’s Testimony

Consistent with the last revised version of the Commission’s procedural schedule, the Division filed the Pre-filed Direct Testimony of its witness Michael W. Brennan.¹⁰³ Mr. Brennan explained what he categorized as “issues or complications” that exist in the administration of the net metering credits under Section II(5) of the Company’s Net Metering Tariff.¹⁰⁴ He observed:

[T]he administration of the reconciliation process is made difficult because the Rhode Island Net Metering program does not require separate production and consumption meters to be installed with net metering systems. As a result, for behind the meter systems (which constitute most net metering systems), it is not possible to precisely determine both the amount of energy consumption and the energy production on a monthly or annual basis. The data that is readily available only measures net energy consumption, either positive or negative in each period.¹⁰⁵

¹⁰¹ *Id.* at 12.

¹⁰² *Id.* at 12-15. The remaining section of the testimony discussed potential effective dates which later became stale when the proceedings spanned a longer time for Commission review than the Company apparently anticipated.

¹⁰³ Exhibit DIV 1, Pre-Filed Testimony of Michael Brennan, September 13, 2023.

¹⁰⁴ *Id.* at 3.

¹⁰⁵ *Id.*

The testimony then explained how the Company's tariff contemplates the use of estimates to determine either energy generation or energy consumption when performing the Company's annual reconciliation on each net metering account.¹⁰⁶

Mr. Brennan distinguished the reconciliation of accounts of stand-alone projects as being "much more straightforward" than the reconciliation of accounts from behind-the-meter projects.¹⁰⁷ The reason, as explained by Mr. Brennan, is that stand-alone net metering configurations "have a production meter measuring system generation at the host site as well as actual load data from the accounts receiving net metering credits."¹⁰⁸ For that reason, any issues that might relate to lack of accuracy resulting from estimations "are not relevant" in the case of stand-alone configurations.¹⁰⁹

Mr. Brennan testified that he believed (on behalf of the Division) that the method of using estimates proposed by the Company represents a "reasonable estimate of monthly and annual consumption using historical data for the account prior to the net metering installation."¹¹⁰ He further explained that the annual estimates of consumption are only relevant to stand-alone projects "to determine the portion of the excess generation is within 100% and 125% of consumption and what portion of the excess [is] more than 125% of consumption."¹¹¹

Mr. Brennan's testimony then explained his evaluation of the method through which the dollar amount of the final reconciliation adjustment is determined when a project's annual

¹⁰⁶ *Id.* at 4.

¹⁰⁷ *Id.* at 5.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 5-6.

¹¹¹ *Id.*

production exceeds the annual consumption by more than 100%.¹¹² He explained how the Company would use a weighted average of the applicable rates to determine the appropriate adjustment, including the manner that the Company will assess any applicable billing charge.¹¹³ He testified that “the Division supports the proposed approach to calculating the billing charge and assessing those charges to customers.”¹¹⁴ He opined that the approach “is consistent with the requirements of the net metering statute.”¹¹⁵

Mr. Brennan’s testimony also addressed the Company’s original proposal to exclude projects that are 25 kW or less from the annual reconciliation procedure, noting that the Company’s initial reason given for the exclusion related to the complexity of running an analysis for the over 10,000 accounts in that category.¹¹⁶ He referenced the August 16 technical session during which the Company indicated that they may have a software solution to automate the process, he indicated that the Division supported the inclusion of all accounts in the reconciliation.¹¹⁷

Mr. Brennan also testified regarding the Division’s concern regarding communications with customers about the billing charges that could result from reconciling the Excess Credits at year end.¹¹⁸ He cited the Company’s response to PUC 1-7 in which the Company agreed to a dispute resolution process.¹¹⁹ The final section of the pre-filed testimony identified the various tariff amendments proposed by the Company in its initial filing, including the addition to Schedule B that requires allocations to be as close to 100% as possible.¹²⁰ Mr. Brennan also noted areas in

¹¹² *Id.* at 6-8.

¹¹³ *Id.* at 6-7.

¹¹⁴ *Id.* at 8.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 9.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 9-10.

¹¹⁹ *Id.* at 10.

¹²⁰ *Id.* at 10-11.

which the Company expressed a willingness to consider other alternatives to Schedule B “to allow for more flexibility to manage the allocation of credits in a way that minimizes the likelihood of unused credits at the satellite accounts and/or stranded credits at the host account.”¹²¹ He also expressed support for the concept of having a project treated as a “qualifying facility” (“QF”) (an apparent reference to the Public Utilities Regulatory Policies Act of 1978) to receive compensation under the “avoided cost rate” for stand-alone facilities until the project matches its production to load in order to avoid delays in interconnection.¹²² He concluded his pre-filed testimony with a statement of general support for “the Company’s proposed approach for a process to conduct an annual reconciliation of Excess Renewable Net Metering Credits,” including the tariff modifications and the willingness of the Company to consider alternatives.¹²³

C. *Gridwealth Testimony*

Gridwealth sponsored the pre-filed testimony of Anthony Quincy Vale, the Chairman and President of Gridwealth.¹²⁴ Mr. Vale testified that Gridwealth has over 55 MW of solar projects under development in Rhode Island and that all of these projects are participating or intend to participate in the net metering program. Gridwealth also originates and manages “offtake relationships.”¹²⁵ He stated that Gridwealth is seeking transparency and improved accounting relating to the management of their customer accounts.¹²⁶ He testified that Gridwealth is seeking “consistency in the administration and accounting for net metering credits.”¹²⁷ His main point of contention stated in his testimony from which most of his testimony followed was summed up in

¹²¹ *Id.* at 12.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Exhibit Gridwealth 1. Pre-Filed Testimony of Quincy Vale, September 13, 2023.

¹²⁵ *Id.* at 3.

¹²⁶ *Id.*

¹²⁷ *Id.*

one sentence: “An annual volumetric reconciliation that assesses a billing charge to net metering customers for excess production of electricity over a year but still values the credits on a monthly or quarterly basis is fundamentally inequitable.”¹²⁸ He noted that monthly rates varied by season and observed that “electric rates are highest in winter months (when most net metering systems produce less) despite that peak electricity use is in the summer (when most net metering systems produce the most).”¹²⁹ According to Mr. Vale, unless the rates were levelized across the entire year, “net metering customers are compensated too little in high production season and charged too much in winter low production season.”¹³⁰

Mr. Vale also asserted that “[t]he failure to reconcile to an annual average rate does not properly account for the impact net metering customers have on the reduction of natural gas demand specifically in the electricity sector.”¹³¹ Based on this opinion, he argued that the value of all credits “must be reconciled on an annual basis to best reflect their value to the electrical system and electric ratepayer.”¹³² He described his understanding of the Company’s proposal which uses a 12-month period for the reconciliation of excess credits and asserted that it arises out of a section of Rhode Island law which permits the Company to make an election to reconcile payments and credits under a billing plan to actual production and consumption, citing Rhode Island General Laws § 39-26.4-3(a)(2).¹³³ Mr. Vale interpreted the Company’s proposal as one that uses this provision of the law to perform its annual reconciliation and assessment of charges to address the Excess Credits.¹³⁴

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 3-4.

¹³² *Id.* at 4.

¹³³ *Id.* at 5.

¹³⁴ *Id.*

The testimony then describes the Company's initial proposal to use an average last resort rate when it implements its proposal to cash out excess renewable credits on accounts, quoting the original testimony of the Company which stated: "Specifically, the Company is proposing to apply an annual average of the LRS [last resort service] rate as the LRS rate fluctuates throughout the year."¹³⁵ Mr. Vale explained why the last resort service rate fluctuates, noting its relationship to the demand for natural gas which drives the price for electricity referring to one of the Company's responses to a data request.¹³⁶

Mr. Vale then opined that the way the Company is crediting is unfair to net metering customers. According to his testimony, it is unfair that on the one hand, net metering customers are credited at lower amounts during the summer when last resort service rates are lower while, on the other hand, they are charged at a higher last resort rate for their consumption when it is less than production during winter.¹³⁷ He then asserted an understanding that net metering customers produce more electricity in the summer, but consume more electricity in the winter.¹³⁸

His testimony provided estimates of the financial impact if the last resort service rate was averaged on a net metered project, illustrating that it would result in a higher revenue stream to the net metering customer.¹³⁹ He then criticized the Company's crediting system, opining, "The failure to account for the unwarranted impact natural gas has on net metering customers costs those customers substantial lost revenue that is not justified according to the purposes of the net metering act and according to the guiding principles of docket 4600."¹⁴⁰

¹³⁵ *Id.* at 6.

¹³⁶ *Id.* (The data request response was MAE 1-5.)

¹³⁷ *Id.* at 7-8.

¹³⁸ *Id.* at 7.

¹³⁹ *Id.* at 8.

¹⁴⁰ *Id.*

Mr. Vale’s reference to docket 4600 is referring to a stakeholder report that was provided to the Commission which contained ratemaking principles identified in his testimony.¹⁴¹ He lists principles that were contained in the referenced stakeholder report regarding the need for effective price signals in ratemaking, including mitigating demand at times of peak consumption, price signals that reflect marginal costs, fair compensation for providing value and benefits, consistency with state policy goals such as those relating to the environment and climate, and rate structures that encourage appropriate investments in the system.¹⁴² He maintained in his testimony that “[t]he current policy of tying compensation of net metering customers to the value of natural gas is fundamentally inconsistent with these ratemaking principles from docket 4600.”¹⁴³ Mr. Vale criticized the Company for not appropriately addressing the principles, stating that “[i]t is self-evident that penalizing net metering customers for the price impact of demand for natural gas does not serve any of [the] purposes [of net metering].”¹⁴⁴ He also quotes extensively from a document published by the State of Rhode Island that was published over eight years ago in October of 2015.¹⁴⁵

His testimony criticizes the Company’s description of how the costs of the net metering program are recovered from all ratepayers, maintaining that the Company’s “statement about the cost of net metering to distribution customers very conspicuously omits all of the benefits and values of net metering that must be included in any cost/benefit analysis under the [Commission’s] resolution in 4600.”¹⁴⁶ He then asserts:

¹⁴¹ *Id.* at 9.

¹⁴² *Id.*

¹⁴³ *Id.* (citing Energy 2035: Rhode Island State Energy Plan, issued on October 8, 2015, by Rhode Island Division of Planning.)

¹⁴⁴ *Id.* at 10.

¹⁴⁵ *Id.* at 10-11.

¹⁴⁶ *Id.* at 11.

By producing electricity during peak hours and times, net metering systems (almost entirely photovoltaic systems) drive down system peaks and realize tremendous grid-wide savings for all market participants that are not compensated by [the utility] net metering tariff.¹⁴⁷

He also asserts that the Company's position "neglects consideration of and compliance with RI energy policy."¹⁴⁸

Mr. Vale referenced a response to a data request by the Company which provided a copy of a cost/benefit analysis that had been produced by a consultant, Sustainable Energy Advantage (SEA), hired by the Office of Energy Resources to evaluate the benefits and costs of net metering, maintaining that the SEA analysis does not reflect the net cost of net metering.¹⁴⁹ Mr. Vale then recommends what he categorizes as a correction to the identified problem by "requiring [Rhode Island Energy] to credit net metering customers the same way it proposes to charge them, by averaging the [last resort service] rate over an annual period when reconciling the value of production versus the cost of consumption."¹⁵⁰ To address what Mr. Vale believes is an inequity, it appeared from his testimony that he was recommending that the Company change the way the Excess Credits are calculated for purposes of determining final compensation to net metering customers. Mr. Vale did not elaborate on how the formulaic calculation would be performed, but he testified that he was recommending a change to the value of the Excess Credits which would be implemented by using the annual average of the applicable last resort service rates during the annual reconciliation.¹⁵¹ He supports the recommendation, stating:

Averaging the [last resort rate] for the purposes of crediting production will even out the seasonal swings in value driven by natural gas demand and will properly align the value of net metering customers production of electricity to the electricity market with demand for

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 11-12.

¹⁵⁰ *Id.* at 12-13.

¹⁵¹ *Id.* at 12-13.

electricity in the electricity market. That methodology will avoid clouding the value of net metering with the cost of natural gas.¹⁵²

The testimony then criticized the Company's current administration of net metering, maintaining that it gives the Company "a lot of discretion to manipulate billing and charging in ways that disadvantage net metering customers and Rhode Island policy."¹⁵³

Mr. Vale then asserted that he did not have time enough to fairly evaluate the Company's change in position to use a weighted average to determine the last resort charges during the annual reconciliation, maintaining that "[t]he introduction of such new approaches this late in the proceeding gives Gridwealth inadequate opportunity to contest such practices it cannot even comprehend."¹⁵⁴ Mr. Vale also asserted that the Company response to a data request regarding the cost of net metering was not responsive.¹⁵⁵ This complaint mirrors the Motion filed by counsel for Gridwealth which will be discussed below in this Order in a separate section.

Finally, Mr. Vale recommended establishing a neutral ombudsperson to ensure that the administration of the net metering program "is consistent with RI's goals of enhancing energy security while decreasing costs and emissions."¹⁵⁶

D. Position of OER

OER did not sponsor any witnesses in the case. However, it filed a 2-page position statement making three recommendations.¹⁵⁷ The three recommendations are quoted below:

OER recommends RIE develops a detailed communication strategy for both developers and off-takers as well as a timeline for its implementation. Additionally, RIE should hold

¹⁵² *Id.* at 13.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 14.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 15.

¹⁵⁷ Exhibit OER 1. Position Statement, September 14, 2023.

a DG Seminar that goes into detail about these changes. It should be recorded and posted on the RIE website;

OER recommends that RIE publish a clear process document with expected timing for changes and a tax guidance document, and communicate that information regularly with accounts; and

OER recommends RIE commit to or be ordered to prepare robust guidance on disputing estimated production charges including examples of how a customer may be able to determine if their estimate is inaccurate.

E. Position of Revity

Revity did not provide any pre-filed testimony for any witnesses in the proceeding.¹⁵⁸ However, Revity filed a legal memorandum that raised a legal issue relating to the interpretation of the Net Metering Statute, arguing that the provision relating to the Excess Credits – R.I. Gen. Laws § 39-26.4-2(8) – did not apply to stand-alone projects.¹⁵⁹ This legal issue is addressed in this Order below in a separate section.

In addition to the legal issue, Revity’s Legal Memorandum also took issue with the Company’s proposal to require allocations on Schedule B to be as close as possible to 100% before a project receives authority to interconnect.¹⁶⁰ Revity maintained that the problem is not that host accounts of the generator are accumulating unused credits (i.e., Excess Credits), “but rather that third party off-takers’ accounts are accumulating unused credits.”¹⁶¹ Revity maintained that there are many reasons for this, but requiring the host accounts to allocate 100% of the credits as a

¹⁵⁸ During the evidentiary hearings, Revity requested permission from the Commission to put forth a witness to provide direct verbal testimony during the hearings, which request was granted. The testimony is described below in this Order.

¹⁵⁹ Revity Energy LLC’s Memorandum of Law in Response to the Narragansett Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend the Net Metering Provision – Proposal for Administration of Excess Net Metering Credits, August 25, 2023, at 4-9 (hereinafter referred to as the “Revity Legal Memorandum”). It is important to note that Revity’s memorandum made many assertions of fact that are not in the evidentiary record.

¹⁶⁰ *Id.* at 9-10.

¹⁶¹ *Id.* at 9.

condition for the project to be interconnected to the system is not going to resolve this problem.¹⁶² The memorandum asserted that the host accounts “are financially incentivized to allocate credits.”¹⁶³ The point made in the memorandum is that whether or not there is a condition for interconnection that requires a 100% allocation before interconnection, there will still be a build up of unused credits regardless of the host’s compliance with the condition.¹⁶⁴

Revyty also maintained that in the context of stand-alone configurations, the problem of Excess Credits is “only a legacy issue and will not repeat itself in the future,” maintaining that the recent amendment to the Net Metering Statute that expanded eligible off-takers to commercial and industrial accounts will make it easy for the projects to fully subscribe and avoid unused credits.¹⁶⁵ Revyty also addressed a concern it had regarding the potential adjustment for unused credits that have built up historically, recommending that the Commission allow a one-time transfer of unused credits to other eligible off-takers in order to match load to production.¹⁶⁶

With respect to the condition that would prevent interconnection until there is a 100% alignment of off-takers to estimated production, Revyty asserted that this would harm renewable energy developers who need federal income tax credits to finance their projects.¹⁶⁷ According to Revyty, a delay in interconnection could affect tax credit eligibility and put potentially large sums of investment dollars at risk for the projects.¹⁶⁸

¹⁶² *Id.* at 9-10.

¹⁶³ *Id.* at 10.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 11.

¹⁶⁸ *Id.*

In a separate memorandum filed on October 2, as a Reply to the legal issues that were briefed separately, Revity also raised an objection to the Company's proposal to assess billing charges associated with the annual reconciliation on the "host account" instead of the accounts of the off-takers that received the Primary Credits prior to the reconciliation.¹⁶⁹ Revity argued that the proposal of the Company "creates significant financial legacy risk for host accounts."¹⁷⁰ Revity claimed that "[n]ot only does a host account lack any control over the off-taker's actual electricity consumption, the host account also lacks control over whether an off-taker decides to purchase additional credits from other hosts."¹⁷¹

F. Company's Pre-Filed Rebuttal Testimony

On September 22, 2023, the Company submitted the Pre-file Joint Rebuttal Testimony of Ms. Russel Salk and Mr. Blazunas.¹⁷² The Company asserted that it was submitted to (i) rebut the pre-filed testimony of Gridwealth's witness,¹⁷³ (ii) respond to the position statement of OER,¹⁷⁴ (iii) respond to the Division's testimony,¹⁷⁵ and (iv) respond to one of the recommendations made by Revity regarding a process to allow transfer of credits among off-takers.¹⁷⁶ However, the vast majority of the pre-filed rebuttal testimony related to the pre-filed direct testimony of Gridwealth's witness, Quincy Vale.

¹⁶⁹ Revity Energy LLC's Replay Memorandum to the Division of Public Utilities & Carriers September 26, 2023 Memorandum and September 22, 2023 Response of The Narragansett Electric Company d/b/a Rhode Island Energy to the Memoranda of Law Addressing Tariff Advice Filing (October 2, 2023)(Revity Reply Memorandum).

¹⁷⁰ *Id.* at 7.

¹⁷¹ *Id.*

¹⁷² Exhibit RIE 2. Pre-Filed Joint Rebuttal Testimony of Salk and Blazunas, September 22, 2023.

¹⁷³ *Id.* at 4-15.

¹⁷⁴ *Id.* at 15-16.

¹⁷⁵ *Id.* at 16.

¹⁷⁶ *Id.* at 16-17.

The Company’s witnesses took issue with Mr. Vale’s assertion that the Company’s current methodology is “inequitable” because it values credits on a monthly basis while performing a reconciliation relating to excess credits annually. Ms. Russell Salk and Mr. Blazunas first point out that the methodology about which Mr. Vale complains is already embedded in the current Net Metering Tariff which was approved by the Commission.¹⁷⁷ They also assert that the methodology is consistent with both the Net Metering Statute and the state’s energy and climate policies.¹⁷⁸

In response to Mr. Vale’s argument that the current process is inequitable, they explain that the Company is now proposing to use the weighted average of the applicable rates to determine the Primary Credits and the Excess Credits used to calculate the billing charges at the time of the annual reconciliation, instead of the annual average credit value which had originally been proposed.¹⁷⁹ They acknowledge that an inequity might be present if the net metering credits paid to customers on a monthly basis do not align with the manner in which the billing charges would be assessed on excess generation – which would be the case if an average annual Primary Credit and Excess Credit were used. They argue, however, that using a weighted average for the billing charges instead of the average annual charges addresses the issue.¹⁸⁰ The testimony explained that the Company will use each individual customer’s billing information, the monthly value of the Primary and Excess Credits that were applicable to the customer, and the customer’s net generation data.¹⁸¹ The Company will then be able to calculate an annual weighted average rate for both the value of the applicable Primary Credits and the applicable Excess Credits related to the customer based on the customer’s net generation upon which the reconciliation will be based.¹⁸² According

¹⁷⁷ *Id.* at 4.

¹⁷⁸ *Id.* at 5.

¹⁷⁹ *Id.* at 5.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 6.

¹⁸² *Id.*

to the Company's witnesses, the weighting methodology will align the billing charge that is applied to each specific net metering customer with the credits that were actually paid to the specific net metering customer.¹⁸³

Mr. Vale had recommended in his pre-filed testimony a change in the way the Primary Credits and the Excess Credits are calculated for purposes of determining final compensation to net metering customers. In response, the Company's witnesses assert that the Company's proposal is not changing any of the current methodology embedded in the existing Net Metering Tariff that determines how the Primary and Excess Credits are calculated.¹⁸⁴ In contrast, they argue that this proceeding is only considering changes in the administration of the Excess Credits which has no impact on that current methodology in the existing tariff on how to calculate the Primary Credits and Excess Credits pursuant to that tariff language.¹⁸⁵

The testimony also addressed Mr. Vale's assertion that there is a need to levelize the rate credit values across the year (instead of using the actual monthly rates as stipulated in the existing Net Metering Tariff) by using an annual average for all the rates. Mr. Vale justified this recommendation based on the fact that the seasonal last resort rates are driven by the demand for natural gas.¹⁸⁶ While the witnesses did not dispute the fact that the demand for natural gas has a significant impact on the price differential between last resort rates in the Summer Period compared to the last resort rates in the Winter Period,¹⁸⁷ they took issue with Mr. Vale's assertion that this results in net metering customers not being properly compensated.¹⁸⁸ They observe that

¹⁸³ *Id.* at 6-7.

¹⁸⁴ *Id.* at 5-6.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 7.

¹⁸⁷ *Id.* at 7-8.

¹⁸⁸ *Id.* at 8.

Mr. Vale “appears to be asserting that, as a matter of policy, it is unfair that the price of electricity, which is used to determine the value of net metering credits, is influenced by the natural gas market.”¹⁸⁹ Their response is that the Company calculates the value of the credits pursuant to an approved tariff and the calculation is consistent with state policy.¹⁹⁰ They also assert that the method of compensating net metering customers is consistent with the Commission’s Docket 4600 principles that relate to cost/benefit analyses.¹⁹¹ The witnesses stated:

A net metering customer, in either the summer or winter period, is compensated for net generation based on the [Primary Credit] including the [last resort service] rate in effect at the time of generation, which represents the benefit of the generation absent an energy storage system. Likewise, a net metering customer, like all other [last resort service] customers, is charged for net consumption based on its applicable rate charges, including the [last resort service] rate, which represents the cost of the consumption at the time of consumption.¹⁹²

The witnesses also claim that Mr. Vale’s recommendation that is based on an average last resort rate applied to a single customer, does not recognize “that every customer will have unique profiles with respect to both their generation and consumption.”¹⁹³ Specifically, they point out that whether a customer benefits or not depends upon when they produce electricity.¹⁹⁴ When electricity is produced in the winter at which time the electricity prices are high, the value would be lower by using an average rate.¹⁹⁵ Conversely, when production occurs in the summer at which time electricity prices are lower, the average value would be higher.¹⁹⁶ The testimony illustrates their point with some concrete examples.¹⁹⁷ The witnesses testified that if more net metering

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 8-9.

¹⁹³ *Id.* at 9.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 10-11.

customers produce more generation in the Summer Period compared to the Winter Period, it would – all things remaining equal – have the effect of increasing the aggregate amount of Primary Credits to net metering customers, resulting in a higher amount to be recovered from all ratepayers through the Net Metering Charge.¹⁹⁸

The testimony also responded to an assertion made by Mr. Vale that while net metering customers produce more electricity during the summer than they do in the winter, they consume more electricity in the winter than in the summer.¹⁹⁹ The witnesses cite a response to a data request indicating that it is not possible to show comparative monthly production and consumption curves for a typical residential account because those values are not measured.²⁰⁰ However, the Company produced an analysis of a random account participating in a different solar program where both consumption and production are metered.²⁰¹ The witnesses acknowledged that production was higher in the summer than winter, but the analysis showed that – contrary to Mr. Vale’s premise – consumption was not higher in the winter than summer.²⁰²

The testimony also responded to another assertion made by Mr. Vale in his testimony that a customer can produce more electricity than the customer consumes in a single year. Then, when the annual reconciliation occurs, such customer can still end up with an Excess Credit billing adjustment which results in annual charges that “greatly exceed the fixed charges on the account.”²⁰³ The witnesses point to another analysis they performed which they assert disproves

¹⁹⁸ *Id.* at 11.

¹⁹⁹ *Id.* at 12. *See* MAE 1-4.

²⁰⁰ *Id.*

²⁰¹ This program is referred to as the Renewable Energy Growth Program. *See* R.I. Gen. Laws § 39-26.6-1 *et seq.*

²⁰² *Id.*

²⁰³ *Id.* at 13 (citing response to MAE 2-8).

Mr. Vale's premise and which demonstrates that the net annual bills are within the range of a customer's annual fixed charges.²⁰⁴

Finally, the testimony addressed another assertion that was made by Mr. Vale in his testimony that the Company proposes to use a "capacity factor" as a means to do the annual reconciliation of both generation and consumption.²⁰⁵ The Company's witnesses deny that the Company's filing is making this proposal, referring to a discussion that occurred at the August 16 technical session and a response to a data request indicating the use of an assumed capacity factor relates to estimating production from generation units when the production is not being metered.²⁰⁶

With respect to the recommendations contained in OER's position statement, the Company's witnesses stated that they believed OER's recommendations were reasonable.²⁰⁷

With respect to the pre-filed testimony of the Division's witness, the Company had no substantive response, reflecting their understanding that "[t]he Division indicated that it supports the Company's proposed approach for a process to conduct an annual reconciliation of Excess Renewable Net Metering Credits."²⁰⁸

Finally, the witnesses addressed one policy recommendation made by Revity from Revity's legal memorandum relating to permitting third party off-takers to transfer unused credits to other eligible off-takers, stating that the Company agreed that such a transfer should be permitted.²⁰⁹

²⁰⁴ *Id.* at 13-14.

²⁰⁵ *Id.* at 14. This apparently refers to page 14 of Mr. Vale's pre-filed testimony.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 15-16.

²⁰⁸ *Id.* at 16.

²⁰⁹ *Id.* at 17.

X. Gridwealth's Discovery Motion

A. Gridwealth's Motion

On September 14, 2023, Gridwealth filed a motion entitled “MassAmerican Energy LLC d/b/a Gridwealth Development’s Motion to Require Supplementation of Discovery” (Discovery Motion).²¹⁰ The data requests at issue were sent by Gridwealth on August 22, 2023, and the Company responded on September 11, 2023. The Discovery Motion argued that the Company’s response to four data requests were unresponsive to the requests that were made, further alleging that the unresponsiveness “puts Gridwealth at a significant disadvantage in presenting its advocacy in this docket and should warrant the sanctions provided in Rule 1.19(c)(4)²¹¹ if not corrected in sufficient time to allow adequate preparation for the hearing (in one week).”²¹²

After the Discovery Motion was filed, the Commission rescheduled the evidentiary hearing from the original date of September 21 to October 5, in order to provide time for the Company to reply. The Company filed a timely objection on September 22²¹³ and the Commission later notified the parties that oral argument on the motion would be heard on the day of the evidentiary hearings on October 5.

Prior to the commencement of the evidentiary hearings on October 5, Gridwealth withdrew its claims of unresponsiveness as they applied to three out of four of the data requests

²¹⁰ Massamerican Energy LLC d/b/a Gridwealth Development’s Motion to Require Supplementation of Discovery, September 14, 2023 (Gridwealth Discovery Motion).

²¹¹ Rule 1.19(C)(4) of the Commission’s Rules of Practice and Procedure states: “The failure of a party to comply with a data request or a Commission order related thereto shall be grounds for striking any testimony related to such request.”

²¹² *Id.* at 1.

²¹³ Objection from the Narragansett Electric Company d/b/a Rhode Island Energy to Massamerican Energy LLC’s Motion to Require Supplementation of Discovery, (September 22, 2023)(RIE Objection).

referenced in the Discovery Motion, stating that during a conference call with the Company, Gridwealth accepted those three responses.²¹⁴

The one remaining data request to which Gridwealth's Discovery Motion pertained read as follows:

Request:

On page 9 of the tariff advice filing (the Filing) the witnesses address the question "What is the cost of net-metering to distribution customers as a whole?" Please respond to that question in light of the net cost benefit analysis required by PUC docket 4600 and the guiding principles therein and by Rhode Island energy policy.²¹⁵

The Company's response to the data request quoted a paragraph from its filing which referred to how the program costs would be recovered from all customers. The response also referred to the Commission's Docket 4600 as reflecting "a societal benefit-cost assessment that considers value to the power system, customers, and society." The response provided a copy of a benefit-cost analysis conducted on behalf of OER in 2023 by a consulting firm, Sustainable Energy Advantage (SEA). The Company's response stated: "[T]he benefit-cost assessment results presented on slide 45 [of the SEA analysis] suggest the costs outweigh the benefits for both net metering and virtual net metering." The response concluded with the statement: "Rhode Island Energy considers the Net Metering Statute to be the most relevant of Rhode Island energy's policies for this particular proceeding. Rhode Island Energy maintains its proposal is consistent with the Net Metering Statute."

²¹⁴ Massamerican Energy LLC d/b/a Gridwealth Development's Reply Regarding Its Motion to Require Supplementation of Discovery, at 1 (September 27, 2023)(Gridwealth Reply).

²¹⁵ Data Request MAE 2-1.

The Discovery Motion stated that Gridwealth, during the August 16 technical session, requested the Company to perform a net cost benefit analysis and complains that the Company never did so.²¹⁶ The motion referred to the Company's reference to the SEA analysis as being unresponsive, categorizing the SEA analysis that had been commissioned by OER as "both inadequate and inaccurate." The Discovery Motion then stated: "Gridwealth asks the PUC to order RIE to conduct its own reevaluation of its poorly reasoned conclusion that net metering costs customers in its tariff advice filing, so that analysis can then be subject to cross examination and provides proper policy foundation for the proposal under consideration."²¹⁷

B. Company's Objection

In the Company's Objection, the Company argued that "[t]he scope of the Company's tariff advice filing is limited to establishing a reconciliation process for large net metering customers to effectuate the statutory provisions of the Net Metering Statute."²¹⁸ The Company pointed out that the values used to set the net metering credits "are set by statute and cannot be altered by a Docket 4600 analysis."²¹⁹ The Company's Objection relating to MAE 2-1 concluded with the following:

Given that the Company's proposal is limited to performing a reconciliation to effectuate the Net Metering Statute, the results of Docket 4600 analysis are beyond the scope of the Company's proposal. Therefore, the Company's response to MAE 2-1, which is subject to cross examination and/or an alternative Docket 4600 analysis conducted by MAE's witness, does not place MAE at a disadvantage.²²⁰

²¹⁶ Discovery Motion at 1.

²¹⁷ Discovery Motion at 2.

²¹⁸ RIE Objection at 2.

²¹⁹ *Id.*

²²⁰ RIE Objection at 3.

C. Oral Argument

During oral argument on October 5, counsel for Gridwealth was asked if it was Gridwealth's contention that it was legally entitled under the applicable rules to have the Company perform a study in response to Gridwealth's data request.²²¹ Counsel responded that it was not Gridwealth's position. Rather, counsel stated that the purpose of the motion was to bring attention to Gridwealth's position that the Company's filing was not sufficiently supported with evidence in the absence of a benefit-cost analysis.²²²

D. Commission's Ruling on the Motion

Rule 1.19(A)(2) of the Commission's Rules of Practice and Procedure provide with respect to discovery:

Techniques of pre-hearing discovery permitted in state civil actions may be employed by any party. Upon experiencing any difficulties in obtaining discovery, the parties may seek relief from the Commission by filing a proper motion.

With respect to data requests, Rule 1.19(C)(1) provides:

In any proceeding pending before the Commission, the Commission staff and any party may request such data, studies, workpapers, reports, and information as are reasonably relevant to the proceeding and are permitted by these rules or by statute.

With respect to motions relating to supplementation of responses, Rule 1.19(D) states:

Supplementation of Responses to Discovery Requests. A party who has responded to a request for discovery is under a duty to reasonably and promptly amend or supplement the previous response if information is obtained which would have been required in the previous response if it had been available to the respondent at the time the response was served.

²²¹ Hr'g Tr. at 64-72 (October 5, 2023).

²²² *Id.* a 70-72.

Gridwealth’s Discovery Motion was categorized as one that appears to relate to “Supplementation of Responses to Discovery Requests.” However, the arguments made by Gridwealth did not raise any issues that implicate Rule 1.19(D). There was no allegation that the Company provided a response and subsequently did not supplement the response with information when new information became available.

Rule 1.19(A)(2) indicates that discovery is permitted in a manner allowed in civil actions and permits a party to seek relief by filing a proper motion. Since the relief sought in the Discovery Motion was to request the Commission to order the Company to conduct some form of study or reevaluation of its response, the Commission treated the Discovery Motion as a Motion for Order Compelling Discovery, similar to that which is provided in civil actions under Rule 37.²²³

At the hearing on October 25, the Commission made its ruling on the motion.²²⁴ The Commission found that the Company’s response to the specific question asked in MAE 2-1 was responsive to the request, even if it did not fully satisfy what Gridwealth was seeking in order to support its position. The Commission also found no prejudice or unlawful disadvantage imposed upon Gridwealth on any due process grounds resulting from the manner that the Company responded to the discovery request. The type of arguments made by Gridwealth related to an argument about whether the Company met its burden to support its tariff changes. They did not implicate any due process rights, nor did they provide a foundation for a claim that the Company was not responsive to discovery. The Company’s witnesses were available for cross examination

²²³ R.I. Superior Court Rules of Civil Procedure, Rule 37.

²²⁴ Hr’g Tr. at 218-225 (October 25, 2023).

and Gridwealth had its own witness to make a case to the extent Gridwealth believed the evidence presented by the Company was inadequate.

In addition, during oral argument, counsel for Gridwealth conceded that he was not maintaining that his client was legally entitled to have the Company perform a study.²²⁵ Therefore, the Commission found that Gridwealth failed to provide any justification that would support an order issued by this Commission to compel the Company to conduct any kind of study or reevaluation of its request.²²⁶ For these reasons, the Discovery Motion was denied.

XI. Evidentiary Hearings

A. The Company's Witnesses

The evidentiary hearings took place over four days: October 5, 25, and 26, and November 9, 2023. The Company, Gridwealth, Revity, and the Division each sponsored witnesses who appeared for direct and cross-examination.

The Company's witnesses appeared on October 5 and 25, most of whom had submitted pre-filed testimony, but two who had not. The witnesses were Erica Russel Salk, manager of customer integration for Rhode Island Energy; Peter Blazunas, senior project manager for a consultant Concentric Energy; Stephanie Briggs, senior manager of revenue and rates for Rhode Island Energy; Carrie Gill, senior manager for electric regulatory strategy for Rhode Island Energy; and Chris Ann Rossi, senior manager, billing and credit checks for Rhode Island Energy (collectively referred to as the "Witness Panel"). Ms. Gill and Ms. Rossi had sponsored responses

²²⁵ Hr'g Tr. at 70-72 (October 5, 2023),

²²⁶ It also is doubtful that a party is entitled under the civil litigation rules of discovery to compel another party to perform a study that is not already in existence.

to certain data requests but had not submitted pre-filed testimony. No additional direct examination of the witnesses was given – other than introductions of the witnesses – before the witnesses were made available for cross-examination by the parties and questioning by the Commission.²²⁷

B. Division’s Cross-Examination of Company Witness Panel

The Division had a limited number of questions for the Witness Panel. The panel clarified statements made at the August 16 technical session relating to a proposed two-phased implementation of the first reconciliation which proposes to address the largest customers first, followed by review of the thousands of small net metering accounts.²²⁸ They also answered questions relating to the transition that the Company is still undertaking with National Grid arising out of the purchase of Narragansett Electric by PPL Corporation.²²⁹

C. Gridwealth’s Initial Cross-Examination of Company Witness Panel

Counsel for Gridwealth asked numerous questions relating to the Company’s proposals.²³⁰ First, the Witness Panel answered questions regarding the proposed annual reconciliation process and the Company’s use of a weighted average.²³¹ Mr. Blazunas distinguished between (i) the billing period used by the Company to bill customers which occurs monthly from (ii) the annual reconciliation which occurs at the end of 12 months.²³²

Mr. Blazunas also explained that the Company had originally proposed using a straight average in the calculation of the Net Metering Charge for the reconciliation, but after the August

²²⁷ Hr’g Tr. at 73-79 (October 5, 2023).

²²⁸ *Id.* at 79-81.

²²⁹ *Id.* at 81-82.

²³⁰ *Id.* at 82-120.

²³¹ *Id.* at 83-90.

²³² *Id.* at 83-84.

16 technical session, the Company modified its proposal, and changed it to using a weighted average.²³³ Upon further questioning, Ms. Russel Salk gave an explanation of the weighted average methodology:

On an annual basis, we're evaluating the value of kilowatt hours, which are compensated for on a monthly basis at the value at the point in time of generation. Because on a monthly basis we don't know if that month's negative kilowatt hours have any, [sic] are considered excess. We provide the full renewable net metering credit.

We would not know until the year has completed of those negative kilowatt hours how many are excess. Therefore, we apply the billing charge, which trues up the difference of a renewable net metering credit and excess net metering credit. By applying the weighted average, it ensures accuracy that the value of the credit is aligned with the time of generation.²³⁴

She further explained that “[b]y assessing the charge with a weighted average, it aligns with valuing the generation at the time of generation, because we cannot know what is excess until the end of the year is complete. It has to be done prospectively, which is why we need to weight the average of the negative kilowatt hours to hit the bill on a monthly basis.”²³⁵

Counsel for Gridwealth referred to provisions in the Net Metering Statue that allows the utility to use a 12-month billing plan, (citing R.I. Gen. Laws § 39-26.4-3(a)(2)) to “stabilize net-metered account bills,” asking: “Don't you have to value the credits on an annual basis in order to net the value against the charges?”²³⁶ Mr. Blazunas and Ms. Russell Salk testified that the annual reconciliation was different than a “billing plan.”²³⁷ Ms. Russell Salk explained, “This section that you're referencing in the statute is for a billing plan, but is not required to put a customer on a

²³³ *Id.* at 87.

²³⁴ *Id.* at 88-89.

²³⁵ *Id.* at 90.

²³⁶ *Id.* at 92-93.

²³⁷ *Id.* at 93-94.

billing plan. That is different from an annual reconciliation, to align credit values relative to the generation and consumption ratio.”²³⁸

Counsel for Gridwealth questioned the Witness Panel further, stating: “My question has to do with whether that is consistent with the statute, which requires you to consider both the value of the credit and the credit of the charge in doing your annual reconciliation. That’s what the statute calls for.” Ms. Russell Salk responded:

We are proposing to do an annual reconciliation based on the terms. If we look at the statute and definitions for renewable net metering credit and excess net metering credit, it defines the value based on one to four components of the retail rate and Last Resort Service’s applicable rate during the billing period.

Our billing period is on a monthly basis. We have a monthly read. So the value for the net metering credit is the value at the time of generation, when it benefits the electric system, when the electricity [flows] through the system. On an annual basis we true up any overpayment. We can’t reconcile on a monthly basis. On a monthly basis we cannot know what negative kilowatt hours or excess hours are.”²³⁹

Counsel for Gridwealth then turned to the position that was stated by his witness Mr. Vale, relating to his assertion that it was unfair to tie the value of the credits to the natural gas market.²⁴⁰ Ms. Russell Salk replied by pointing out again that the Company was tying the value to the definitions in the statute.²⁴¹

Gridwealth’s counsel then referenced his understanding that net metering customers generate more in the summer than in the winter and asked whether they should be rewarded for reducing peak demand.²⁴² In response, Ms. Russell Salk testified that “[t]he demand on the electric

²³⁸ *Id.* at 94.

²³⁹ *Id.* at 96-97 (The word “flows” was transcribed as “floats.” This quotation corrects the transcription.)

²⁴⁰ *Id.* at 98-99.

²⁴¹ *Id.* at 100.

²⁴² *Id.* at 100-101.

system for load does not occur at the same time of day that the net metering customers' generation would peak."²⁴³ Ms. Gill reinforced the statement by Ms. Russell Salk, testifying:

A key distinction is that planning for the electric distribution system is not done broadly at the seasonal level, but rather this is in accordance with what [the] peak hours are, like Ms. Russell Salk just noted. The coincident generation of some renewable energy resources, for example, solar in the summer is not coincident with the distribution system peak.

If you look at the purpose of the net metering statute, this is 39-26.4-1, the last purpose is to reduce distribution system costs. The distribution system costs are dependent on the peak time, not generally peak over the summer season, for example.²⁴⁴

Ms. Gill later added that "the system has to be built to serve peak demand in a more granular fashion. So its not just about the summer, it's about the peak demand at the top 15 minutes, for example."²⁴⁵

After the Witness Panel further defended the Company's proposal to perform the annual reconciliation,²⁴⁶ the Witness Panel was asked why electric rates are higher in the winter than they are in the summer.²⁴⁷ Mr. Blazunas referenced the pre-filed testimony, stating that it is driven by the price of natural gas. Counsel for Gridwealth pressed questions regarding the reason why the value of the net metering credits paid in the summer should be less than the value of the credits paid in the winter, given the fact that there are more kilowatt hours of credits produced in the summer than in the winter.²⁴⁸ Mr. Blazunas explained that the credits are being calculated consistent with the Company's tariff which utilizes a component of the last resort service rate. He

²⁴³ *Id.*

²⁴⁴ *Id.* at 101-102.

²⁴⁵ *Id.* at 102.

²⁴⁶ *Id.* at 103-104.

²⁴⁷ *Id.* at 106-107.

²⁴⁸ *Id.* at 107.

further explained that the fact that the last resort service rate “is different in the summer and the winter is a function of how that Commission approved tariff itself operates.”²⁴⁹

Gridwealth Counsel asked policy questions regarding the extent to which the net metering credits should reflect other benefits that warrant increasing the payments.²⁵⁰ The witnesses continued to defend their position that following the tariff and calculating the credit based on a weighted average in the annual reconciliation was appropriate.²⁵¹ Ms Russell Salk stated again that “the compensation for [the] renewable net metering credit and excess renewable credit align most appropriately with the statute, and the net metering provision compensates for the point in time in which generation passes through our electric distribution system.”²⁵²

The cross-examination by Gridwealth concluded with questions regarding how the Company would be performing estimates for purposes of the annual reconciliation. The Witness Panel explained that the Company would be estimating consumption in those instances where estimation was necessary using a three-year historic average.²⁵³ However, Ms. Russel Salk pointed out that no estimation would be needed for stand-alone facilities because actual consumption is known.²⁵⁴

D. Revity’s Initial Cross-Examination of Company Witness Panel

Revity’s counsel commenced cross-examination by focusing on the Company’s proposal regarding the requirement for the percentage allocation of credits on Schedule B to equal 100%.

²⁴⁹ *Id.* at 108.

²⁵⁰ *Id.* at 111-112.

²⁵¹ *Id.* at 112-113.

²⁵² *Id.* at 114-115.

²⁵³ *Id.* at 117.

²⁵⁴ *Id.* at 119-120.

Ms. Russell Salk clarified the Company's position on this proposal and addressed inquiries about its implementation.²⁵⁵

Questions pivoted to scenarios where production exceeds consumption by 25% or more, with Ms. Russel Salk confirming the Company's approach to handling the electricity and confirmed that the credit value for generation beyond the 125% threshold is zero.²⁵⁶ Further inquiries regarding unused credits and their allocation to host and satellite accounts were addressed, although specifics on unused credits for host accounts were uncertain.²⁵⁷

Inquiring about the Company's examination of consumption listed on Schedule B accounts, Ms. Russell Salk indicated that the Company relies on data provided by host accounts.²⁵⁸

Reivity's counsel explored the potential for host accounts to qualify for Authority to Interconnection (ATI) under Public Utility Regulatory Policies Act (PURPA).²⁵⁹ Ms. Russell Salk responded: "I don't think the company would have any opposition to it as long as the criteria is satisfied to become a net metering customer."²⁶⁰

Questions arose regarding the Company's capability to apply the net metering billing charge to satellite accounts. The witnesses affirmed the Company's capacity to apply charges to satellite accounts instead of the host account but defended the Company's proposal to assess the net metering charge to the host account.²⁶¹ Regarding inquiries about conducting a one-time

²⁵⁵ *Id.* at 123-138.

²⁵⁶ *Id.* at 129-131

²⁵⁷ *Id.* at 133-134.

²⁵⁸ *Id.* at 138.

²⁵⁹ The Public Utility Regulatory Policies Act is a United States Act passed as part of the National Energy Act. It was meant to promote energy conservation and promote greater use of domestic energy and renewable energy. (The term "ATI" was defined at page 28, line 6 of the hearing transcript).

²⁶⁰ *Hr'g Tr. at 139 (October 5, 2023).*

²⁶¹ *Id.* at 145-146.

transfer of credits between accounts, Ms. Russel Salk testified that she saw no impediment to allowing such transfers.²⁶²

Regarding compliance with the statute and the proposal's prospective nature, Ms. Gill clarified the Company's stance, emphasizing adherence to statutory requirements and Commission directives.²⁶³ Lastly, Ms. Gill acknowledged that the Company had not fully considered the extent to which the proposal would impact renewable energy development in the state.²⁶⁴

*E. Questions from the Commission*²⁶⁵

Nearly all of the questions asked by the Commission came from staff for purposes of clarifying the record and assuring that the Commission had an accurate understanding of the various aspects of the Company's proposals. The questions and answers will not be summarized in this part of the Order.²⁶⁶

F. Taking Administrative Notice of Information from Prior Dockets

On the morning of October 23, prior to the commencement of the second day of hearings scheduled for October 25, Commission counsel circulated electronically to the parties several documents from prior Commission dockets which reflected the history relating to the net metering program leading up to the discovery of the Company's non-compliance.²⁶⁷ The email

²⁶² *Id.* at 152-153.

²⁶³ *Id.* at 156-157.

²⁶⁴ *Id.* at 157.

²⁶⁵ Counsel for OER had only one question to clarify that the Company originally proposed a threshold of accounts above 25 kW for the application of the reconciliation process. *Id.* at 158.

²⁶⁶ The questions from staff begin at page 159 of the hearing transcript of October 5 and continue in the hearing transcript of October 25. *See* Hr'g Tr. at 159-212 (October 5, 2023), and Hr'g Tr. at 228-357 (October 25, 2023).

²⁶⁷ The documents were as follows. From Docket 4549: Hearing Transcript -April 14, 2015, PUC 1-4, PUC 1-7, PUC 2-2; From Docket 4930: Hearing Transcript – March 19, 2019, PUC 2-6; Docket 5005: PUC 3-1; Docket 5127: PUC 1-16, PUC 5-1, PUC 7-2; Dockets 5234, 5127, 5005: Technical Session Transcript – April 12, 2022; Open Meeting Minutes – December 7, 2022.

communication to the parties indicated the Commission’s intention to take Administrative Notice of the documents. At the beginning of the hearing on October 25, the Commission explained the purpose was to reflect the history and the documents were entered into the record as full exhibits.²⁶⁸ No objections were raised by the parties to the taking of Administrative Notice of the documents²⁶⁹ or the additional opportunity for cross-examination relating to the documents.²⁷⁰

G. Further Cross-Examination by Gridwealth of the Company’s Panel

Counsel for Gridwealth began with questions regarding summer peak demand, its relationship to the seasonal rate changes, and the impact of natural gas demand.²⁷¹ He then asked the Witness Panel questions relating to the differences between using the volumetric method for determining the amount of Excess Credits compared to using a “monetary method.”²⁷² Counsel asked whether the Witness Panel agreed that the Company’s method of calculating the net metering credits was undervaluing the credit based on the Commission’s guidance document relating to Docket No. 4600.²⁷³ Mr. Blazunas did not agree, responding that the Company was using the rate values that exist in the Company’s tariffs.²⁷⁴ Counsel asked whether the witnesses agreed that by using the weighted average of the rates, the Company was introducing “a new rate” and the witnesses disagreed.²⁷⁵ Ms. Russell Salk explained, “[B]y using the weighted average upon an annual reconciliation, it ensures that the value of the net metering credits and the excess net metering credits are valued at the rates in effect at the time of [generation].”²⁷⁶

²⁶⁸ Hr’g Tr. at 216-218 (October 25, 2023).

²⁶⁹ *Id.* at 217-218; *see also id.* at 386-387.

²⁷⁰ *Id.* at 374-375, 379, and 387-389.

²⁷¹ *Id.* at 374-378.

²⁷² *Id.* at 379-390.

²⁷³ *Id.* at 391.

²⁷⁴ *Id.* at 392.

²⁷⁵ *Id.* at 392-393.

²⁷⁶ *Id.* at 393. (The original transcript erroneously typed the word “duration” instead of “generation.”)

Counsel asked the Witness Panel whether the Net Metering Statute authorized an annual reconciliation, referencing the statutory provision relating to billing plans.²⁷⁷ Ms. Russell Salk responded, “To meet the intent of the definition of eligible net metering system, [the statute] identified that system should be sized based on annual consumption. So to meet the intent of the definition, we need to take an annual view of the net value.” She added, “So a customer may be on a billing plan. We – that is separate from the annual reconciliation of excess net metering credits we propose there.”²⁷⁸

Counsel for Gridwealth continued with questions relating to the manner in which the Company performs the calculation for purposes of the annual reconciliation. Ms. Russell Salk further explained: “We are looking at the volume of generation and the volume of consumption to determine the volume of negative kilowatt hours or excess credits, and the value for those credits are either the primary credit or the excess credit, and you’re valuing them based on the rate in effect at the time of generation.”²⁷⁹

Counsel continued his cross-examination asking the Witness Panel whether the Company considered other values when determining the cost of net metering, including capacity value, electric transmission capacity value, environmental cost impacts, or peak electric level. The Witness Panel confirmed that those values were not considered, explaining again that the Company used the rate values for distribution, transmission, transition, and last resort service.²⁸⁰

²⁷⁷ *Id.* at 394-395.

²⁷⁸ *Id.* at 395.

²⁷⁹ *Id.* at 398.

²⁸⁰ *Id.* at 401-403.

H. Further Cross-Examination by Revity of the Company's Panel

Counsel for Revity commenced his additional cross-examination with questions regarding whether the Witness Panel believed that the Company's proposal was in the best interest of net metering customers.²⁸¹ Ms. Russell Salk essentially explained that the Company's proposal is assuring compliance with the statute and that such compliance is in the best interest of all concerned.²⁸² Counsel then proceeded to ask questions regarding the Company's expressed view that the proposal was prospective, given the fact that the Company was proposing to start the first reconciliation to cover credits that were issued in 2022.²⁸³ He also asked what the difference would be between reconciling for 2021 and reconciling for 2022, when the Company is performing the evaluation in 2024. Ms. Russell Salk stated that the Company was ordered in December of 2022 to make a prospective proposal and when the proposal was made in February of 2023, the most recent data was 2022.²⁸⁴

Revity asked questions regarding the difference between the volumetric method and the monetary method, inquiring why the two methods gave different results.²⁸⁵ Ms. Russell Salk was not able to explain the difference, but noted that since the Company measures in kilowatt hours, the Company was proposing a volumetric method.²⁸⁶ Questions were asked about data request responses from August 2021, by employees of the Company working for National Grid. Specifically, the data response pertained to a description of circumstances in which net metering customers were billed separately by their commodity service providers and how customers might

²⁸¹ *Id.* at 404-407.

²⁸² *Id.* at 405-406.

²⁸³ *Id.* at 407-408.

²⁸⁴ *Id.* at 408.

²⁸⁵ *See* further discussion of the difference between the volumetric and monetary methods in Section XI (I), *supra*.

²⁸⁶ *Id.* at 412-413.

be able to reduce the amount of Excess Credits.²⁸⁷ In response, Ms. Rossi clarified that the Company does not get involved with advising customers on how they should set up their billing arrangements with their suppliers.²⁸⁸ Counsel asked follow up questions about other circumstances where the Company could have advised customers about how the credits would be assessed. Ms. Rossi's response was that the Company does not provide such advice.²⁸⁹

Questions followed about the amount of potential billing charges, the types of customers affected by the past crediting, the financial condition of those customers, and the extent to which the Company has advised the customers regarding the potential impact of the Company's proposal.²⁹⁰ Ms. Gill responded that the Company was not in a position to comment on the third party relationships, or financial positions, and Ms. Russell Salk stated that the Company was waiting for a final Commission decision and would inform customers at that time.²⁹¹ Reivity probed further regarding the extent to which the Company had knowledge of the amount of Excess Credits that reside on the accounts of the stand-alone customers. Ms. Russell Salk responded that the Company performed its last analysis for 2020, but did not necessarily have the specific customer data for 2020.²⁹² The Witness Panel was then asked if the Company had any concerns about customer confidence in the net metering system. Ms. Gill responded that the Company's proposal was intended to accurately reflect the terms of the statute and tariff, but acknowledged that the statute did not appear to use the term "billing charge."²⁹³

²⁸⁷ *Id.* at 413-417.

²⁸⁸ *Id.* at 415-418.

²⁸⁹ *Id.* at 420-421.

²⁹⁰ *Id.* at 423-425.

²⁹¹ *Id.* at 424-425.

²⁹² *Id.* at 430-431.

²⁹³ *Id.* at 432-433.

Finally, Counsel concluded his cross-examination asking the Witness Panel if the Company has historically taken any steps “to ensure that an off-taker was not signing up for more credits than they can consume.”²⁹⁴ Ms. Russell Salk, in response, testified that the Company only reviews what is presented on the Schedule B, but does not go back to check the consumption records that are available to the Company.²⁹⁵ Instead, the Company has just trusted the information recorded on the Schedule B as submitted.²⁹⁶

I. Follow Up Questions

The Company’s counsel asked a number of follow-up questions from which the Witness Panel confirmed again that the values of the Primary Credit and the Excess Credit were taken directly from what was specified in the Net Metering Statute.²⁹⁷ Mr. Blazunas also testified in that while the Company has used the term “billing charge” one could also refer to it as a “true up” to assure that “whatever was overpaid is collected back.”²⁹⁸ Ms. Rossi also confirmed that the purchase of receivables program applicable to third-party supply billing was not effective until after April 2022, which occurred after the testimony which had been given by the National Grid witnesses in 2021.²⁹⁹

Commission staff concluded the questioning of the Company’s Witness Panel with other clarifying questions.³⁰⁰ One clarification related to distinguishing the monetary method from the volumetric method. As confirmed by the Witness Panel, the monetary method derives an estimate

²⁹⁴ *Id.* at 434.

²⁹⁵ *Id.* at 434-435.

²⁹⁶ *Id.* at 435.

²⁹⁷ *Id.* at 436-437.

²⁹⁸ *Id.* at 439.

²⁹⁹ *Id.* at 440-441.

³⁰⁰ *Id.* at 444-456.

of Excess Credits by comparing the aggregate dollar values of credits paid at the end of the year to the amount of billings for the same year that the customer would have needed to pay absent the credits. Then the total dollars in excess of billings is divided by the applicable rate to determine an estimate of the number of excess kilowatt-hours.³⁰¹

The Commission staff also obtained confirmation from the Witness Panel that the estimate of total billing charges that would have been calculated under the volumetric metric for 2020 was substantially lower than the calculation under the monetary method. Specifically, the volumetric method calculated \$1.95 million of charges, compared to a substantially higher number of billing charges that would have been the result using the monetary method of \$6.185 million.³⁰² The Witness Panel also confirmed why the monetary method has the potential to yield inaccurate results.³⁰³ Staff also clarified with the Witness Panel other details regarding the complexities associated with not knowing in any given month whether production from a net metering facility is excess until the end of the year.³⁰⁴

J. Direct Testimony of Gridwealth's Witness at the Evidentiary Hearings

The evidentiary hearings continued on October 26 and the first witness was Mr. Quincy Vale. Before Mr. Vale was cross-examined by the parties, he provided further direct testimony in response to questions from his counsel.³⁰⁵ Mr. Vale first testified that Massachusetts has a net metering program and, in that state, net metering customers are allowed to transfer credits.³⁰⁶ He also testified that it was his understanding that the utility does not assess charges for excess credits

³⁰¹ *Id.* at 445-447.

³⁰² *Id.* at 448.

³⁰³ *Id.* at 449.

³⁰⁴ *Id.* at 453-456.

³⁰⁵ Hr'g Tr. at 466-513 (October 26, 2023).

³⁰⁶ *Id.* at 467.

in that state because it is not statutorily required.³⁰⁷ He continued, commenting on the complexity of the net metering issues, particularly in the case of excess credits. He also commented that he believed if the utility was more transparent about the credits and more collaborative with host accounts to prevent the excessive build-up of credits, many of the issues in the case could be obviated.³⁰⁸ Mr. Vale testified regarding his understanding of the physics of the electric system, stating that the electricity flows to the nearest load where it is consumed.³⁰⁹ He described a simplified example of excess generation delivered into the grid and being consumed by a neighbor on the system.³¹⁰ Mr. Vale acknowledged that he is not involved in utility supply planning and procurement activities, but gave his “base understanding” of how he believed it worked.³¹¹ He further testified about his very general understanding of costs and benefits regarding the timing of generation and market payments through the ISO New England system.³¹² He spoke in layman’s terms about his understanding of the flow of electrons, including a colloquial reference to electrons making a “U-turn” on the system between adjacent buildings, along with other general non-expert understanding of how the electrical system worked.³¹³

Mr. Vale then testified critically about how he believed the Company has different options to administer the program, but expressed dissatisfaction with the choices the Company has made.³¹⁴

³⁰⁷ *Id.* at 468.

³⁰⁸ *Id.* at 469-470.

³⁰⁹ *Id.* at 470.

³¹⁰ *Id.* at 471-472.

³¹¹ *Id.* at 475-476.

³¹² *Id.* at 477-479.

³¹³ *Id.* at 480-481.

³¹⁴ *Id.* at 483-484.

He then testified that he believed the monetary method was inconsistent with the Net Metering Statute if there are different rate classes involved.³¹⁵ He went on to testify regarding the complexity of reconciling excess production and distinguished stand-alone from behind the meter.³¹⁶ Mr. Vale was asked about his understanding of the Company's proposed use of the weighted average in performing the annual reconciliation. In response, however, Mr. Vale instead gave an opinion that over the next six months to a year, the issue he was concerned about should be resolvable regarding the reconciliation of excess, stating:

And I think that, you know, if we all work together in the next six months to a year, now that the pool of net metering off-takers has been so drastically expanded to include all of the commercial and industrial entities in the state, I can't see why there would ever be really any significant buildup of excess credits that would have to be billed back or cashed out or charged.

And I'd like to come at it from that perspective. And I think that simplifies things greatly, because then we can sort of not have this argument over what rate to assess on and how to actually comes up with a charge for that excess credit, because we don't fundamentally know when those excess kilowatt hours were created, we don't know the day, the hour, the minute.³¹⁷

He then went on to describe how the change in law helped solve for the future.³¹⁸ He expressed his opinion that if the Company collaborated with the net metering customers to address the past build-up of Excess Credits to allow transfers of the credits it could be a solution to the existing issue.³¹⁹ He then went on to testify about the benefits that could be created if the Company could

³¹⁵ *Id.* at 494.

³¹⁶ *Id.* at 495-496.

³¹⁷ *Id.* at 498-499.

³¹⁸ See P.L. 2023, ch. 300, § 1, effective June 24, 2023; P.L. 2023, ch. 301, § 1, effective June 24, 2023. (S 0684 Substitute A, enacted 6/24/2023, *An Act Relating to Public Utilities and Carriers – Net Metering.*)

³¹⁹ Hr'g Tr. at 503-504 (October 26, 2023).

provide more information on a monthly basis to the hosts regarding the accounts being served by the generators.³²⁰

Mr. Vale reiterated some of his previously identified concerns in his pre-filed testimony about seasonal rates, but then testified that he thought that the Company's new proposal to use a weighted average as opposed to an arithmetic average in doing the reconciliation "substantially resolved" his concern.³²¹ He concluded his testimony expressing a hope that the Company's new initiative to install advanced meters could result in a greater sharing of customer information.³²²

K. Cross-Examination of Gridwealth's Witness

The Company and the Division had only a very limited number of questions for Mr. Vale. Revity and OER had none. The Company only asked about Mr. Vale's familiarity with the Company's privacy policies and the need to obtain permission from customers for the sharing of data, which Mr. Vale acknowledged.³²³

The Division followed up the Company's question, confirming with Mr. Vale that his agreements with his off-takers provide permission to have access to the customers' energy usage metering data.³²⁴ Mr. Vale acknowledged that he had such permission, but was testifying earlier about wanting electronic data base access to information in the future which was a permission he expects to be able to obtain.³²⁵

³²⁰ *Id.* at 504-507.

³²¹ *Id.* at 509-510.

³²² *Id.* at 511-512.

³²³ *Id.* at 514-515.

³²⁴ *Id.* at 516-517.

³²⁵ *Id.* at 517-519.

Division counsel then asked Mr. Vale if his Company was actually affected by the excess credits issue. Mr. Vale explained that his interest in the Docket began before the law was changed. He testified that in light of the expanded program for net metering eligibility his Company is not affected by the excess credits, except to the extent that a host account might incur a charge from prospective implementation of new rules.³²⁶ Mr. Vale also testified that the Company has not refused any request by Mr. Vale relating to transfers of credits.³²⁷

L. Questions for Gridwealth's Witness

The Commission and staff had numerous questions for Mr. Vale that were designed to assure that the Commission was understanding Mr. Vale's business, his position, and proposal. All of the questioning will not be summarized here.³²⁸ However, some of the testimony provided in response to the Commission is important to highlight.

One of the proposals made by the Company related to withholding interconnection of a stand-alone net metering system unless and until the project presents a Schedule B which closely matches forecasted production to consumption of off-takers. During the August 16, 2023 technical session, Mr. Vale had raised the idea of an alternative.³²⁹ The Chairman asked Mr. Vale at the October 26 hearing to elaborate. Mr. Vale confirmed that he was proposing that a project be able to obtain interconnection as a qualifying facility and receive compensation at the applicable "avoided cost rate" until all the accounts are matched for net metering.³³⁰ Mr. Vale explained why this would be important for project developers and be a satisfactory solution for developers.

³²⁶ *Id.* at 519-521.

³²⁷ *Id.* at 522.

³²⁸ *See id.* at 526-636.

³²⁹ *Id.* at 535.

³³⁰ *Id.* at 536-542.

Mr. Vale also clarified his proposal regarding the determination of the value of Excess Credits. He confirmed that he now understood that the charge was charging back the distribution, transmission, and transition rate values only.³³¹ However, he testified that he is proposing that the Commission make an adjustment to the value of last resort service rate when computing the charge, using an evaluation of the net benefits of net metering, rather than simply relying upon the rate that was in effect at the time of generation.³³²

Counsel for Gridwealth concluded with some limited re-direct. Mr. Vale testified that his pre-filed testimony that proposes using an average last resort rate for the reconciliation was responding to the Company's original proposal.³³³ But the Company modified its proposal for the annual reconciliation to use a weighted average. Mr. Vale clarified that – after his exchange with Commission staff – he has concluded that using the weighted average is a “fairly accurate” way to perform the reconciliation.³³⁴ However, he continued to maintain that the last resort rate should reflect a different value than the stipulated rate based on his assertion that the addition of distributed generation provides “tremendous ratepayer benefits.”³³⁵ Mr. Vale generally alluded to what he believed the benefits are for distributed generation, but did not quantify or provide any analytical support for the assertion of benefits exceeding the value of the actual rate.³³⁶

³³¹ *Id.* at 614-615.

³³² *Id.* at 600-603 and 619-623.

³³³ *Id.* at 638.

³³⁴ *Id.* at 637-639.

³³⁵ *Id.* at 640.

³³⁶ *Id.* at 642.

M. Direct Testimony of Revity's Witness

Revity did not sponsor any pre-filed testimony. However, at the commencement of the third day of hearings on October 26, Revity sought leave to have a witness appear on its behalf. Counsel described the purpose of the testimony:

[H]e will be able to testify about who are some of the off-taker satellite accounts with the largest excess credit issue that -- as we sit here today. He'll be able to testify about, in our, Revity's, experience from a developer side, what the causes of the excess issues have been for off-taker satellite accounts, and he'll also be able to testify about the developer side experience with respect to submitting Schedule B's, which I think are sort of a critical bottleneck -- choke point, I should say, in determining whether there's going to be a future excess problem.³³⁷

With the proffered limitations, no party objected to Revity's witness appearing and the Commission allowed the witness to appear.³³⁸

Revity presented Mr. Corey Palumbo, Vice President and minority owner of Revity Energy.³³⁹ Mr. Palumbo testified that he manages renewable operations and the Company's relationships with their off-takers.³⁴⁰ He described his experience of managing the Schedule B's and how the category of eligible off-takers in the past was limited to municipal, government, education, non-profits, and hospitals.³⁴¹ He explained Revity's business is to develop, build, and operate ground-mounted solar systems ranging from 200 kW to 10 MW.³⁴² He explained that Revity has been involved with off-takers who have built up negative balances of credits on their accounts, identifying Providence, Pawtucket, Cumberland, and Warwick.³⁴³ He stated that he was

³³⁷ *Id.* at 461.

³³⁸ *Id.* at 463-465.

³³⁹ *Id.* at 645-646.

³⁴⁰ *Id.* at 646.

³⁴¹ *Id.* at 647-649.

³⁴² *Id.* at 650.

³⁴³ *Id.* at 651.

aware that Providence had built up millions of dollars of negative balances of credits, and both Pawtucket and Cumberland approximately a million each.³⁴⁴ He explained some of the reasons or causes for the negative build-up of credits.³⁴⁵ He explained the difficulties Revity has in matching the credits to the long-term consumption of their off-taker customer accounts.³⁴⁶

Mr. Palumbo also testified about the subject of transferring credits. He stated that Revity, as the developer, does not have the right to seek a transfer of credits and that the right to transfer the credits resides with the owners of the off-taker/satellite accounts.³⁴⁷ He expressed his understanding that it is within the discretion of the utility to allow it to happen.³⁴⁸ Mr. Palumbo testified that the change in law that allows commercial and industrial accounts to be eligible to become off-takers will alleviate or mitigate the Excess Credit issue because the pool of eligible off-takers has now been greatly expanded, making it easier to re-allocate net metering credits.³⁴⁹

Mr. Palumbo explained the difference between an off-taker transferring credits to a third party from reallocating credits on the Schedule B, using the City of Providence as an example.³⁵⁰ He said that allowing transfers alleviates the build-up of credits, but it does not solve the problem of reallocating credits on the Schedule B.³⁵¹ According to Mr. Palumbo, Revity developed and built the system, but Providence is the owner and operator of the system and is purchasing monetary credits from Revity.³⁵² For that reason, transferring credits will not result in the host account avoiding billing charges. Mr. Palumbo expressed his understanding that the transfer of

³⁴⁴ *Id.* at 653.

³⁴⁵ *Id.* at 654.

³⁴⁶ *Id.* at 655-658.

³⁴⁷ *Id.* at 660.

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 661-662.

³⁵⁰ *Id.* at 662-664.

³⁵¹ *Id.* at 664.

³⁵² *Id.* at 663.

credits by Providence will not resolve the billing charge because the fact that the credits are transferred by the off-taker is not taken into the calculation of the Excess Credit charge.³⁵³

He then stated Revity's position on the billing charges:

I would say it would be Revity's position to not do any billing charges retroactively. It would be Revity's position that for, call it negative balances -- There's two sides of it. There's the negative balance issue. Allow customers to do one time transfers to clean up the negative balance issues and then, now that the legislation has just recently passed, give the industry time to bring in new customers and perform reallocations so that the long-term structural issues are not still in place.³⁵⁴

Mr. Palumbo also stated that Revity had concerns with the Company's proposal to assess billing charges against the host account instead of the off-taker/satellite accounts.³⁵⁵ One was the concern that the host account would be charged. But he also explained his understating that assessing billing charges against the host account does not avoid the build-up of negative credit balances on the off-taker accounts because the Excess Credits would reside on the host account.³⁵⁶ Finally, he expressed concern that the matter of the build-up of credits and transfers is out of the control of the host account.³⁵⁷

N. Cross-Examination and Questioning of Revity's Witness

The Company had only a few questions for Revity's witness.³⁵⁸ Counsel for the Company inquired about the information relating to its municipal customers that Revity relies upon to size its generation. Mr. Palumbo testified that the system is not based on information from the municipality.³⁵⁹ Mr. Palumbo also answered a question stating that Revity had control over

³⁵³ *Id.* at 664.

³⁵⁴ *Id.* at 665.

³⁵⁵ *Id.* at 666-667.

³⁵⁶ *Id.*

³⁵⁷ *Id.* 667.

³⁵⁸ *Id.* at 668-670.

³⁵⁹ *Id.* at 668.

amending the Schedule B's.³⁶⁰ The Division had more questions for Mr. Palumbo relating to the degree of responsibility or control that Revity has had over the issues raised in the Docket, including the causes of the build-up of negative balances of credits.³⁶¹ Neither Gridwealth nor OER had any questions for Mr. Palumbo.

Commission staff asked further clarifying questions of Mr. Palumbo.³⁶² In particular, staff focused on the difference between a negative balance compared to the determination of Excess Credits. Mr. Palumbo confirmed that his description of negative balances on the accounts of off-takers may or may not be a result of Excess Credits as defined by the statute, but could have built up from the timing of when credits were issued and consumption occurred, as well as differences resulting from the fact that the rates of the host account upon which the credits are based may be different than the rates of the satellite accounts.³⁶³

O. Direct Testimony and Cross Examination of the Division's Witness

The Division introduced its witness, Mr. Brennan, who offered no additional direct testimony beyond the pre-filed testimony admitted in the record. He was then made available for cross-examination.³⁶⁴ The Company had no substantive questions for the witness other than to confirm the Division's support for the Company's proposals.³⁶⁵ OER had no questions.³⁶⁶

Counsel for Gridwealth initiated cross-examination with questions that did not directly relate to the pre-filed testimony of the witness. Rather, questions were asked in order to elicit

³⁶⁰ *Id.* at 669.

³⁶¹ *Id.* at 671-684.

³⁶² *Id.* at 684-725.

³⁶³ *Id.* at 687-689.

³⁶⁴ Hr'g Tr. at 749 (November 9, 2023).

³⁶⁵ *Id.* at 750.

³⁶⁶ *Id.* at 816.

answers relating to the operations of the natural gas and electric systems.³⁶⁷ He continued with questions about the travel of electricity on the system on subjects over which the witness did not claim expertise.³⁶⁸ The questions then proceeded on the subject of costs that might be reflected in a benefit-cost analysis, followed by questions about the extent to which Rhode Island Energy has commercial interests in transmission and gas systems.³⁶⁹ Gridwealth's questions then asked the witness what it means to be a ratepayer advocate, to which Mr. Brennan answered that it was looking out for the best interests of ratepayers on matters of rates and rate-setting, among other matters of fairness.³⁷⁰

Counsel moved to the subject of the value of Excess Credits, inquiring whether the witness believed that using a seasonal or an average is an appropriate way to value net metering benefits.³⁷¹ Mr. Brennan responded by stating that the value of the credits is based on the statute.³⁷² When Gridwealth continued to question whether the values "properly compensated net metering," it drew an objection from Division counsel as a question that was already answered.³⁷³ Finally, Mr. Brennan testified that he had not done any analysis of whether the last resort service rate properly compensates net metering customers for their impact on peak demand for electricity, after which the cross-examination by Gridwealth ended.³⁷⁴

Following Gridwealth, counsel for Revity cross-examined the witness. The initial questions pressed by Revity related to whether the Company's proposal to assess billing charges

³⁶⁷ *Id.* at 751-760.

³⁶⁸ *Id.* at 762-770.

³⁶⁹ *Id.* at 776-777.

³⁷⁰ *Id.* at 778-779.

³⁷¹ *Id.* at 780-782.

³⁷² *Id.* at 781.

³⁷³ *Id.* at 781-782.

³⁷⁴ *Id.* at 783-784.

for 2022 was a proposal with “prospective” effect.³⁷⁵ Mr. Brennan opined that he believed it was a prospective proposal because there is no way to conduct the process until the end of the calendar year.³⁷⁶ Mr. Brennan was asked about the cause of the problem of unused credits on customer bills. Mr. Brennan opined that it was a combination of causes, including mismatch of sizing of generation to load, changes in load, and in the case of stand-alone projects, not enough load subscribed to match production.³⁷⁷

Revity’s counsel also asked questions regarding Mr. Brennan’s opinion that the Company’s proposal was in the best interest of all ratepayers. Mr. Brennan essentially maintained that even though it might result in charges to net metering customers, he still believed it was in the best interest of all ratepayers, including net metering customers.³⁷⁸ Revity then turned to the subject of the Company’s proposal to assess billing charges upon the host account rather than the satellite accounts, probing why the Division supported this proposal. Mr. Brennan referred to the Company’s response to a record request within which the Company articulated reasons, including the Company not being privy to the contractual relationship between the host and the satellite accounts nor was the Company aware of the price that satellite accounts may have paid for the credits.³⁷⁹ He added that the Company would not know whether there were provisions in the contractual relationship that would make it inappropriate for the Company to assess a billing charge on the account.³⁸⁰

³⁷⁵ *Id.* at 787-791.

³⁷⁶ *Id.* at 790-791.

³⁷⁷ *Id.* at 791-792

³⁷⁸ *Id.* at 795.

³⁷⁹ *Id.* at 797.

³⁸⁰ *Id.* at 798.

Reivity then probed whether the Division had undertaken any efforts to investigate the identity of the satellite accounts.³⁸¹ Mr. Brennan indicated the Division had not done so except in the course of learning information from various dockets.³⁸² Counsel went on to ask the witness about the Company’s proposal to require the Schedule B to allocate as close as possible to 100% of consumption.³⁸³ Counsel pressed questions regarding the definition of “close to 100% as possible” and Mr. Brennan ultimately acknowledged that the Company would be the ultimate “gatekeeper” to make the determination of whether the standard was met.³⁸⁴

Commission staff then followed up with numerous clarifying questions. One of the areas of inquiry related to the questions that counsel for Gridwealth had been asking regarding compensation for solar. Staff asked whether Rhode Island could technically compensate all types of net metering facilities with one compensation value to match the value of the timing of production given that different facilities contribute differently in time and space to the electric system – to which Mr. Brennan answered “no.”³⁸⁵ Another area of inquiry worth noting were questions asking the witness about the Company’s proposal to require the Schedule B to allocate as close as possible to 100% before being interconnected. Mr. Brennan acknowledged potential negative consequences to the development of projects if the interconnections were delayed as a result of the rule.³⁸⁶ The Commission sought the opinion of the witness regarding the concept of having billing charges assessed on the satellite accounts instead of the host account. Mr. Brennan opined that it could be a fair way to do it, but would need to take into account in some way the

³⁸¹ *Id.* at 805.

³⁸² *Id.* at 808-806.

³⁸³ *Id.* at 810-814.

³⁸⁴ *Id.* at 814.

³⁸⁵ *Id.* at 823-824.

³⁸⁶ *Id.* at 838-839.

contractual relationship which might present complications.³⁸⁷ Mr. Brennan also offered an opinion regarding Gridwealth's proposal to allow interconnections to occur on a temporary basis under the qualifying facility rules. He stated that providing such an option would be positive.³⁸⁸

Finally, in response to questions from the Commission, Mr. Brennan confirmed his understanding that the existing Net Metering Tariff – excluding any amendments that were redlined in the proposed tariff – already contained terms and conditions that were consistent with the requirements of the Net Metering Statute.³⁸⁹

XII. Post-Hearing Briefs

A. The Request for Post-Hearing Briefs

At the close of the evidentiary hearing on November 9, the Commission directed the parties to file Post-Hearing Briefs, subject to a set of provisional rules that were circulated to the parties.³⁹⁰ The parties were asked to state precisely what they were asking the Commission to approve, reject, or modify. They also were asked to brief a legal issue.

B. The Parties' Requests and Positions Regarding the Tariff proposal

Below is a summary of the positions of each party relating directly to the tariff proposals.

i. The Company's Position

The Company's Brief succinctly summarized its requests in five components:

- (1) to isolate the largest net-metered accounts (greater than 25 kW) for reconciliation on an annual basis from smaller accounts;

³⁸⁷ *Id.* at 847-850.

³⁸⁸ *Id.* at 845-847.

³⁸⁹ *Id.* at 850-851.

³⁹⁰ Provisional Rules for Post-Hearing Briefing (Exhibit COMM 24).

- (2) to conduct an annual reconciliation applying a “Volumetric Method” using a weighted average;
- (3) to provide net metering customers with an option to cash out and/or transfer any remaining credits following the annual reconciliation;
- (4) apply any applicable billing charges stemming from the annual reconciliation or true up to the host account; and
- (5) require a stand-alone net metering project that is required to allocate net metering credits to eligible credit recipients via Schedule B to allocate as close to 100% of the credits as possible before the project receives authority to interconnect (“ATI”).³⁹¹

ii. The Division’s Position

The Division summarized its position in four parts, which are partially paraphrased below:

- (1) That the Division supported the annual reconciliation applying the volumetric approach using a weighted average;
- (2) That the Division supported an option to net metering customers to cash-out or transfer any remaining credits following the annual reconciliation;
- (3) That the Division supported an application of billing charges stemming from the annual reconciliation to the host account; and
- (4) While the Division had originally supported the Company’s proposal to include a condition for interconnection in Schedule B, the Division indicated that it would not oppose holding the issue for a later tariff filing.³⁹²

³⁹¹ Initial Brief of Rhode Island Energy, at 2-3 (November 29, 2023)(RIE Post-Hearing Brief).

³⁹² Division of Public Utilities and Carriers Post-Hearing Memorandum, at 4-5 (November 29, 2023)(Division’s Post-Hearing Brief).

iii. OER' Position

OER did not stake out any particular position regarding the Company's proposals. However, OER's brief reiterated the Office's recommendation that a "cohesive communication plan" be put in place.

iv. Revyty's Position

Revyty stated its position in two parts:

- (1) Billing charges should be assessed only for credits issued in the future (i.e., beginning with credits issued in 2024) and billing charges should be assessed on satellite accounts (as opposed to host developer accounts), and
- (2) Reject [the Company's proposal that would require] stand-alone projects to allocate as close to 100% as possible" before receiving authority to interconnect ("ATI") because [the proposal] does not address the problem of excess net-metering credits and will only create additional administrative burdens.³⁹³

v. Gridwealth's Position

Gridwealth provided a list of seven requests:

- (1) That RIE modify the proposed tariff amendments as provided on pages one and two of [Gridwealth's] brief;³⁹⁴
- (2) That RIE establish full and accessible transparency so all net metering customers can know openly in advance whether they need to transfer Renewable Net Metering Credits to avoid billing charges for Excess Credits;
- (3) That RIE establish ease of access to allow easy electronic transfer of Renewable Net Metering Credits between different accounts;
- (4) That RIE may only reconcile Excess Credits and the proposed billing charge on a prospective basis beginning with the full calendar year of 2024;

³⁹³ Revyty LLC's Post-Hearing Memorandum, at 1 (November 29, 2023).

³⁹⁴ MassAmerican Energy LLC d/b/a Gridwealth Development's Post Hearing Memorandum of Law, at 1-2 (November 29, 2023)(Gridwealth Post-Hearing Brief)(Gridwealth's brief contained recommended provisions to the Company's proposed tariff provisions.)

- (5) That RIE allow one or more transfers of Renewable Net Metering Credits between accounts to avoid the billing charge before these tariff changes are implemented;
- (6) That RIE assess the proposed billing charges directly to the net metered account that is given the Primary Credits, not to the host account, apportioned based on the schedule B allocation; and
- (7) The Commission appoint an independent, neutral and well experienced and informed administrator to oversee and ensure proper implementation of all of Rhode Island's renewable energy programs and tariffs.³⁹⁵

C. The Legal Issue Addressed in the Post-Hearing Briefing

The parties were also asked to brief a legal issue that was implicated by the position taken by Gridwealth relating to the Excess Credits. An Addendum to the circulated provisional rules described the nature of the issue, stating in part:

Gridwealth's witness has recommended that the last resort service rate used for determining the Excess Credits be adjusted for purposes of the annual reconciliation to increase the value of the Excess Credits.

This raises the question of whether the Commission has the statutory authority to make such an adjustment to the last resort rate for purposes of the annual reconciliation. The Commission requests this question to be briefed.

In addition to an explanation of the issue, the Commission posed two questions for the parties to brief:

- (1) In order to adjust the last resort rate used for purposes of the annual reconciliation relating to the Excess Credits, as recommended by Gridwealth, would the Commission need to change the avoided cost rate referenced in the Docket 4268 Order?
- (2) Given the declaration by the General Assembly within the statutory definition, does the Commission have the authority to declare the avoided cost rate to be different

³⁹⁵ Gridwealth Post-Hearing Brief at 21.

for purposes of the annual reconciliation than what is declared in the statutory definition?

In succinct summary, the positions taken by the parties were as follows. Both the Company and the Division argued that the definitions within the Net Metering Statute itself control how the Excess Credits would be valued and the Commission has no authority to change it. Revity and OER took no position on the legal matter relating to the valuation of the Excess Credits, but Revity reiterated its arguments regarding Revity's view that the Excess Credit provision of the law does not apply (an issue which is addressed separately in the next section of this Order below). Finally, Gridwealth argued that the law not only allows the Excess Credit value to be adjusted, but public policy compels it. Gridwealth's arguments on that issue also are addressed in a separate section of this Order.³⁹⁶

XIII. Legal Issue Regarding Applicability of Excess Credits Provision

A. Revity's Argument Regarding Applicability of Excess Credits

When Revity filed a motion on August 25 for an extension of time to file testimony, Revity raised a legal issue regarding the interpretation of the statutory definition of Excess Credits.³⁹⁷ Subsequently, the Commission directed the parties to brief the legal issue.³⁹⁸ Revity filed its legal memorandum on September 8 (the Revity "Memorandum") addressing the legal issue. The Memorandum also included an argument opposing the proposed interconnection condition related

³⁹⁶ See Section XIV of this Order, *supra*.

³⁹⁷ Revity Energy LLC's Motion for Extension of Time within which to File Pre-Filed Testimony and/or a Response to the Tariff Advice to Amend Net Metering Provision – Proposal for Administration of Excess Net Metering Credits, at 2-3 (August 25, 2023).

³⁹⁸ Hr'g Tr. at 25-27 (August 28, 2023).

to information needed in Schedule B which is unrelated to the legal interpretation of the Excess Credit provision and addressed elsewhere in this Order.³⁹⁹

With respect to the legal issue, Revity first argues against the Company proposing to perform the reconciliation of Excess Credits, asserting that it reflects a revocation of consideration.⁴⁰⁰ According to Revity, the Company received all the electricity and sold it and the Company's consideration was net-metering credits.⁴⁰¹ Revity then argues that "[t]he Net Metering Statute should be strictly construed against such revocation and any ambiguities resolved in favor of those rights in the credits which have already been allocated."⁴⁰²

Revity also maintains that the Net Metering Statute does not permit the "cash out" of Excess Credits to third party off-takers in contracts with stand-alone host generators.⁴⁰³ According to Revity, the definition of Excess Credits (i.e., "excess renewable net-metering credits") contained in R.I. Gen. Laws § 39-26.4-2(8) does not apply to stand-alone net metering facilities.⁴⁰⁴ Revity reasons that there is a wording distinction between the statutory use of the word "consumption" and the word "usage" that makes a material difference in the statutory interpretation.⁴⁰⁵ Revity points out that the definition of Excess Credits refers to the renewable self-generator's "*own consumption* at the eligible net-metering system site."⁴⁰⁶ Revity then contrasts that wording with the definition of the Primary Credit which refers to "the renewable self-generator's *usage* at the

³⁹⁹ Revity Energy LLC's Memorandum of Law in Response to the Narragansett Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend Net Metering Provision – Proposal for Administration of Excess Net Metering Credits (September 8, 2023)(hereinafter "Revity September 8 Memorandum").

⁴⁰⁰ Revity Memorandum at 3.

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 5.

⁴⁰⁵ *Id.*.

⁴⁰⁶ *Id.* (emphasis in original).

eligible net-metering system site.”⁴⁰⁷ Revery argues that the Excess Credit provision only applies to self-generators with their “own consumption,” reasoning that a third-party off-taker is not a renewable generator with its own on-site consumption.⁴⁰⁸

According to Revery, “Usage and consumption are fundamentally different concepts.”⁴⁰⁹ Revery quotes from Black’s Law Dictionary which defines consumption as “the act of destroying a thing by using it; the use of a thing in a way that exhausts it.”⁴¹⁰ Revery then quotes the definition in Black’s Law Dictionary for “use” which defines the term as “[t]o employ for the accomplishment of a purpose; to avail oneself.”⁴¹¹ Revery then uses the analogy of a hamburger that it claims supports its premise, stating “A hamburger can be used many times and in many ways: by selling it, reselling it, throwing it away, or consuming it. A hamburger can only be consumed once.”⁴¹² Revery continues by arguing for a distinction in the semantics, asserting:

The host developer “uses” the [Primary Credit] by transferring the credit to an offtaker. It is the offtaker, not the generator, who “consumes” the credit and that consumption occurs remotely. Therefore, the non-community “stand-alone” configuration does not involve a renewable generator’s *own* consumption at the site.⁴¹³

Revery argues that a stand-alone configuration has little or no consumption at the site, arguing that the Net Metering Statute treats stand-alone configurations different than behind-the-meter

⁴⁰⁷ *Id.* (emphasis in original)(citing R.I. Gen. Laws § 39-26.4-2(22)).

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.* at 5-6.

⁴¹¹ *Id.* at 6 (brackets in original).

⁴¹² *Id.*

⁴¹³ *Id.* (emphasis in original). Revery appears to conflate and confuse the net metering customer’s usage and consumption of electricity with usage and consumption of credits.

configurations.⁴¹⁴ Revity also argues that the Company's Net Metering Tariff expanded the definition of Excess Credit beyond the language in the Net Metering Statute.⁴¹⁵

In its post-hearing brief, Revity repeated some of its arguments relating to the terms "consumption" and "usage."⁴¹⁶ Revity pointed to various ways that electricity can be used and argues that electricity can only be consumed once.⁴¹⁷ In making its arguments in its two briefs, Revity made assertions regarding consumption of electricity at the host site and consumption of credits by the off-takers.⁴¹⁸ However, in pivoting between consumption of electricity at the host site and the consumption of credits by the off-takers, Revity appeared to be conflating the consumption of credits with the consumption of electricity.

Revity also supported its position that the Excess Credits provision does not apply by citing R.I. Gen. Laws § 39-26.4-4 of the Net Metering Statute which states that the Net Metering Statute "shall be construed liberally in aid of its declared purposes."⁴¹⁹ Interpreting the Company's proposal as "forcing" customers to cash-out their unused credits, Revity argued that the Company's interpretation of the statute that applies the Excess Credits to stand-alone projects "does not encourage development of renewable generation systems."⁴²⁰ Revity further maintained that the Company's proposal that would allow the Company to cash-out Excess Credits should not be applied to third-party off-takers of stand-alone facilities "given that there is a way to facilitate the extinguishment of unused credits while preserving the economic value of those credits."⁴²¹

⁴¹⁴ *Id.* at 6-7.

⁴¹⁵ *Id.* at 7.

⁴¹⁶ Revity Post-Hearing Brief at 4-7.

⁴¹⁷ *Id.* at 5.

⁴¹⁸ *Compare* Revity Post-Hearing Brief at 5 and Revity September 8 Memorandum at 6.

⁴¹⁹ Revity September 8 Memorandum at 8.

⁴²⁰ *Id.*

⁴²¹ *Id.* at 9.

As to the future administration of the net metering program, Reivity added an observation regarding the impact of the recently enacted amendment to the Net Metering Statute which expanded the eligibility criteria for off-takers to commercial and industrial customers. According to Reivity, “the issue of unused credits on non-community ‘stand-alone’ configurations is only a legacy issue and will not repeat in the future.”⁴²² Reivity believes that this will address the over-subscription of credits through the introduction of new off-takers in the future.⁴²³

B. Gridwealth’s Memorandum

Gridwealth filed a memorandum on the same day as Reivity, but chose not to address the legal issue.⁴²⁴ Although labeled as a “Memorandum of Law”, the filing only made arguments relating to its opposition to the Company’s method of performing the annual reconciliation, reflecting the views that later appear in Gridwealth’s pre-filed testimony. The memorandum made no reference to the issue of statutory interpretation raised by Reivity.

C. Rhode Island Energy’s Response to Reivity

The Company filed a memorandum in response to both Reivity and Gridwealth.⁴²⁵ In response to Reivity’s position that the Net Metering Statute does not permit the Company to cash out Excess Credits, the Company argues that “Reivity selectively attempts to highlight” the use of the word “usage” when Reivity compares it to the word “consumption” in the Net Metering Statute

⁴²² *Id.* at 10.

⁴²³ *Id.* at 10-11. Reivity recommends that off-takers be allowed an opportunity for a one-time credit transfer adjustment to address the historic glut of unused credits.

⁴²⁴ Massamerican Energy LLC d/b/a Gridwealth Development’s Memorandum of Law (September 8, 2023).

⁴²⁵ Response of the Narragansett Electric Company d/b/a Rhode Island Energy to the Memoranda of Law Addressing Tariff Advice Filing (September 22, 2023).

definitions.⁴²⁶ According to the Company, Reivity overlooks other language in the statute permitting cash outs and ignores the broad context of the Net Metering Statute.⁴²⁷

The Company maintains that the statute authorizes the Company to cash out “any net-metering customer,” and asserts that Reivity is attempting “to focus the Commission’s attention on a meaningless comparison” of the definitions for the Excess Credit and Primary Credit.⁴²⁸ The Company points out that there are parts of each definition that result in each definition applying to a customer’s “consumption” or “usage.”⁴²⁹ Specifically, the Company brings attention to the fact that the definition of the Primary Credit is the only definition that uses the word “usage.” Yet, that same definition states that the Primary Credit includes “the sum of the *usage* of the eligible credit-recipient accounts with the community remote net metering system over the applicable billing period.”⁴³⁰ Further, the Company refers to the fact that its existing Net Metering Tariff already applies both those terms consistently, without a difference in meaning, noting that the existing tariff was already approved by the Commission.⁴³¹ The Company then points out that if Reivity’s definitional difference was valid, it raises the question of whether Reivity would be entitled to any net metering credits at all, given the existing tariff language that provides no distinction.⁴³²

The Company argues that “Reivity’s Memorandum is based on the ‘myopic literalism’ of statutory construction” that has been rejected by the Rhode Island Supreme Court in numerous

⁴²⁶ *Id.* at 5.

⁴²⁷ *Id.*

⁴²⁸ *Id.* at 6.

⁴²⁹ *Id.* at 7.

⁴³⁰ *Id.* (emphasis in original)

⁴³¹ *Id.*

⁴³² *Id.*

cases.⁴³³ They assert that Revity’s interpretation is inconsistent with the statute “as it relates to facilitating the administration of net metering.”⁴³⁴ Finally, the Company clarifies that its proposal was not intended to “force” net metering customers to cash out their Excess Credits. Rather, the proposed cash-out provision is optional and allows a customer to elect to roll over its Excess Credits to its future bills.⁴³⁵

D. Division’s Response to Revity

The Division filed a legal memorandum in response to both Revity and Gridwealth’s memoranda.⁴³⁶ With respect to the issue of statutory interpretation argued by Revity, the Division expressed its disagreement with the positions of Revity. First, the Division takes issue with Revity’s claim that the interpretation of the statute by the Company leads to a “revocation of consideration.”⁴³⁷ The Division observes that the net metering statute specifies different compensation levels and calculation methods depending upon the amount of electricity being produced.⁴³⁸ The Division points out that “[n]o customer is entitled to more than what is set forth in the statute.”⁴³⁹ The Division adds, “To the extent that there have been problems in how the net metering credits have been accumulated in the past, correcting them going forward with clarifying tariff changes is absolutely within the Commission’s authority and is in the best interest of ratepayers, as well as net metering customers.”⁴⁴⁰

⁴³³ *Id.* at 8 (citing *Raiche v. Scott*, 101 A.3d 1244, 1248 (R.I. 2012), quoting *Alessi v. Bowen Court Condominium*, 44 A.3d 736 (R.I. 2012); *In re Brown*, 903 A.2d 147,150 (R.I. 2006); *O’Connell v. Walmsley*, 156 A.3d 422, 426 (R.I. 2017); and *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011)).

⁴³⁴ *Id.*

⁴³⁵ *Id.* at 8-9.

⁴³⁶ Division of Public Utilities & Carriers Memorandum (September 26, 2023).

⁴³⁷ *Id.* at 4.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 4-5.

With respect to Revity’s argument that distinguishes the meaning of the word “usage” from “consumption,” the Division points out that Revity’s proffered definition of “consumption” incorporates the word “use” as a part of the definition.⁴⁴¹ Similar to the Company’s response to the matter of semantics, the Division also refers to the definitions for in R.I. Gen. Laws § 39-26.4-2(22) and § 39-26.4-2(8) in which the words “usage,” “consumed,” and “consumption” have the same meaning,⁴⁴² stating: “The Division submits that consumption and usage, when referencing the measurement of electricity, is one and the same. We see no correlation to Revity’s hamburger analogy.”⁴⁴³

E. Revity’s Reply

Revity filed a reply memorandum responding to the memoranda of the Company and the Division (the Revity “Reply Memorandum”).⁴⁴⁴ Revity first disputes the Division’s conclusion that the Company’s proposal is in the best interest of net metering customers.⁴⁴⁵ Revity then proceeds to challenge the Division’s and the Company’s claim that there is “no meaningful difference” between the terms “usage” and “consumption.”⁴⁴⁶ Revity relies on principles of statutory construction, citing federal court and U.S. Supreme Court precedents, including a quote from the Ninth Circuit: “It is a well-established canon of statutory interpretation that the use of different words or terms within a statute demonstrates that Congress intended to convey a different meaning for those words.”⁴⁴⁷

⁴⁴¹ *Id.* at 5.

⁴⁴² *Id.* at 5-6.

⁴⁴³ *Id.* at 6.

⁴⁴⁴ Revity Energy LLC’s Reply Memorandum to the Division of Public Utilities & Carriers September 26, 2023 Memorandum and September 22, 2023 Response of The Narragansett Electric Company d/b/a Rhode Island Energy to the Memoranda of Law Addressing Tariff Advice Filing (October 2, 2023)(Revity Reply Memorandum).

⁴⁴⁵ *Id.* at 1.

⁴⁴⁶ *Id.* at 2.

⁴⁴⁷ *Id.* at 2-3, quoting *SEC v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003).

Revyty responds to the Division’s statement that the Division could not find any “correlation to the hamburger analogy,” indicating that Revyty found it to be “quite apt.” Revyty then explains its position in the context of electricity:

Electricity can only be consumed in one fashion: it powers the operation of lighting, heating, cooling, refrigeration, electronic or other machine device in a manner that completely exhausts any opportunity for future application of that electricity. Electricity can be used in many ways: it can be consumed, it can be sold, it can be transmitted, it can be grounded, and it can be stored. Like a hamburger, electricity can be used many times but consumed only once. The renewable net-metering credit regime applies to usage; the excess renewable net-metering credit regime applies to consumption at the site.⁴⁴⁸

Revyty argues that there is little to no on-site electricity consumption at stand-alone configurations, but maintains that there is “on-site usage” in the form of transmission, grounding, and potential storage.⁴⁴⁹

Revyty then points out that when the Company developed its Net Metering Tariff, the Company changed the definition of “renewable net-metering credit” in the tariff to use the word “consumption” instead of “usage.” Revyty raises the question why there was a change if there was no difference between the words.⁴⁵⁰

Revyty also responds to an argument made by the Company that there is no reason to distinguish between the terms “usage” and “consumption” for purposes of easing the administrative burden of administering the program.⁴⁵¹ Revyty argues that the General Assembly “made no mention of seeking to ease the burden” as one of the purposes of the statute.⁴⁵² Revyty also takes issue with the Company’s assertions that deny any difference between the terms,

⁴⁴⁸ *Id.* at 3.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.* at 4.

⁴⁵¹ *Id.* at 5.

⁴⁵² *Id.*

maintaining that “Revity is only interested in the Statute’s definition because the Tariff cannot, as a matter of law, change the statutory terms from how the General Assembly defined them.”

The remainder of the Reply addresses Revity’s concern about the Company’s proposal to assess the net metering charge on host accounts which is not directly relevant to the legal issue, but is addressed elsewhere in this Order.

F. Oral Argument

Prior to hearing from the witnesses in the proceeding on October 5, the Commission held oral argument on the legal issue raised by Revity in its memoranda.⁴⁵³ This Order will not reiterate the entire oral argument and dialogue between the parties and the Commission.

With respect to Revity, however, counsel restated his arguments as provided in the memoranda, then responded to a series of questions from the Commission regarding the meaning of the words “consumption,” “consume,” “usage,” and “use.” While counsel for Revity held to his position that the terms had a different meaning when considering the definition of Excess Credits, there were a few exchanges relating to the plain meaning of the terms in ordinary conversation that are pertinent to the issue at hand.

CHAIRMAN: Let’s take it in the context of someone, everybody uses electricity, and just about everybody gets an electric bill. If you had an electric bill for a house/apartment/business and you’re holding it in your hand and we looked at the electric bill, and it indicates that the bill is based on 1,000 kilowatt hours times the applicable rates, there is a square in the corner and it says kilowatt hours, and it says a thousand, if I asked you when you’re holding the bill how much electricity did you use that month on that account what would you say? You would say 1,000?

REVITY COUNSEL: I probably would answer 1,000 kilowatt hours.

⁴⁵³ Hr’g Tr. at 17-61 (October 5, 2023).

CHAIRMAN: What if I said to you. How much electricity did you consume for the month on that account? You would say a thousand, right?

REVITY COUNSEL: Yes.

CHAIRMAN: That's because the word consume and consumption in that context is the same as used and usage, right? Context of your electric bill, when I ask that question, the context is the same, the meaning is the same?

REVITY COUNSEL: I would respond a thousand to both questions. I would not quibble with, in that instance, your employment of the word use versus consumption, you're right.⁴⁵⁴

During the same exchange, the Chairman cited Section 3 of Chapter 26.4, paragraph (a)(2) and asked counsel if he agreed that the words "consumption" and "usage" in that paragraph were being used interchangeably, and counsel for Revity agreed.⁴⁵⁵

Further, the Chairman posed another hypothetical of an appliance that is powered by electricity. And in that context, counsel for Revity again agreed that the words "consume" and "use" meant the same thing.⁴⁵⁶ Counsel then acknowledged that the terms do have the same meaning in ordinary usage:

One thing we can look to is ordinary usage, certainly is something. I think you quite convincingly displayed that in the ordinary course of life. You asked me that question about my bill or my blender, I would not give you two different answers between consumed and used. I would look silly saying I would give two different answers.

Another thing we can look to is the context of the whole statute. I also think what you've just shown me here is that in the context with the statute it appears fairly interchangeable from the General Assembly.

⁴⁵⁴ *Id.* at 41-42.

⁴⁵⁵ *Id.* at 44-45.

⁴⁵⁶ *Id.* at 45-46 (There was a transcription error in the original transcript that was missing the words "appliance use" which were inadvertently dropped from line 14 of page 46. A review of the webcast recording confirms the words should have appeared in the transcript.)

One thing we do use, and I would suggest the first step the courts go to, or interpretive bodies, you should say as this Commission is, go to the dictionary definition. In the dictionary, these words differ. There are no two ways about that.

In the dictionary the words are different. I would say the dictionary interpretation favors Revity's common usage.⁴⁵⁷

Counsel for Revity maintained that there are different methods that can be employed in statutory construction, but he did not back away from his position that the dictionary definition of the words "usage" and "consumption" favored Revity's position.⁴⁵⁸

G. Commission's Decision Regarding the Applicability of the Statute

The Commission finds the argument that the Excess Credits provision of the Net Metering Statute does not apply to stand alone projects to be unconvincing and without merit.

Net metering is a statutory directive relating to electric billing associated with production from certain renewable generation facilities, and the consumption/usage of electricity associated with those facilities which give rise to billing credits. In the context of electric billing, it is indisputable that the terms "usage" and "consumption" are interchangeable. The Commission for decades also has treated the terms as completely interchangeable in the context of utility billing. It is typical of the Commission when it approves rate increases to make them effective for "usage on and after" or "consumption on and after" a specified effective date. A legal researcher only needs to search those terms on Westlaw for rate approval decisions of this Commission to find numerous times when those terms have been used with the same meaning.⁴⁵⁹

⁴⁵⁷ *Id.* at 47-48.

⁴⁵⁸ *Id.* at 48.

⁴⁵⁹ See for example: *In Re: National Grid Application to Change Electric Rate Schedules*, 2009 WL 2407210 (R.I.P.U.C.) (rates approved for "consumption on and after"); *In Re: The Narragansett Electric Company d/b/a*

Even within the Net Metering Statute itself, Revity conceded that there were entire paragraphs in more than one place that used the terms interchangeably.⁴⁶⁰ Applying common sense and a logical reading of the entire Net Metering Statute leads to the conclusion that the General Assembly could not have intended different substantive meanings for each of those terms. Otherwise, it would make no sense for the terms to have exactly the same meaning in some paragraphs of the statute while at the same time having different meanings for purposes of another paragraph. If the General Assembly intended a substantive difference, it most certainly would have needed to provide separate definitions to provide context. When applying this common sense to the statutory construction, it is readily apparent that Revity’s reasoning reflects the type of “myopic literalism” that has been rejected by the Rhode Island Supreme Court.⁴⁶¹

Beyond the obvious semantics as accepted in the industry and ordinary usage, other sections of the Net Metering Statute indicate a legislative intent to have the provision relating to Excess Credits apply to all configurations of net metering. The Net Metering Statute defines an “eligible net-metering system” to include stand-alone projects.⁴⁶² Then, in the definition for Excess Credits, the first sentence begins with the words: “‘Excess renewable net-metering credit’ means a credit that applies to an *eligible net-metering system*”⁴⁶³ Given the fact that the term “eligible

National Grid’s Long-Term Contracting for Renewable Energy Recovery Factor, 2020 WL 606036 (R.I.P.U.C.) (rates approved for “consumption on and after”); *In Re: Pascoag Utility District Semi-Annual Reconciliation Filing*, 2004 WL 3682515 (R.I.P.U.C.) (rates approved for “usage on and after”); and *In Re: The Narragansett Electric Company, d/b/a National Grid’s 2013 Electric Retail Rate Filing and 2013 RES Charge and Reconciliation*, 2013 WL 3007172 (R.I.P.U.C.) (rates approved for “usage on and after”). These orders are only a handful of a multitude of examples.

⁴⁶⁰ See, e.g., R.I. Gen. Laws § 39-26.4-2(6); § 39-26.4-2(22); and § 39-26.4-3(a)(2).

⁴⁶¹ See *Raiche v. Scott*, 101 A.3d 1244, 1248 (R.I. 2012), quoting *Alessi v. Bowen Court Condominium*, 44 A.3d 736 (R.I. 2012); *In re Brown*, 903 A.2d 147, 150 (R.I. 2006); *O’Connell v. Walmsley*, 156 A.3d 422, 426 (R.I. 2017); and *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011).

⁴⁶² R.I. Gen. Laws § 39-26.4-2(6). The second half of the definition contains a long provision stating: “Notwithstanding any other provision of this chapter, any eligible net-metering resource: [owned by certain enumerated stand-alone project types] shall be treated as an eligible net-metering system withing an eligible net metering system site.”

⁴⁶³ R.I. Gen. Laws § 39-26.4-2(8)(emphasis added).

net-metering system” includes stand-alone projects, the definition of Excess Credits, by its unambiguous terms, applies to stand-alone projects.

Finally, the definition of an eligible net-metering system specifies that “All energy generated from *any* eligible net-metering system is, and will be considered, consumed at the meter where the renewable energy resource is interconnected for valuation purposes.”⁴⁶⁴ Logically, if all energy from “any eligible net-metering system” is considered consumed at the meter of the stand-alone project, Revity’s argument that there is no “consumption” at the stand-alone project site cannot be sustained under the statute.

For all of these reasons, the Commission finds that the definition of “excess renewable net-metering credit” contained in R.I. Gen. Laws § 39-26.4-2(8) applies to all net metering configurations, including (without limitation) all stand-alone projects.⁴⁶⁵

XIV. Legal Issue Addressing Whether the Excess Credit Value Can be Adjusted

A. Summary of the Issue

As described earlier in this Order, the Net Metering Statute includes a definition of Excess Credits with a sentence containing a specific directive regarding the rate to be used to establish the credit value, stating:

Such excess renewable net-metering credit shall be equal to the electric distribution company’s avoided cost rate, which is hereby declared to be the electric distribution company’s last resort service kilowatt hour (kWh) charge for the rate class and time-of-use billing period (if applicable) applicable to the customer of record for the eligible net-

⁴⁶⁴ R.I. Gen. Laws § 39-26.4-2(7)(emphasis added).

⁴⁶⁵ Revity also argued that the Excess Credit provision was an improper revocation of consideration. This argument cites a principle of contract law. Contract law is not a relevant consideration where the statute expressly specifies how rates, credits, and compensation are to be determined.

metering system or applicable to the customer of record for the community remote net-metering system.⁴⁶⁶

The term “avoided cost” which appears in this provision is a term used across the electric industry relating to the federal Public Utility Regulatory Policy Act (PURPA).⁴⁶⁷ The Commission explained the avoided cost terminology in a prior 2012 case:

The so called “avoided cost” definition is a colloquialism arising out of the definition in PURPA of ‘incremental cost of alternative electric energy’ which states, “For purposes of this section, the term ‘incremental cost of alternative electric energy’ means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.’ . . . This definition, by virtue of its meaning, became recognized as simply the utility's “avoided costs,” and so the term was popularized.⁴⁶⁸

As embedded in the Net Metering Statute, the value of Excess Credits (i.e., the excess renewable net-metering credits) is directly tied to the state’s determination of avoided cost. At the same time, the statutory provision declares the state’s determination to be the last resort service rate applicable to the customer, leaving no room for the Commission to establish a different value for that rate.⁴⁶⁹

Consistent with the statutory definition, the Company’s existing Net Metering Tariff and its proposed amended tariff lift the words of the statutory definition of Excess Credit and embed it in the tariff. The tariff then contains a proviso with respect to the annual reconciliation specifying what takes place when consumption for the year is less than generation, triggering a true-up for

⁴⁶⁶ R.I. Gen. Laws § 39-26.4-2(8).

⁴⁶⁷ Section 210 of the Public Utility Regulatory Policies Act, 16 U.S.C.A. §824a-3.

⁴⁶⁸ *In Re: R.I. Office of Energy Resources’ Report and Recommendations Regarding Distributed Generation Classes and Ceiling Prices et al*, 2012 WL 1243281, n. 125 (R.I.P.U.C., 2012).

⁴⁶⁹ The Company has a “Qualifying Facility” tariff (QF Tariff) which establishes the last resort rate as the avoided cost rate for renewable technologies. The Narragansett Electric Company Qualifying Facilities Power Purchase Rate. R.I.P.U.C. No. 2240. The QF Tariff was approved by the Commission in 2012, in a case where the Commission confirmed that this statutory definition defined the avoided cost for all renewable technologies. *In Re: National Grid Tariff Advice to Amend R.I.P.U.C. No. 2035 Qualifying Purchase Power Rate*, 2012 WL 2927768 (February 16, 2012).

the Excess Credit. The tariff specifies that a billing charge is calculated, representing “the difference between the [Primary Credit] and the [Excess Credit] in effect during the applicable 12-month period multiplied by the difference between the kWh generated by the Eligible Net Metering System and the consumption during the same 12-month period.” In performing the annual reconciliation, the Company proposes to use the weighted average of the applicable distribution, transmission, and transition charges to determine the billing charge. Thus, the weighted average value would be multiplied against the total excess kWh to determine the total billing charge. The result is a “true-up” that assures that the net metering customer retains an Excess Credit that is no more or less than the value of the applicable last resort service rate.

Gridwealth withdrew any opposition to using the weighted average to determine the value of the distribution, transmission, and transition rates in the calculation of the billing charge.⁴⁷⁰ However, Gridwealth’s witness asserted that the utility should be required to change the way the billing charge is calculated by assuming a different value for the last resort service rate than what was in effect at the time of the generation.⁴⁷¹ Gridwealth’s witness testified that the credit rate should be the annual average of the last resort rate.⁴⁷² Thus, when performing the annual reconciliation, Gridwealth’s witness essentially testified that the Company should establish a new value for the last resort rate based on the annual average last resort rate.

This methodology would result in the application of a last resort credit rate that is higher than the actual last resort rate in effect during the summer, and lower than actual last resort rate in

⁴⁷⁰ Hr’g Tr. at 637-639 (October 26, 2023).

⁴⁷¹ Exhibit Gridwealth 1. Pre-Filed Testimony of Quincy Vale at 12-13 (September 13, 2023)

⁴⁷² *Id.*

effect during the winter. The comparative effect of the billing methodology asserted by Gridwealth’s witness is illustrated in the **Table 2** below:

Table 2: Illustrative Comparison of Billing Charge Calculations

Primary Credit Value		Primary Credit Value Gridwealth (Average) Method		
1	Distribution	0.06831	Distribution	0.06831
2	Transmission	0.03342	Transmission	0.03342
3	Transition	0.00021	Transition	0.00021
4	Actual Last Resort Rate (LRS)	0.09508	Average Last Resort Rate (LRS)*	0.13208
5	Primary Credit	0.19702	Primary Credit Using Average LRS	0.23402
6				
7				
Utility's Tariff Billing Charge		Utility's Tariff Billing Charge		
9	Distribution	(0.06831)	Distribution	(0.06831)
10	Transmission	(0.03342)	Transmission	(0.03342)
11	Transition	(0.00021)	Transition	(0.00021)
12	Billing Charge	(0.10194)	Billing Charge	(0.10194)
13	Primary Credit	0.19702	Average LRS Primary Credit	0.23402
14	Less Billing Charge	(0.10194)	Less Billing Charge	(0.10194)
15	EXCESS CREDIT	0.09508	EXCESS CREDIT	0.13208
Excess Credit is higher than actual LRS rate.				
Last Resort Rate Summer = 0.09508				
Last Resort Rate Winter = 0.16908				
* Average Rate = 0.13208				

The actual summer last resort rate compared to the average is shown on line 4 of the above Table 2. The last resort rate and other rates in the table shown for distribution, transmission, and transition are the 2023 rates for residential rate classes.⁴⁷³ While Table 2 uses residential rates, the mathematical effect on the Excess Credit would be the same for any rate class. As can be shown by the results in line 15, the utility’s methodology results in an Excess Credit that is equal to the actual last resort rate for the applicable period. In contrast, the recommendation from Gridwealth’s pre-filed testimony results in an Excess Credit that is higher than the actual applicable last resort rate during the summer. Mathematically, if the much higher winter last resort rate of \$0.16908 is inserted in Table 2 on line 4 for the Primary Credit Value, Gridwealth’s methodology that uses the

⁴⁷³ Attachment RR-3 (October 25-26, 2023), pages 1-2.

average of \$0.13208 results in an Excess Credit that is lower than the actual last resort rate for the winter. In either case, the Excess Credit does not match the applicable last resort rate.

During the evidentiary hearings, Gridwealth continued to assert that the Company should calculate the Excess Credits using an average of the last resort service rates.⁴⁷⁴ However, it was not clear from the record that Gridwealth's witness was understanding the Company's proposal to use the weighted average of the distribution, transmission, and transition charges.⁴⁷⁵ Nevertheless, Gridwealth stood by the position during the hearings that the last resort service rate should be set at a higher value when the Company performed the reconciliation.

After the evidentiary hearings, the parties filed their post-hearing briefs. In Gridwealth's brief, Gridwealth made a new proposal that was never supported by Gridwealth's witness, but changed the formulas embedded in the Company's proposed tariff.⁴⁷⁶ Instead of supporting Gridwealth's witness testimony to simply change the value of the last resort rate by using the average rate, the brief introduced a formula that proposed to use "a ratio of the Primary Credit paid divided by the Primary Credit that would have been paid based on an annual average last resort service (LRS) rate."⁴⁷⁷ This new formulaic proposal was never supported by any witness during proceeding and was proposed for the first time in the post-hearing brief. The formulaic proposal is not only difficult to parse out, but it appears to calculate an Excess Credit that is higher than the applicable last resort rate that was in effect at the time of generation. Thus, not only was the

⁴⁷⁴ Hr'g Tr. at 14, 492, 609, and 637-638 (October 26, 2023).

⁴⁷⁵ *See id.* at 586 and 591-592 (Gridwealth's witness stated twice that he believed that the Company was proposing to use the weighted average of the last resort rate. This was erroneous, because the Company was proposing to use the weighted average of the distribution, transmission, and transition charges in the reconciliation, not the weighted average of the last resort rate.)

⁴⁷⁶ Gridwealth's Post-Hearing Brief at 1-2.

⁴⁷⁷ *Id.* at 2

proposal made too late in the proceedings, but it suffers from the same defect as the original proposal to substitute the average last resort rate during the reconciliation.

Unlike the utility’s methodology that aligns literally with the statutory directive to have the Excess Credit be equal to the last resort rate “applicable to the customer of record,”⁴⁷⁸ the methodologies proposed by Gridwealth do not result in the Excess Credit matching any last resort rate applicable to any “customer of record,” either in the summer or the winter. In fact, it appears that the credit methodology results in a credit that is higher than the actual last resort rate in the summer period when production from Gridwealth’s solar facilities are the highest, and is lower than the actual last resort rate in the winter when production from Gridwealth’s solar facilities are lower – an effect that would reward Gridwealth with higher net revenues during the summer. While the method would financially reward renewable resources such as Gridwealth that typically produce more in the summer, it would financially penalize other resources such as wind that might produce more in the winter when the market value of the electricity is actually higher.

B. Gridwealth’s Argument to Change the Value of the Excess Credits

Despite the mismatches to actual last resort rates, Gridwealth argues that public policy and the Net Metering Statute support its methodology to change the credit value.⁴⁷⁹ Gridwealth’s main argument pertains to its viewpoint that the Commission should consider how the price of natural gas impacts the market price of electricity.⁴⁸⁰ According to Gridwealth, using the actual last resort rate in effect at the time of generation “penalizes” the net metering producer who produces more electricity during the summer when natural gas prices driving electricity markets are lower.⁴⁸¹

⁴⁷⁸ R.I. Gen. Laws § 39-26.4-2(8).

⁴⁷⁹ *Id.* at 18-19.

⁴⁸⁰ *Id.* at 16; Pre-filed Testimony of Vale at 8.

⁴⁸¹ Gridwealth Post-Hearing Brief at 16.

Gridwealth also makes other arguments, but the arguments are not clear and do not directly address the question of how the Commission would have the authority to change the last resort rate for purposes of the Excess Credit calculation. For example, Gridwealth makes policy arguments based on assertions of inequities and claims about the utility's monopoly power that do not address the statutory directives of the Net Metering Statute.⁴⁸²

Another argument made by Gridwealth is based on the assertion that the Company did not perform a cost-benefit analysis that conforms to the Commission's guidance on such analyses established in Commission Docket No. 4600.⁴⁸³ Without providing any credible and competent evidence from a witness to support its assertion, Gridwealth maintains there are benefits being provided by the distributed generation facilities that need to be taken into account when determining the Excess Credit valuation.⁴⁸⁴ While Gridwealth's witness testified about his understanding of how the electric system works, he was not qualified as a witness to provide evidence upon which the Commission could reasonably rely to support the assertion of benefits or quantification of them. Gridwealth also attempted to use its cross-examination of the Division's witness to establish facts regarding the operation of the electric system, but the Division's witness was not qualified to provide any such testimony as an expert on system operations and its effects on system costs.⁴⁸⁵ Gridwealth also cited language that was published in a state energy plan over eight years ago in 2015,⁴⁸⁶ but did not produce any witness to sponsor the document or provide expert testimony supporting the factual assertions in the plan.

⁴⁸² *Id.* at 9.

⁴⁸³ Pre-filed Testimony of Vale at 8.

⁴⁸⁴ *Id.* at 12-13.

⁴⁸⁵ It is important to note that Gridwealth's witness, Mr. Vale, also was not qualified to testify credibly regarding the operation of the electric system.

⁴⁸⁶ Gridwealth Post-Hearing Brief at 18. The October 8, 2015 energy plan can be found at: <https://planning.ri.gov/sites/g/files/xkgbur826/files/documents/LU/energy/energy15.pdf>

Finally, Gridwealth asserted new arguments in its reply memorandum after the evidentiary record closed, asserting that the Rhode Island Constitution and the Act on Climate “directs” the Commission to change the Company’s proposal with respect to the Excess Credits.⁴⁸⁷ Gridwealth argues that “[a]llowing net metering customers to be penalized by seasonal rates driven by demand for natural gas, all while assessing them a penalty for overproducing local, clean electricity, cannot possibly be construed as consistent with the Act on Climate and the Rhode Island Constitution.”

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At the time of allowing the parties to file final briefs, the Commission circulated a set of briefing rules entitled “Provisional Rules for Post-Hearing Briefing.”⁴⁸⁹ Paragraph 2 stated:

Reply Briefs are permitted for all parties, due by COB on December 8.

- a. Any Reply must be narrowly tailored in response to an argument, proposal, or assertion made in another party’s Post-Hearing Brief.
- b. If a party introduces a new proposal or new argument that is not reasonably responsive to a position asserted in a given Post-Hearing Brief to which the party is responding, either the entire filing or the relevant portion may be stricken and not considered.

While Gridwealth attempted to claim in its Reply Brief that it was raising the Constitutional and “Act on Climate” legal arguments as a response to the initial brief of the Company and the Division, the assertion is not credible. Those arguments could have been and should have been raised in Gridwealth’s first brief or earlier in these proceedings to allow other parties an opportunity to respond so the legal claim could be fully addressed.

⁴⁸⁷ MassAmerican Energy LLC d/b/a Gridwealth Development’s Post Hearing Reply Memorandum of Law, December 8, 2023, at 2. (Gridwealth Reply Brief)

⁴⁸⁸ *Id.* at 3.

⁴⁸⁹ Provisional Rules for Post-Hearing Briefing (Exhibit COMM 24).

C. *Commission’s Decision Regarding the Excess Credit Value*

The Commission has examined the statutory language and finds it to be clear and unambiguous. The General Assembly directed that the Excess Credit be “*equal to the electric distribution company’s avoided cost rate, which is hereby declared to be the electric distribution company’s last resort service kilowatt hour (kWh) charge for the rate class and time-of-use billing period (if applicable) applicable to the customer of record for the eligible net-metering system . . .*” The proviso reflects a clear intent on the part of the legislature to have the Excess Credit match the market cost of the utility purchasing and reselling electricity to customers. In turn, the General Assembly left no room for the Commission to make its own “avoided cost” determination. Instead, the General Assembly directed the credit to be equal to the applicable last resort service rate. The Commission finds that the Company’s Net Metering Tariff and the method of determining the Excess Credit fully complies with the Net Metering Statute and the Commission has no authority to establish any other credit value other than the applicable last resort rate.

Given the Commission’s interpretation and finding regarding the legislative directive in the Net Metering Statute, Gridwealth’s argument that the Commission should change the value of the last resort rate within the calculations used for the annual reconciliation is not a relevant consideration. But even if the Commission did have authority to change the value of the Excess Credit, the Commission finds that Gridwealth failed to produce any competent and credible evidence supporting the assertion that the value of the Excess Credit understates the value of the electricity being produced by the net metering facilities.⁴⁹⁰ It also is illogical to suggest that net-

⁴⁹⁰ The Commission notes that two assertions were made by Gridwealth (i.e., that solar generation reduces peak system costs and that customers use more electricity in the winter than summer) were contradicted with data provided by the Company. Specifically, peak distributed solar generation is not coincident with peak demand on the system. Hr’g Tr. at 101 (October 5, 2023). *See also* PUC 3-1. In addition, the Company’s records showed that customer usage is not

metering customers are being “penalized” by being paid the applicable last resort rate in effect at the time that electricity is being generated.

Further, Gridwealth has asserted that the Company should have performed a benefit-cost analysis consistent with the Commission’s guidance document from Docket No. 4600 (Guidance Document).⁴⁹¹ This argument is misplaced.⁴⁹² First, the benefit-cost analysis referenced in the Guidance Document is a screening tool to determine if a proposal’s benefits exceed the costs.⁴⁹³ The benefit-cost analysis is not a mechanism that is used to determine the net costs or net benefits upon which a rate is calculated. It is a tool – and only one consideration – that may be used to determine whether a given new project or new rate design proposal is just and reasonable.⁴⁹⁴ Second, the issue in this case was not to approve the design of a new rate being proposed by the Company and determine whether it is just and reasonable. The General Assembly established the Excess Credit value as the last resort rate, preempting any discretion that the Commission may have had in its design in the first instance. In fact, the existing tariff previously approved by the Commission already specified that the last resort rate would be the Excess Credit value and the reference to last resort service (or in older versions , its predecessor rate of standard offer service)

typically greater in the winter than in the summer. *See* Record Request No. 4 Supplemental, Attachment RR-4 Supplemental.

⁴⁹¹ *See Public Utilities Commission’s Guidance on Goals, Principles and Values for Matters Involving The Narragansett Electric Company d/b/a National Grid* (October 27, 2017)(Guidance Document). The document can be found at: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/4600A-GuidanceDocument-Final-Clean.pdf>

⁴⁹² R.I. Gen. Laws § 42-35-2.12 addresses the use of a guidance document. It is not binding on the agency and the agency has the authority to act at variance with it. *See* § 42-35-2.12(d)&(f): “(d) If an agency proposes to act in a contested case at variance with a position expressed in a guidance document, it shall provide a reasonable explanation for the variance. If an affected person in a contested case may have relied reasonably on the agency’s position, the explanation must include a reasonable justification for the agency’s conclusion that the need for the variance outweighs the affected person’s reliance interest;” and “(f) A guidance document may be considered by a presiding officer or final decision maker in an agency contested case, but it does not bind the presiding officer or the final decision maker in the exercise of discretion.”

⁴⁹³ Guidance Document at 6-7.

⁴⁹⁴ *Id.* at 7.

has been in all previous iterations of the tariff since the inception of the program.⁴⁹⁵ Rather, the Commission’s review of the tariff proposal and associated Excess Credit was to confirm whether the Company’s tariff amendments would assure compliance with the directive contained in the Net Metering Statute and the Company’s obligations under its own pre-existing tariff conditions.

A benefit-cost analysis is not relevant to an interpretation of the statute to determine whether a utility action or rate complies with an unambiguous statutory directive unless the statute itself explicitly required it. The rate or action either complies or it does not. As explained above, the Commission has undertaken the statutory review and found the Excess Credit mechanism within the tariff to be completely in compliance with the statutory directive.

Finally, while Gridwealth waived its arguments regarding an alleged inconsistency with the Constitution and the Act on Climate, the Commission nevertheless finds those arguments to be wholly without merit. First, Gridwealth’s characterization of the annual reconciliation billing charge as a “penalty” that it is inconsistent with the Constitution and the Act on Climate merely reflects Gridwealth’s opinion and policy disagreement with the Net Metering Statute. It does not represent any legal deficiency. The policy has already been set by law. Gridwealth may not like it and wish to enhance its revenue stream with an Excess Credit that has a higher monetary value during the summer, but that is not a sustainable legal challenge in the context of interpreting the statute.

⁴⁹⁵ See PUC 3-6 (definition of “Excess Renewable Net Metering Charge). The original iterations referred to the “Standard Offer Service Rate” which was the predecessor utility rate prior to the service changing to “Last Resort Service.” The current tariff refers to “Last Resort Service”. (R.I.P.U.C. No. 2257).

Second, Article I, section 17 of the Rhode Island Constitution bears absolutely no relevancy to the issue of whether the value of the Excess Credit included in the Company's tariff follows the Net Metering Statutory definition.

Third, the general provisions of the Act on Climate do not provide a basis for the Commission to ignore the unambiguous provisions of the Net Metering Statute which specify that the Excess Credits shall be equal to the avoided cost rate and that the avoided cost rate shall be the applicable last resort service rate. The Commission has no authority to use the Act on Climate as a basis to contradict the definition of Excess Credits in the Net Metering Statute. The Commission has a duty to interpret the two statutes in harmony. It may not use one statute to alter the unambiguous directive of another statute.⁴⁹⁶

Fourth, the Commission finds that the entirety of the Net Metering Statute which is designed to support renewable resources is consistent with the Act of Climate, including the provision that specifies the value of the Excess Credits. The Net Metering Statute provides very generous incentives through the Primary Credit mechanism to encourage the development of renewable resources that are sized within the limits set forth in the statute.⁴⁹⁷ In addition, the statute leaves room for projects to be compensated even when the size of the units exceeds the statutory limits. By allowing a project to exceed the size limitations by as much as 25% and still receive compensation equal to the market value of the electricity produced, the Net Metering Statute (including the definition of the Excess Credits) performs quite consistently with the Act on

⁴⁹⁶ See *Blanchette v. Stone et al*, 591 A.2d 785, 786 (R.I. 1991) (“When a court is called upon to construe the provisions of coexisting statutes, we attempt to follow the rule of statutory construction that provides that statutes relating to the same or similar subject matter should be construed such that they will harmonize with each other and be consistent with their general objective scope.”)

⁴⁹⁷ See Table 1, *supra*.

Climate to encourage the development of non-emitting renewable resources. The Commission finds no inconsistency which would require an implied repeal of the definition of Excess Credits or otherwise authorize a deviation from the very specific requirement within the definition of Excess Credits in the Net Metering Statute.

For all of these reasons, the Commission rejects Gridwealth's argument to change the value of the Excess Credits and finds that valuing the Excess Credits at the applicable last resort rate as proposed by the Company is in compliance with the Net Metering Statute.

XV. Decisions on Proposed Tariff Amendments

A. "Schedule C" Billing Charge Calculations and the Volumetric Method

Consistent with the Company's obligation to follow the directives in the Net Metering Statute, the Company included a "Schedule C" in its proposed Net Metering Tariff with formulas to illustrate the parameters and method of determining the application and amount of the billing charge.⁴⁹⁸ The Commission finds that the formulas included in Schedule C appropriately align the billing charge in a manner that is consistent with the definition in the Net Metering Statute appearing in Rhode Island General Laws § 39-26.4-2(8). The formulas appropriately distinguish the credit value in the three different circumstances defined in the statute – (i) when annual consumption is greater than production (i.e., the billing charge does not apply and there is no true-up needed), (ii) when production is between 100% and 125% of annual consumption (i.e., the billing charge applies to result in an Excess Credit value for production over 100% and up to 125% of consumption), and (iii) when production is over 125% of consumption (i.e., the billing charge offsets the incremental credits associated with production over 125% of consumption). The

⁴⁹⁸ See PUC 4-2, pages 9 and 18 of the revised redline tariff; and Schedule EJRS-1.

Schedule also yields an Excess Credit value that matches the applicable last resort rate in effect at the time of production of the generation. The Schedule is consistent with Rhode Island General Laws § 39-26.4-2(8).

The Company also includes a reference to using the volumetric method to determine the applicability of the billing charge. This method was well-supported in the record by the Company's witnesses, who effectively explained how it would be used to determine and calculate the billing charge.⁴⁹⁹ The Division's witness also reviewed the Company's proposed methodology and confirmed that it was reasonable.⁵⁰⁰ While Gridwealth originally questioned the use of a weighted average when applying the volumetric method in the calculation of the billing charge, Gridwealth's witness later acknowledged that use of the weighted average was appropriate.⁵⁰¹ There was no credible evidence produced by any party that could support a sustainable conclusion that the volumetric method was inconsistent with the Net Metering Statute.

The Commission, however, has determined that it is not reasonable for the Company to apply the higher billing charge relating to excess generation greater than 125% of consumption (referenced in the proposed Schedule C) to single meter net metering facilities. While the existing Net Metering Tariff allows the use of such an assumption, the testimony in this case brought attention to an inherent flaw in the reconciliation process. The reason relates to the fact that while a single meter can measure with reasonable certainty when the net metering customer's consumption is less than the total production of the facility (i.e., the net of production and consumption), it is not possible to know by how much without two meters being installed.⁵⁰² While

⁴⁹⁹ Pre-Filed Testimony of Salk and Briggs, at 125-14 (Exhibit RIE 1).

⁵⁰⁰ Pre-filed Testimony of Brennan at 3-10.

⁵⁰¹ Hr'g Tr. at 509-510 (October 26, 2023).

⁵⁰² Hr'g Tr. at 188-189 (October 5, 2023).

in the utility industry generally there are instances in billing that involve metering errors where estimates have been used to make one-time billing adjustments,⁵⁰³ the Company would be repeatedly using the same assumption based on the old three-year consumption history of the customer measured from the period prior to the net metering facility being installed.⁵⁰⁴ Since net metering facilities are in place for many years (if not decades), the Company is effectively proposing to use stale consumption history that relates to the period of time prior to the system being installed for the project's useful life.

In the context of the net metering program, the Commission finds it would be unreasonable for the Company to annually assess the billing charges based on an assumption of what consumption might be from the old three-year consumption history, as opposed to a current measured quantity or an estimate based on current consumption data.⁵⁰⁵ For that reason, The Commission rejects the provision that permits the Company to apply a higher billing charge to single meter systems when generation is assumed to be greater than 125% of consumption. The Company is directed to treat any net metering credits in excess of 100% of consumption measured at a single meter configuration as Excess Credits for the purposes of executing the process described in Section II(5) and Schedule C.

⁵⁰³ In instances of broken meters or theft of service, usage estimates have been used to make individual billing adjustments because there is no other practical way to identify billing determinants. See the rules of the Division of Public Utilities and Carriers, *Standards for Electric Utilities*, Billing Adjustments, Rule 1.7.5 (815-RICR-30-00-1).

⁵⁰⁴ Pre-Filed Testimony of Salk and Briggs, Schedule EJRS-1, page 1 (Exhibit RIE 1).

⁵⁰⁵ While the statute references use of the three-year consumption average, the reference pertains to the pre-installation sizing requirement to *determine eligibility* of the unit for net metering treatment in the first instance. It is not an authorization to continually use the three-year history as a proxy for consumption to determine Excess Credits. See R.I. General Laws § 39-26.4-2(6). The statute further states: "A projected annual consumption of energy may be used until the actual three-year (3) average annual consumption of energy over the previous three (3) years at the electric distribution account(s) located at the eligible net-metering site becomes available for use in determining eligibility of the generating system."

With the noted exception, the Commission finds the addition of Schedule C and the confirmation of the volumetric method to calculate the billing charge to be reasonable and consistent with the statutory requirements.

B. Crediting Ratepayers for Positive Balances

The Company added a sentence to the Net Metering Tariff which stipulates that the results of the reconciliation will be credited to all distribution customers.⁵⁰⁶ This provision confirms that any additional revenue obtained from customers through the billing charge will be refunded to all ratepayers through the Net Metering Charge. It is not retained by the Company. This provision was not contested, and the Commission finds it reasonable and appropriate.

C. The Proposed Pre-Condition for Authority to Interconnect

The Company proposed language to be embedded in Schedule B of the Net Metering Tariff which would require the net metering project proponent to allocate “as close to 100%” of the credits “as feasible” to the aggregate estimated consumption of off-takers before the project receives authority to interconnect (ATI).⁵⁰⁷ While the Division supported this proposal, both Revity and Gridwealth objected, arguing that such a condition does not directly address the problem of unused credits and creates other administrative problems. Gridwealth’s witness, Mr. Vale, raised concerns that it would disrupt the ability of the developers to obtain financing and obtain the tax benefits which are dependent upon the date interconnection is authorized.⁵⁰⁸ Mr. Vale proposed an alternative solution which would allow a developer to obtain ATI and be paid at the qualifying facility avoided cost rate until the required number of off-takers are obtained by the

⁵⁰⁶ PUC 4-2, page 12 of the Revised Redline tariff.

⁵⁰⁷ PUC 4-2, page 14 of the Revised Redline tariff.

⁵⁰⁸ Hr’g Tr. at 536-539 (October 26, 2023).

project.⁵⁰⁹ This would allow payments for production at a value lower than the Primary Credits (i.e., the Company's avoided cost rate set at the last resort service rate) until the project obtains eligibility for net metering. The project has the incentive to obtain the required allocation to 100%, but there is no delay in the timing of the project reaching commercial operation while the project developer seeks to contract with the required amount off-takers to reach the 100%.

The Commission finds the Company's proposal to be needlessly restrictive. The Commission also finds that the alternative solution proposed by Gridwealth is reasonable and preferable. The Commission rejects the referenced 100% proviso proposed by the Company to Schedule B, and directs the Company to include a provision in Schedule B which allows interconnection to occur prior to net metering under the rules for qualifying facilities until the developer is able to reach the required 100% threshold, after which net metering treatment commences.

D. First Year to which the Annual Reconciliation Shall Apply

The Company proposed to commence its first annual reconciliation of net metering credits for calendar years 2022 and 2023. This would require the Company to assess billing charges to true-up credits for years prior to the Commission's approval of the Company's proposals in this case. While the reconciliations would be consistent with the existing tariff in effect during those years and, therefore, not technically retroactive, the Company failed to implement the provisions on a timely basis not only for those years, but all years since the inception of the program.

The Company's failure to implement and enforce the provisions of its tariff relating to the Excess Credits has caused a significant number of net metering customers to receive annual credits

⁵⁰⁹ *Id.* at 537-538.

on their electric bills which exceeded the monetary value of the Excess Credits as specified in the Net Metering Tariff. The implementation of the Company's own tariff was entirely within the Company's control. The discovery of this non-compliance has now caused a considerable amount of uncertainty among net metering customers and the project owners who provided net metering credits under contracts with those customers.

Based on the record in this case, the Commission finds it would be unreasonable for those net metering customers not to be able to rely upon the past billings and credits as a settled outcome prior to the completion of this proceeding. For that reason, the Commission is ordering the filing of a new Net Metering Tariff with an effective date of February 1, 2024, cancelling the current Net Metering Tariff which has been in effect. The new Net Metering Tariff shall specify prospective application through which the Company shall conduct annual reconciliations at the end of each year, commencing with production and consumption that occurs in calendar year 2024. Since the existing Net Metering Tariff is being cancelled, the Company will be without authority to conduct any annual reconciliations relating to the Excess Credits for any period prior to 2024. Thus, all net metering accounts will be treated by the Company as settled for the year 2023 and all years prior.

E. Time Limitation on Completion of Annual Reconciliations

The Commission finds that it would be unjust and unreasonable for the Company not to complete its annual reconciliation within a reasonable time from the end of the applicable year to which the reconciliation applies. Thus, it is imperative that a time limitation be imposed on the Company to complete all the future reconciliations. For that reason, the new Net Metering Tariff shall specify that the Company must complete its annual reconciliation and notify all affected

customers of the balance on their accounts as of the end of the prior-year reconciliation by June 15. Such notification will help to facilitate customer decisions regarding cashing out those balances.⁵¹⁰ To the extent that the Company encounters difficulties beyond its reasonable control in the completion of any of the reconciliations, it may seek reasonable extensions from the Commission.

F. Proposed Cash Out and Transfer Provisions

The Company proposes to add a provision to the Net Metering Tariff which authorizes the Company to cash out any balances of Excess Credits through payments made directly by the utility to the net metering account after the annual reconciliation. The Company also added a provision that would allow transfers of credits to other eligible net metering accounts. The Commission finds that allowing a cash out of Excess Credits is reasonable, provided that such cash out does not occur until the applicable account is reconciled, as stated in the proposed language. The cash out amount, however, must be limited to *the lower of* the credit balance shown from the annual reconciliation or the credit balance on the applicable account as of the date of cash out. This is necessary to avoid circumstances where a customer may receive a cash out that is greater than what was reconciled. For any accounts which had a positive balance of credits as of the end of 2023, those accounts also shall be deemed eligible for cash out at the lower of the balance as of the end of 2023 or the balance as of the date of the cash out.

In the case of net metering facilities that are 25 kW or less and the production and consumption at the facility is measured by a single meter, an annual reconciliation is not required. For such facilities, cash outs of the credit balance on the account are permitted once per year after

⁵¹⁰ See the section of this Order that follows below regarding discussion of the cash out provision.

the end of the applicable year, unless a second cash out is requested by the owner of the net metering facility because the owner is moving from the premises and closing the current electric account, in which case a second cash out is permitted after the closing of the account in the amount of the credit balance as of the date of the closing of the account.

With respect to transfers of credits, the Commission notes that there are likely three types of transfers that could be applicable. One would be the transfer of credits between accounts owned by the same customer of record. Another may be circumstances where ownership of the host account is changing because of sale of the generation unit. The other would be the transfer of credits from one customer's account to an account of a different customer of record. The Commission finds that the first two types of transfers are reasonable. However, the Company has not provided sufficient support to justify the Commission approving tariff conditions which allow transfers between accounts of different customers of record. Net metering customers with Excess Credits on their account can be fully and fairly compensated by simply cashing out the credits. Therefore, the Commission finds no persuasive reason to allow the utility to transfer credits on its billing system in a manner that simulates a market for the sale of credits.

While the subject of allowing a "one-time" transfer was raised during the hearings, it arose in the context of addressing unused credits that now exist on accounts from years prior to 2024.⁵¹¹ Now that the Commission has directed that that annual reconciliations may only occur prospectively beginning for the year 2024, there is no persuasive reason to include a transfer

⁵¹¹ Revity Memorandum of Law at 10-11 (October 2, 2023)(Exhibit REV 4).(Revity argued: "As to the issue of unused credits that have historically built up on third party offtaker accounts to date, Revity would respectfully suggest that the Commission allow those offtakers to exercise a one-time transfer of unused credits to other eligible offtakers with consumption that matches the previously unused credit. That will address the historic glut and developers can amend their Schedule B submissions with respect to those offtakers to re-allocate the unused credit portion to new offtakers to address structural over-subscription.")

provision in the tariffs that could encourage the trading of net metering credits among customers as financial transactions. The utility's billing system is for billing rates and credits. It is not a system for managing financial trading in artificial markets, the administrative and billing system costs of which would be funded by all ratepayers. Accordingly, the Commission rejects, in part, the provision that would allow transfers between accounts, except as indicated.

Accordingly, transfers of credits from one account to another account shall only be permitted in two circumstances: (i) when ownership of the host account is changing because of the sale of the unit and the credits are transferred from the old host account to the new host account; or (ii) the transfer of credits is between accounts owned by the same customer of record or accounts of affiliates of the same parent company/entity that holds 100% ownership interest in each affiliate. The Commission directs the Company to include a revised provision in the new Net Metering Tariff reflecting these conditions.

G. "Consumption Balance Report" and Potential Double-Counting of Consumption

While the Commission is limiting the authorization to transfer credits between accounts as stated above, the Commission recognizes that host accounts will need some level of flexibility to be able to address circumstances where it becomes apparent that the total production may exceed consumption during the applicable calendar year for reasons beyond the host account's control.⁵¹² This can be accomplished by allowing host accounts to amend their Schedule B before the end of the applicable year to add accounts in order to assure that the aggregate consumption of all accounts on the Schedule B is equal to or greater than the annual production of the net metering facility. However, in order to determine whether the Schedule B needs to be amended, owners of

⁵¹² See Hr'g Tr. at 469, 504-505 (October 26, 2023).

the host accounts will need a reasonable amount of information regarding the consumption associated with the satellite accounts to forecast the balance between production and consumption before the end of the year.

For these reasons, the Commission directs the Company to provide a consumption-to-production balance report to each host account at the end of the third quarter (Consumption Balance Report). The Consumption Balance Report should provide the following:

- i. Year-to-date consumption information for each satellite account listed on the Schedule B as of the end of the third quarter, reflecting total consumption through the September billing cycle of each customer listed on the Schedule B;
- ii. The total net production recorded by the Company for the host account's generation through the end of September;
- iii. The total consumption that occurred in the prior calendar year from each of the satellite accounts listed (to the extent available) for the months of October through December;
and
- iv. A list of any accounts on the applicable Schedule B that also appear on other applicable Schedule B's associated with other host projects.

This data provided through the Consumption Balance Report should provide sufficient information for the host accounts to take steps to add new eligible satellite accounts to the Schedule B before the end of the calendar year to assure that total consumption is greater than production, thus avoiding billing charges. This Consumption Balance Report should be provided to the host account within 30 days of the last satellite account billing cycle of September reflected in the report. The

host accounts will then have 30 days from the receipt of the Consumption Balance Report to amend the Schedule B which will be considered effective in the calendar year for purposes of the Company executing the annual reconciliation. The Company is directed to use the last effective Schedule B provided to the Company for the applicable calendar year as a measure of consumption when the annual reconciliation is performed for the host account.

There was an indication at the hearings that there may be satellite/off-taker accounts that are listed on more than one Schedule B from different host accounts.⁵¹³ To the extent there are instances where a satellite/off-taker account is being provided credits from more than one host account and appears on more than one Schedule B submitted to the Company by owners of host accounts, the Company must allocate the total consumption of the off-taker to each host account at the time of the annual reconciliation in a manner that accounts for 100% of the off-taker's consumption while avoiding double counting of consumption for separate projects.

The Commission directs the Company to perform a review and accounting of all Schedule B's to identify off-taker accounts that appear on more than one Schedule B. The Company has 60 days to complete the review and accounting. The results of the review and accounting needs to be filed with the Commission. The Company also must provide a notice and schedule to each host account that has one or more off-takers being provided net metering credits from more than one host account. The note should encourage all the affected host accounts and the affected satellite/off-taker to enter into discussions in order to agree upon an allocation that reasonably allocates percentages of the annual consumption to each host account without counting more than 100% in total. The note should then provide instruction for the affected parties to submit a

⁵¹³ See Hr'g Tr. at 809-810 (October 26, 2023).

confirmation of agreement in a form reasonably acceptable to the Company signed by authorized persons for each entity confirming the allocation to the Company's reasonable satisfaction. The note should state if no agreement is reached, the Company will use a process and default methodology to determine the allocation that will be included in the Company's Net Metering Tariff, subject to the Commission's review and approval.

The Commission directs the Company to develop a proposal for determining a reasonable allocation of consumption to host accounts from off-takers appearing on more than one Schedule B that avoids double counting of consumption, to be applied in instances where mutual agreement has not been reached among the affected host accounts and off-taker to the reasonable satisfaction of the Company. The Company is directed to make a filing with the proposed resolution by no later than May 1 for review and approval by the Commission. The filing also needs to include a proposal for the management of the issue of multiple Schedule B's in future years.

H. Billing Charges to Host Accounts

The Company has proposed to add a provision in the Net Metering Tariff which specifies that any billing charges associated with the annual reconciliation will be assessed on the host net metered account. Revity and Gridwealth objected to this provision, arguing that the billing charges should be assessed on the off-taker accounts instead. The Commission, however, finds the Company's proposal to be reasonable. First, it would not be practical or reasonable to assess charges on off-taker/satellite accounts who have no visibility to the production of the net metering generation unit owned by the host account, no way to anticipate aggregate shortfalls experienced by the host account, and no practical way to take steps to avoid the charge. Second, the host account

has a contract with each satellite account and the Company has no visibility to those terms.⁵¹⁴ It also is the host account that receives the credits in the first instance before they are allocated to the satellite accounts.

It also is important to note that the Commission is ordering that the annual reconciliation begin in 2024. In addition, the Commission is directing the Company to establish a process which provides for amendments to the Schedule B prior to the end of each year. The prospective nature of the annual reconciliation is important in the context of the changes in law which expanded eligibility for net metering credits to be allocated to commercial and industrial accounts. Both Reivity and Gridwealth provided testimony indicating that the administrative problem associated with managing Excess Credit allocations for stand-alone projects is a legacy issue.⁵¹⁵ In other words, it only creates difficulty for the years prior to the implementation of the new law that expands eligibility of off-takers for net metering. Once the eligible class of customers expanded to include commercial and industrial accounts, it created a large universe of customers to whom net metering credits could be allocated. Based on this testimony, the owners of host accounts will be well-equipped to manage their allocations such that the issue relating to the impact of Excess Credits on stand-alone facilities should become academic. That being the undisputed case, the only circumstances where a host account would be assessed billing charges associated with an annual reconciliation would be when the host account has not managed its accounts efficiently and prudently in 2024 and beyond. Management of the accounts also will be facilitated by the

⁵¹⁴ Record Request-7 (October 25-26); Hr’g Tr. at 797 (November 9, 2024).

⁵¹⁵ See Hr’g Tr. at 500-503 and 662-663 (October 26, 2023).

requirement for the Company to provide a Consumption Balance Report, as discussed above in this Order.

Given this record, the Commission finds the Company's proposal to be appropriate and reasonable. Accordingly, the Commission approves the inclusion of the provision which assesses any billing charges on host accounts.

I. Provision Exempting Projects Sized at 25 kW or Under

In its initial filing in this case, the Company added language to the Net Metering Tariff which would exempt from the annual reconciliation net metering customers with eligible net metering facilities that are 25 kW or less in size.⁵¹⁶ The provision would exempt small-sized net metering facilities from being subject to the lower Excess Credit value. In effect, customers with these smaller units would be paid the full Primary Credit rate for all production from their facilities. The reasoning given by the Company was a concern that it would be challenging to reconcile such a large number of small accounts in the first year.⁵¹⁷ However, based on the data provided during the proceeding, the exemption is written so broadly that it captures not just behind-the-meter installations with single meters (totaling over 9,500 facilities), but also community remote net metering facilities which are numbered at only 157 facilities.⁵¹⁸

⁵¹⁶ See the Redlined Tariff in the Company's filing of February 15, 2023, page 3 (definition of "Eligible Reconciliation Pool").

⁵¹⁷ See PUC 1-1 (The Company estimated over 9,000 accounts).

⁵¹⁸ Second Supplemental Response to Record Request No. 2, Attachment RR-2, at page 1 of 2 (Exhibit RIE 17).

OER supported the exemption, while the Division appeared to be satisfied with either result – with or without the exemption being included.⁵¹⁹ Neither Revity nor Gridwealth objected to the proposed exemption.

The Company later indicated in the August 16 Technical Session that it appeared that it may be able to reconcile the smaller accounts in an automated manner.⁵²⁰ Nevertheless, there are apparent complexities that the Company will be facing for 2024 to implement the annual reconciliation in the first year for the affected accounts greater than 25 kW. Adding 9,500 smaller single-metered accounts at the same time could create significant implementation challenges, including setting up an efficient process to effectively answer customer billing complaints.⁵²¹ Thus, the Commission finds it reasonable and prudent for the single meter net metering facilities of less than 25 kW to be provisionally exempted at this time from the annual reconciliation. At a later date, the Commission can determine when the exemption should end after the Company has at least one billing year of experience with the annual reconciliation processes. For the time being, the Commission approves a pragmatic provisional exemption for single meter facilities that are 25 kW or less. Accordingly, the Commission rejects the provision proposed by the Company as too broad and directs the Company to include an exemption provision that is limited to single meter net metering accounts that are 25 kW or less.

⁵¹⁹ See Pre-filed Testimony of Brennan at 9.

⁵²⁰ August 16 Technical Session Transcript at 5-8.

⁵²¹ See Second Supplemental Response to Record Request No. 2, Attachment RR-2, Line 11 (Exhibit RIE 17). (According to the exhibit, there were over 9,500 behind-the-meter accounts of “less than 25 kW.”)

J. Gridwealth's Request for the Appointment of a Neutral Administrator

Gridwealth makes a request for the Commission to appoint an administrator for the net metering program.⁵²² However, Gridwealth did not support this recommendation with substantial evidence justifying a need for such a radical appointment. There were only three sentences from Gridwealth's testimony which referred to the recommendation, each of which appeared in pre-filed testimony. The statements are quoted here verbatim:

We also seek independent third-party oversight of the administration of the net metering credit to ensure proper crediting and accounting practices for these customers, given the complexities and past experience to be evidenced in this proceeding.⁵²³

As long as the utility incentives remain at cross purposes with the goals of net metering customers and RI policy, a neutral ombudsperson will help to neutralize that dichotomy and ensure administration that is consistent with RI's goals of enhancing energy security while decreasing costs and emissions. The customer cannot be expected to bear the additional burden of discovering faulty administration that is often not at all transparent or of disputing such problems as needed to resolve them.⁵²⁴

The testimony provides conclusory opinions with no evidentiary foundation for the few factual assertions that may be implied by the statements.

Complexity alone does not support the recommendation and no credible evidence was provided to support the accusation that "utility incentives remain at cross purposes" with state policy goals. No reason was given why such an appointment is needed in the future, how it would be funded, what authority the individual would have under the law, whether the Commission would even have the authority to delegate regulatory authority to a hired contractor, or why the

⁵²² Gridwealth Post-Hearing Brief at 21.

⁵²³ Pre-filed Testimony of Vale, at 4.

⁵²⁴ *Id.* at 15.

current agency oversight processes comprising the Commission, the Division, and OER should be preempted. In short, there is no evidentiary basis supporting Gridwealth's recommendation. Accordingly, the Commission denies the request.

K. Other Commission Directives Relating to Tariff Amendments

a. Continuous Publication of Credit Values

Over the course of this proceeding, it became apparent to the Commission that there was a lack of transparency relating to the manner through which the Company is determining and implementing the net metering credits. While the Net Metering Tariff contains formulas which disclosed how the credit values would be calculated, the actual credit values have not been published in a readily accessible manner. Given the complexity of the net metering program, the Commission has concluded that it would improve transparency if the Company publishes all of the applicable net metering credits by rate class in a tariff Addendum to Tariff No. 2095 and updates the Addendum each month when there are rate changes affecting the credits. As such, the Commission directs the Company to create and maintain the Addendum that discloses the credits currently in effect.

A conspicuous note should be included at the beginning of the Addendum which explains the fact that the applicable credit values for net metering customers who receive credits from remote facilities (i.e., community remote net metering facilities or other facilities located remotely) are determined from the rate class assigned to the facility – not the rate class of the recipient of the credits. The note also should provide this statement or one conveying the same type of message:

Community remote net metering facilities and other remote net metering facilities are typically served on the C-06 rate, from which the credits would be derived. But Net

metering customers should check with their net metering service provider to confirm the applicable rate class.

b. Publication of Explanatory Summary and Historical Credit Values

In addition to the tariff Addendum, the Commission directs the Company to publish the historical credits and develop a summary document of how the crediting mechanism works. For the credit history, the Company is directed to publish a separate document which lists the history of the crediting values by month, year, and rate class, in a downloadable excel format. At a minimum the list should commence with the values that were in effect for 2023. This list should be accessible through a separate website link and updated as the rates change from month to month, such that any customer may have easy access to the historical values and be able to download the data for its own use.

The summary document should be composed in a “plain English” manner that is likely to be understood by customers who are not familiar with the net metering process. This will not be a part of the actual Net Metering Tariff, but should be published by the Company on its webpage to which the Commission may also link for its own website. A proposed explanatory document should be filed by the Company with the Commission within 30 days after the Commission’s approval of the Company’s compliance filing of the new Net Metering Tariff. A staff-led technical session may be scheduled if it appears that it would be helpful in the event many substantive edits are needed.

c. Updating Tariff for Changes in the Law from 2023 Legislative Session

Finally, the proposed Net Metering Tariff which the Commission has reviewed in this case has not been updated to reflect the changes in the Net Metering Statute that were passed in the

2023 Legislative Session. The Company is directed to file an updated version of the new Net Metering Tariff with proposed edits that reflects the changes to the Net Metering laws applicable to the tariff. Such filing should be made no later than 30 days after the Commission's approval of the Company's compliance filing arising out of this case.⁵²⁵

XVI. Utility Accountability

As reflected in the history of the administration of net metering which is included in the record,⁵²⁶ the Company failed to comply with the Net Metering Tariff for many years. The Commission observes that the referenced non-compliance occurred prior to PPL acquiring The Narragansett Electric Company and, therefore, was caused by the Company while it was under the ownership of and doing business as National Grid. However, PPL acquired the shares of The Narragansett Electric Company. It is that regulated entity – regardless of which corporate entity owned the shares of the Company – that was responsible for complying with its own tariff.⁵²⁷

After the acquisition, the Company made the filing in this Docket to address the issue for calendar years 2022 and 2023. Thus, the Commission finds that it would be unfair for the Company to be held accountable for non-compliance relating to the years 2022 and 2023 given that the Company took timely steps to address the issue for those years. The Commission, however, is not making any findings or declarations regarding the extent to which the Company may or may not

⁵²⁵ While the first compliance filing may not be up-to-date with current law, any statutory changes prevail (such as eligibility criteria) even if not reflected in the approved tariff during the interim.

⁵²⁶ See Hr'g Tr. at 153-156 (October 5, 2023); and the following documents over which the Commission took Administrative Notice: From Docket 4549: Hearing Transcript -April 14, 2015, PUC 1-4, PUC 1-7, PUC 2-2; From Docket 4930: Hearing Transcript – March 19, 2019, PUC 2-6; Docket 5005: PUC 3-1; Docket 5127: PUC 1-16, PUC 5-1, PUC 7-2; Dockets 5234, 5127, 5005: Technical Session Transcript – April 12, 2022; Open Meeting Minutes – December 7, 2022.

⁵²⁷ The Commission has no knowledge of whether PPL and National Grid entered into any separate agreements of indemnity which would require financial reimbursement at the corporate holding company level. Any such agreements are beyond the jurisdiction of this Commission.

be held accountable for its non-compliance for the years prior to 2022. However, the Commission notes that the Division has statutory authority to investigate and address matters of utility non-compliance with tariff provisions.⁵²⁸ This Order has no effect on any future action that may be taken by the Division relating to the potential consequences to the utility, financial or otherwise, for non-compliance relating to the years prior to 2022. In that regard, the Commission defers to the discretion of the Division whether to pursue any further regulatory action and sees no jurisdictional conflict if the Division decides to act independently on the matter as it relates to the period of non-compliance for the years prior to 2022.

XVII. Compliance Filing

On January 22, 2024, the Company made a compliance filing that included a new Net Metering Tariff, cancelling the existing tariff, effective February 1, 2024. The Commission approved the compliance filing at Open Meeting on January 31, 2024.

XVIII. Conclusion

Accordingly, it is hereby

(25052) ORDERED:

- (1) The current Net Metering Tariff (R.I.P.U.C. 2257) is cancelled, effective on February 1, 2024, and the new Net Metering Tariff shall be effective on February 1, 2024, with terms and conditions consistent with the directives of the Commission in this Order that relate to the proposed amendments that were reflected in the proposed revised redlined tariff provided in the response to data request PUC 4-2 (Revised Tariff Proposal).
- (2) The Company's proposal to commence annual reconciliations for calendar years 2022 and 2023 is denied.

⁵²⁸ See R.I. General Laws § 39-4-13.

- (3) The Company's proposed provisions to use the volumetric method, as described in Section II(5) and Schedule C of the Company's response to PUC 4-2 (Revised Tariff Proposal), to conduct annual reconciliations for inclusion in the new Net Metering Tariff is approved and the annual reconciliations shall commence for credits that were applied on bills rendered in billing cycles that reflect usage occurring only within calendar year 2024 and the years that follow.
- (4) All annual reconciliations shall be completed by June 15, 2025, unless the Company encounters difficulties beyond its reasonable control and obtains an extension from the Commission.
- (5) The Company's proposal to add the definition of the "Eligible Reconciliation Pool" as proposed in the Revised Tariff Proposal is denied, and the annual reconciliation shall not apply to single meter systems that are 25 kW or less.
- (6) The Company's proposal to apply a higher billing charge to single meter systems when generation is assumed to be greater than 125% of consumption and actual consumption is not known is denied. The Company shall treat any net metering credits in excess of 100% of consumption measured at a single meter configuration as Excess Renewable Net Metering Credits for the purposes of executing the process described in Section II(5) and Schedule C.
- (7) The Company's proposed Schedule C which reflects the formulas for calculating the applicable billing charges and the associated tariff language found in paragraph II(5) of the Revised Tariff Proposal which references Schedule C is approved, as modified by prior motions approved by the Commission relating to exemptions for single meter systems.
- (8) The Company's proposed language in Schedule B of the Revised Tariff Proposal that would deny Authorization to Interconnect (ATI) if a net metering project has not allocated as close to 100% as possible of the credits to the aggregate estimated consumption of off-takers on the Schedule B is denied, and the Company is directed to allow interconnection and commencement of operation to occur pursuant to the power purchase tariff for qualifying facilities (R.I.P.U.C. No. 2240) until the developer is able to reach the required 100% threshold, after which net metering treatment commences.

- (9) The second sentence of Section IV(3) of the Revised Tariff Proposal which provides for any proceeds from billing charges arising out of the annual reconciliations to be credited to all ratepayers through the Net Metering Charge is approved.
- (10) The Company's proposed language in Section II(12) of the Revised Tariff Proposal relating to cash outs and transfers is denied, and the Company shall (i) permit cash outs under the conditions set forth below, and (ii) permit only certain transfers limited by the conditions set forth below:

Conditions for Cash Outs

- (a) Cash outs are only permitted after the completion of the annual reconciliation pertaining to the applicable account;
- (b) The post-reconciliation amount of the cash out shall be the lower of (1) the credit balance shown from the annual reconciliation of the applicable account or (2) the credit balance on the applicable account on the date of the cash out;
- (c) For any accounts that had a positive balance of credits as of the end of 2023, those accounts shall be deemed eligible for cash out at the lower of (i) the credit balance as of the end of 2023 or (ii) the credit balance on the account as of the date of the cash out;
- (d) Once an annual reconciliation is completed for accounts on a given Schedule B, the Company shall notify the customers of record for each satellite/off-taker account listed on the Schedule B within a reasonable time after completion of the reconciliation of their respective eligibility to cash out their credits, including an explanation of how the customer can initiate the cash out; and
- (e) For single meter net metering facilities that are 25 kW or less, an annual reconciliation is not required. For such facilities, cash outs of the credit balance on the account are permitted once per year after the end of the applicable year, unless a second cash out is requested by the owner of the net metering facility because the owner is moving from the premises and closing the current electric account, in which case a second cash out is permitted after the closing of the account in the amount of the credit balance as of the date of the closing of the account.

Conditions for Transfers

- (f) Transfers of credits from one account to another account shall only be permitted in two circumstances: (i) when ownership of the host account is changing because of

the sale of the unit and the credits are transferred from the old host account to the new host account; or (ii) the transfer of credits is between accounts owned by the same customer of record or accounts of affiliates of the same parent company/entity that holds 100% ownership interest in each affiliate.

- (11) (a) The Company is directed to provide a consumption-to-production balance report to each host account at the end of the third quarter of each year (Consumption Balance Report).
- (b) The Consumption Balance Report should provide the following:
- i. Year-to-date consumption information for each satellite account listed on the Schedule B as of the end of the third quarter, reflecting total consumption through the September billing cycle of each customer listed on the Schedule B;
 - ii. The total net production recorded by the Company for the host account's generation through the end of September;
 - iii. The total consumption that occurred in the prior calendar year from each of the satellite accounts listed (to the extent available) for the months of October through December; and
 - iv. A list of any accounts on the applicable Schedule B that also appear on other applicable Schedule B's associated with other host projects.
- (c) The Consumption Balance Report shall be provided to the host account within 30 days of the last satellite/off-taker account billing cycle of September that is reflected in the report.
- (d) The host accounts will have 30 days from receipt of the Consumption Balance Report to amend the Schedule B which will be considered effective in the calendar year for purposes of the Company executing the annual reconciliation.
- (e) The Company is directed to use the last effective Schedule B provided to the Company for the applicable calendar year as a measure of consumption when the annual reconciliation is performed for the host account.
- (f) The Company shall produce annual Consumption Balance Reports, including other terms relating to the reports as herein specified by the Commission.

- (12) In instances where a satellite/off-taker account is being provided credits from more than one host account and appears on more than one Schedule B submitted to the Company by owners of host accounts, the Company is directed to allocate the total consumption of the off-taker to each host account at the time of the annual reconciliation in a manner that accounts for 100% of the off-taker's consumption while avoiding double counting of consumption for separate projects.
- (13) The Company is directed to perform a review and accounting of all Schedule B's to identify off-taker accounts that appear on more than one Schedule B. The Company has 60 days to complete the review and accounting. The results of the review and accounting shall be filed with the Commission.
- (14) The Company is directed to provide a notice and schedule to each host account that has one or more off-takers being provided net metering credits from more than one host account, as follows:
- (a) For each off-taker receiving credits from more than one host account, the schedule shall identify the off-taker and the applicable Schedule B of the host account.
 - (b) The notice shall provide an explanatory note which discloses to the host account that the Company must allocate a portion of the total consumption of the off-taker to each host account when an annual reconciliation is completed.
 - (c) The note shall encourage all the affected host accounts and the affected satellite/off-taker to enter into discussions in order to agree upon an allocation that reasonably allocates percentages of the annual consumption to each host account without counting more than 100% in total. The note should then provide instruction for the affected parties to submit a confirmation of agreement in a form reasonably acceptable to the Company signed by authorized persons for each entity confirming the allocation to the Company's reasonable satisfaction. The note should state if no agreement is reached, the Company will use a process and default methodology to determine the allocation that will be included in the Company's Net Metering Tariff, subject to the Commission's review and approval.
- (15) The Company is directed to develop a proposal for determining a reasonable allocation of consumption to host accounts from off-takers appearing on more than one Schedule B that avoids double counting of consumption, to be applied in

instances where mutual agreement has not been reached among the affected host accounts and off-taker to the reasonable satisfaction of the Company. The Company shall make a filing with the proposed resolution for review and approval by the Commission no later than 30 days after the Commission's approval of the Company's compliance filing. The filing also shall include a proposal for the management of the issue of multiple Schedule B's in future years.

- (16) The provision set forth in the first sentence of Section IV(3) of the Revised Tariff Proposal relating to assessing any billing charges on the host account is approved.
- (17) The Company is directed to publish the credit values of all of its applicable net metering credits by rate class as an Addendum to Tariff No. 2095 and update the Addendum each time there are rate changes affecting the credits. The Commission also directs the Company to include a conspicuous statement on the Addendum which explains the fact that the applicable credit values for net metering customers who receive credits from remote facilities (i.e., community remote net metering facilities or other facilities located remotely) are determined from the rate class assigned to the facility – not the rate class of the recipient of the credits. The note also should provide this statement or a similar one conveying the following intended message:

Community remote net metering facilities and other remote net metering facilities are typically served on the C-06 rate, from which the credits would be derived. But Net metering customers receiving credits should check with their net metering service provider to confirm the applicable rate class.

- (18) The Company is directed to publish on its website a separate document which lists the history of the crediting values by month, year, and rate class, in a downloadable excel format. At a minimum the list should commence with the values that were in effect for 2023. This list should be accessible through a separate website link and updated as the rates change from month to month, such that any customer may have easy access to the historical values and be able to download the data for its own use.
- (19) The Company is directed to develop a summary document of how net crediting is implemented by the Company. The summary document should be composed in a “plain English” manner that is likely to be understood by customers who are not familiar with the net metering process. This will not be included within the Net Metering Tariff nor will the summary be treated as binding tariff language, but is intended to be published by the Company on its webpage as a general guide to understanding net metering, to which the Commission may also link for its own

website. A proposed explanatory document should be filed by the Company with the Commission within 30 days after the Commission's approval of the Company's compliance filing of the new Net Metering Tariff for review by the Commission prior to publication.

- (20) The Commission directs the Company to file no later than 30 days after the Commission approves the Company's compliance filing, an updated version of the new Net Metering Tariff with proposed edits that reflect the changes to the Net Metering laws that occurred during the 2023 legislative session that are applicable to the tariff, for Commission review and approval. The Commission will consider the Company's proposal for determining a reasonable allocation of consumption to host accounts from off-takers appearing on more than one Schedule B along with this new Net Metering tariff.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 12, 2024, PURSUANT TO AN OPEN MEETING DECISION ON JANUARY 12, 2024. WRITTEN ORDER ISSUED MAY 10, 2024.

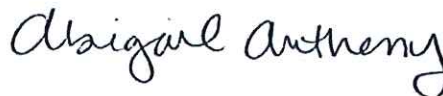
PUBLIC UTILITIES COMMISSION



Ronald T. Gerwatowski, Chairman



John C. Revens, Jr., Commissioner



* Abigail Anthony, Commissioner



* Commissioner Anthony joins in the decisions reached on pages 101-103 and 111-140 of the Order and writes separately for clarity and to focus on the core substantive issues involved in this docket.

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws §39-5-1, any person aggrieved by a decision or order of the PUC may, within seven (7) days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.

*Concurring Opinion of Commissioner Anthony:

I concur with the Commission and wholeheartedly support the majority’s comprehensive approach which fully addresses the issues raised in this docket. However, I write separately because I believe that a more focused and succinct presentation in this concurrence will make the critical issues more accessible and actionable to a broader audience. Net metering can be complex, and observations during the proceedings have shown that even involved parties may struggle with key statutory concepts. By simplifying the issues and aligning with statutory language, this concurrence aims to enhance understanding, ensuring that the substantive issues are prominent and clear to all stakeholders.⁵²⁹

Net Metering

Net metering generally is a mechanism by which retail electricity customers can use eligible generators to flow energy onto the power system during one time period to offset energy consumption that occurs in different time periods. Net metering involves the interplay of the customer’s generation and consumption, and the utility’s reading of the customer’s meter. A retail customer’s meter increments (or “spins”) in one direction when the customer uses more than they generated, and then the meter decrements (or “spins backwards”) when generation is greater than

⁵²⁹ The majority’s opinion uses the term “primary credit” as shorthand for Renewable Net Metering Credit. This term is defined by R.I.G.L. § 39-26.4-2(22). I use the statutory term in this concurrence for clarity.

consumption. So, when the utility reads the customer's meter it only records the net of consumption minus generation: thus, the utility is reading the *net* meter.

Application to Rhode Island Energy's Electric Business

As applied to Rhode Island Energy's customers, Net Metering is a statutorily mandated billing mechanism that requires the Company to conduct a netting process and determine the value of net metering credits to participants. Each customer's meter is read approximately twelve times per year to establish monthly net consumption or generation.⁵³⁰ For months in which consumption is greater than generation, the customer's meter will record net usage and the customer is billed for that consumption at the rates applicable to the customer's rate class. For months in which generation is greater than consumption, the customer's meter will record net generation and a statutorily defined Renewable Net Metering Credit is applied to each kilowatt-hour of net generation resulting in cash credit on the customer's bill.^{531,532}

Additionally, the statute requires that at the end of a billing period, the Company must perform a reconciliation to account for net generation exceeding 100% or 125% of the customer's annual consumption. Pursuant to the Net Metering Statute, any generation that is determined to be greater than 100% and less than 125% of the net metering customer's usage should be credited

⁵³⁰ Rhode Island Energy endeavors to read all customers' meters, net metering or otherwise, on an approximately monthly cycle.

⁵³¹ R.I.G.L. § 39-26.4-2 (22). The statute defines the Renewable Net Metering Credit as the total kilowatt hours of electrical energy generated multiplied by the sum of the distribution company's last resort service kilowatt hour charge for the rate class applicable to the net metering customer (net of the renewable energy standard charge or credit), the distribution kilowatt hour charge, transmission kilowatt hour charge, and transition kilowatt hour charge.

⁵³² For any net metering system, the resulting cash credit can be used against past, current, or future charges associated with the electric account where the generation physically occurs. For Community Remote Net Metering system and some net metering systems associated with special customers enumerated in the Net Metering Statute, the cash credit may also be transferred to other eligible electric accounts that are different and remote from the location where generation physically occurs.

at a statutorily defined (and lower-valued) Excess Renewable Net Metering Credit.^{533,534} No credit is provided for generation above 125% of consumption.⁵³⁵ While the Company reads meters and sends bills to its customers on a monthly cycle as described above, the Net Metering Tariff adopts a calendar year as the *billing period* for the purposes of annual reconciliation.⁵³⁶ Thus, in order to determine whether generation has exceeded the statutory 100% or 125% thresholds *during the billing period*, the Company must compare the net sum of twelve months of consumption and generation (based on the monthly meter reads). Since all net generation is initially paid a full Renewable Net Metering Credit during the monthly billing cycle, the Company must apply a *charge* to customers whose generation exceeds the 100% or 125% thresholds, and this lowers the credit paid for those kilowatt-hours of generation to the statutory Excess Renewable Net Metering Credit or to zero, as appropriate.⁵³⁷

The Company's tariff advice filing aims to bring the Company into compliance with the required annual reconciliation for net generation in excess of 100% or 125% of the customer's annual consumption. During previous one-year billing periods, the Company's implementation of the annual reconciliation process was inconsistent with the Company's tariff on file with the PUC, which resulted in net generation exceeding 100% of net metering customers' annual consumption being compensated at the Renewable Net Metering Credit value instead of the Excess Net Metering Credit value. Net metering customers that were credited at the Renewable Net Metering

⁵³³ R.I.G.L. § 39-26.4-2 (8). The statute defines the Excess Renewable Net Metering Credit as equal to the electric distribution company's last resort service kilowatt hour charge for the rate class and time-of-use billing period (if applicable) applicable to the net metering customer account.

⁵³⁴ R.I.G.L. § 39-26.4-3(a)(4)

⁵³⁵ The statute does not specify a credit value for generation exceeding 125% of on-site usage. The Company's tariff provides zero credit for such generation.

⁵³⁶ R.I.PUC Tariff No. 2257 Section II (5).

⁵³⁷ As explained below, in this tariff advice the Company's proposes that all distribution customers would be credited with any positive balance resulting from annual reconciliation charges, offsetting against the annual Net Metering Charge.

Credit value instead of the Excess Net Metering Credit value were overcompensated and this overcompensation was paid for by all ratepayers through the Net Metering Charge.

Summary of Rhode Island Energy's Tariff Advice Filing

The Company's tariff advice filing outlines key proposals aimed at administering the net metering program and ensuring compliance with the Net Metering Statute. Here is a concise summary of my perspective of each component:

Annual Reconciliation Process: Describing the existing tariff's reconciliation process, the proposal introduces a method termed the "volumetric method" to calculate Excess Renewable Net Metering Credits.⁵³⁸ This method compares kWh generated by a facility to estimated kWh consumption over a year, based on a three-year historical average.⁵³⁹ I agree with the majority finding that this approach makes sense and is reasonable for determining the ratio of generation to consumption at net metering facilities with separate generation and consumption meters. With single-meter installations, however, the Company lacks separate measurements for consumption and generation, making it impossible to determine whether production exceeds 125% of consumption without making assumptions about consumption. Typically, in the utility industry, estimates are used for one-time billing adjustments due to metering errors. Here, the Company's proposal entails repeatedly using assumptions based on a customer's old three-year consumption history, predating the installation of the net metering facility. Relying on outdated consumption history for billing purposes is impractical and potentially unfair. By rejecting the provision allowing the Company to reconcile Excess Renewable Net Metering Credits to single-meter systems when generation is assumed to exceed 125% of consumption, this problem is avoided.

⁵³⁸ Schedule EJRS-1 to the Direct Testimony of Russell Salk and Brigg, page 1.

⁵³⁹ *Id.*

The Company should treat any net metering credits exceeding 100% of consumption at a single-meter configuration as Excess Renewable Net Metering Credits.

Exemption for Small Projects: The proposal suggests limiting the annual reconciliation for Excess Renewable Net Metering Credits to projects exceeding 25 kW.⁵⁴⁰ Exempted customers would receive the Renewable Net Metering Credit for all the electricity their facilities generate. Initially, the Company aimed to exempt these smaller systems to avoid the complex task of reconciling numerous small accounts, though the Company later indicated that it could automate the reconciliation process. I agree with the majority finding that the proposed exemption is overly broad, encompassing not only single meter facilities, but also net metering facilities with separate generation and consumption meters. Since it is relatively straightforward to conduct the annual reconciliation for facilities with two meters, the Company should narrow the exemption to apply to *single meter facilities* under 25 kW. This provisional exemption should remain in place until the Company and the Commission gain sufficient experience with the annual reconciliation process.

Introduction of Schedule C: A new addition to the Net Metering Tariff, Schedule C – Volumetric Method Billing Charges, outlines how Excess Renewable Net Metering Credits are calculated, including the use of an annual average of volumetric rates.⁵⁴¹ I find that the calculations presented in the schedule are straightforward and align with the Net Meter Statute definitions in Rhode Island General Laws § 39-26.4-2(8). The schedule distinguishes Net Metering Credit values based on the three circumstances defined in the statute and ensures that Excess Renewable Net Metering Credits match the applicable last resort service rate. Following the initial filing, the Company proposed

⁵⁴⁰ See Redlined Tariff at 3, the definition of “Eligible Reconciliation Pool.”

⁵⁴¹ Schedule EJRS-1, Redlined Tariff, page 9.

using the weighted average of volumetric rates so that that the billing charge more closely reflects the applicable Excess Renewable Net Metering Credit the customer should have received at the time the customer instead received a Renewable Net Metering Credit.

Option for Credit Cash-Out: This provision permits net metering customers to cash out a negative balance on a customer's bill that may exist when the annual cash value of Renewable and Excess Renewable Net Metering Credits are greater than the cash value of the charges to the same customer over the same year. The cash out option would be available only after annual reconciliation is completed, ensuring that the negative balance cashed out does not include over-compensation to the customer. This option would replace carrying over a balance on the customer's bill into the future.⁵⁴² Following the initial filing, the Company also proposed allowing customers to transfer these same types of negative balances to other customers.⁵⁴³ I agree with the majority that cashing out a negative bill balance is reasonable with the condition that the cash out amount is limited to the lower of the customer's balance shown after the annual reconciliation or the customer's balance on the date of the cash out. Cash outs should be permitted once per year, following the annual reconciliation, and the opportunity to cash out should also be available to single-meter net metering facilities 25 kW or less that are exempt from the reconciliation. In most cases, the cash out provision makes credit transfers unnecessary. The majority decision identifies several situations where transfers should be allowed.⁵⁴⁴

⁵⁴² *Id.* at 11.

⁵⁴³ Negative balances can occur on bills for a variety of reasons, but the proposal was limited to transferring only those negative balances caused by participation in Net Metering.

⁵⁴⁴ Majority Order at 121-22.

Distribution Customer Credit: The revenue the company collects from the annual reconciliation billing charges is returned to distribution customers through annual reconciliation of the Net Metering Charge.⁵⁴⁵ I find that this is an appropriate reconciliation mechanism.

Schedule B Modification: The Company proposed adding language to Schedule B requiring project developers to allocate shares of the facilities' output to remote accounts to achieve near 100% allocation to expected generation, with interconnection withheld until this requirement is met.⁵⁴⁶ I find that this is an ambiguous, yet consequential, threshold. Instead, the Company should allow for interconnection under tariffs and terms and conditions that apply to Qualifying Facilities until the project reaches the 100% threshold, at which point the Net Metering Tariff will apply.⁵⁴⁷

Billing Charges: The Company proposed adding a provision to the Net Metering Tariff stating that any billing charges from the annual reconciliation will be applied to the host net metering account. This makes sense for several reasons. First, it's impractical and unreasonable to charge off-taker accounts that lack both visibility into the host account's production and the ability to make changes to the host account's Schedule B, making it impossible for off-takers to anticipate and address consumption shortfalls to avoid billing charges.

Effective Date of Annual Reconciliation: The Company proposed commencing the first annual reconciliation covering the calendar years 2022 and 2023.⁵⁴⁸ While that proposal is consistent with the Commission's directive, I find that assessing billing charges to reconcile credits for periods preceding this decision is sufficiently impractical. Therefore, I agree to direct the Company to commence annual reconciliations beginning with production and consumption in 2024.

⁵⁴⁵ *Id.* at 12.

⁵⁴⁶ *Id.* at 14.

⁵⁴⁷ Majority Order at 118-19.

⁵⁴⁸ Pre-Filed Testimony of Salk and Briggs, at 15-16 (Exhibit RIE 1).

Additional Considerations

Gridwealth's expert witness argued that the Excess Renewable Net Metering Credit should be based on an annual average last resort service rate. The effect of this recommendation would be to compensate electricity generation at the same rate regardless of when it was generated. Despite extensive testimony and examination exploring Gridwealth's proposal and perspective, this argument was easily dismissed. The statutory language is clear and unequivocal, mandating that the Excess Renewable Net Metering Credit equals the electric distribution company's last resort service kilowatt-hour charge.⁵⁴⁹ This clear provision reflects the legislature's intent to match the Excess Renewable Net Metering Credit with the applicable price of electricity. The Company's method of determining the Excess Renewable Net Metering Credit fully complies with the Net Metering Statute, leaving no room for the Commission to deviate from the prescribed last resort service rate.

Revyty brought forth a legal issue regarding the interpretation of the statutory definition of Excess Renewable Net Metering Credits. This argument is similarly easily dismissed. Applying a logical reading of the Net Metering Statute leads to the conclusion that the General Assembly could not have intended different substantive meanings for the terms usage and consumption. The majority order contains a thorough description of the record and Commission's decision on this issue.⁵⁵⁰

⁵⁴⁹ R.I. Gen. Laws § 39-26.4-2(8).

⁵⁵⁰ Majority Order at 100-103.

Conclusion

In the broad spectrum of views and concerns presented during this proceeding, the Commission's main task was to ensure that the proposed tariff revisions align with the statute's clear definitions and directives. While the proceedings in this docket brought forth legitimate considerations regarding fairness to all ratepayers including net metering participants and non-participants, it is important to recognize that the statute offers explicit and detailed instructions for administering net metering. This concurrence aims to highlight that the key exercise of this proceeding was to evaluate the utility's mathematical and practical method for determining whether, and by how much, generation exceeds consumption at each net metering facility, and, following the results of that calculation, how to ensure that generation is credited in accordance with the statutory definitions and directives. By focusing on simplifying the application of the annual reconciliation, I believe the Commission's decisions will advance the fair, consistent, and transparent application of the Net Metering Statute and the Company's Net Metering Tariff.


Abigail Anthony, Commissioner