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August 10, 2022

VIA HAND DELIVERY AND ELECTRONIC MAIL

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

RE: Docket 22-14-REG
Ecogy Energy, Inc.'s Petition for Dispute Resolution
Rhode Island Energy's Response

Dear Ms. Massaro:

Enclosed please find The Narragansett Electric Company d/b/a Rhode Island Energy's response to Ecogy Energy, Inc.'s Petition for Dispute Resolution filed in the above referenced docket.

Thank you for your attention to this matter. If you have any questions, please call me at 401-709-3359.

Very truly yours,

Steven J. Boyajian

cc: Docket 22-14-REG Service List

Ecogy Energy LLC- Petition for Dispute Resolution – Docket No. 22-14-REG
Service List Updated 8/1/2022

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STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

In Re: ECOGY ENERGY, INC.	:	Docket No. 22-14-REG

Response of The Narragansett Electric Company d/b/a Rhode Island Energy to Petition for Dispute Resolution

The Narragansett Electric Company d/b/a Rhode Island Energy ("Rhode Island Energy" or the "Company") hereby responds to the Petition for Dispute Resolution filed by Ecogy Energy, Inc. ("Ecogy") with the Rhode Island Public Utilities Commission ("PUC" or the "Commission") on July 15, 2022, in the above reference docket. The dispute stems from the Company's decision to deny the issuance of new Certificates of Eligibility ("COEs") to five of Ecogy's medium-scale solar projects and one small-scale wind project (collectively, the "Ecogy RI Projects") as part of the 2022 First Open Enrollment for the Rhode Island Renewable Energy Growth Program ("RE Growth Program" or the "Program"). The Company respectfully requests that the Commission (1) find that Rhode Island Energy was not required to issue COEs to the Ecogy RI Projects and (2) dismiss Ecogy's Petition.

I. INTRODUCTION

On June 27, 2022, the Company notified Ecogy of its decision to deny the issuance of new COEs for the six Ecogy RI Projects[1] as part of the 2022 First Open Enrollment for the RE Growth Program. The Company denied the issuance of COEs because the Ecogy RI Projects that participated in the 2022 First Open Enrollment were the identical Ecogy projects that already have pending obligations stemming from COEs that were awarded through the 2020 - 2021

[1] Each project was proposed by a separate Ecogy affiliated project company: Ecogy Energy RI I LLC; Ecogy Energy RI V LLC; Ecogy Energy RI VII LLC; Ecogy Energy RI XIV LLC; Ecogy Energy RI XX LLC; and Ecogy Energy RI XXIII LLC.

Program Year Open Enrollments. Each project already has an existing COE awarded per the Renewable Energy Growth Program Tariff for Non-Residential Customers (the "Tariff"). For all but one[2] of the Ecogy RI Projects, a COE had been issued on June 24, 2021, with an Output Certification Deadline of June 24, 2023.

In response to the denial of Ecogy's request for new COEs, on June 30, 2022, Ecogy sent the Company a Pre-Petition Demand Letter ("Demand Letter") in which it maintained that past Company practices required the Company to consider, and issue a COE for, each of the Ecogy RI Projects in the 2022 First Open Enrollment. In its Demand Letter, Ecogy also raised an array of issues that it maintained required the Company to issue a new COE for the Ecogy RI Projects, including that the "outdated COE is no longer viable in current market conditions" and that it "acted in reliance" on certain written confirmation of Company policy and procedures regarding issuance of COEs.

On July 7, 2022, the Company responded to Ecogy's Demand Letter by notifying Ecogy that it needed to terminate its existing COEs prior to bidding the same projects in future open enrollments and that, pursuant to the applicable Company Tariff, Ecogy needed the Company's permission to terminate its existing obligations. On July 15, 2022, Ecogy filed a Petition for Dispute Resolution ("Petition") with this Commission.

II. LEGAL STANDARD

The Tariff and Solicitation and Enrollment Process Rules ("Enrollment Rules") govern how the Company operates the RE Growth Program. Pursuant to the Tariff, the "[a]pplicant and the Customer may not terminate their obligations under [the] Tariff unless and until the

[2] Ecogy Energy RI VII LLC's Certificate of Eligibility was issued on October 7, 2020, and has an Output Certification Deadline of April 7, 2023.

Company consents to such termination." [3] If an Applicant (as defined in the Tariff) wishes to terminate its existing COE, it can submit a request to terminate to the Company. The Tariff further provides that:

> The Company will not unreasonably delay or withhold its consent to an Applicant's request to terminate if the Applicant cannot fulfill the obligations because of an event or circumstance that is beyond the Applicant's reasonable control and for which the Applicant could not prevent or provide against by using commercially reasonable efforts. Id.

Section 10 of the Tariff also provides a process for dispute resolution. Specifically, the Tariff provides:

> If any dispute arises between the Company and either the Applicant or the Customer, the dispute shall be brought before the Commission for resolution. Such disputes may include but are not limited to those concerning the Rules, terms, conditions, rights, responsibilities, the termination of the Tariff or Tariff supplement, or the performance of the Applicant, the Customer, or the Company.

III. ARGUMENTS

Invoking the dispute resolution provision of the Tariff, Ecogy filed the instant Petition. In its Petition, Ecogy maintains that because the Ecogy RI Projects meet the eligibility criteria set out in the Enrollment Rules, the Company is required to consider the Projects anew during the open enrollment and should grant the COEs with the condition that the prior COEs be terminated prior to acceptance as the Company had done previously.[4] Ecogy maintains that the requirement to terminate existing COEs before applying in a new enrollment round is an entirely new requirement and not found in the Enrollment Rules.[5] Ecogy also maintains that the Ecogy RI Projects will not meet the Output Certification Deadline of 2023 as is required by the existing

[3] Renewable Energy Growth Program Tariff for Non-Residential Customers, §11.
[4] Petition, at 9.
[5] Petition, at 8.

timeline and that the projects are no longer financially viable under the existing COEs.[6] On that basis, Ecogy seeks new COEs through the 2022 Open Enrollment despite already having still active COEs from the 2020 - 2021 Open Enrollment.

Ecogy's contentions remain unsubstantiated at this time, and the Company does not concede them. The fact is that Ecogy's *post hoc* rationalizations for why it should have been awarded new COEs through the 2022 First Open Enrollment do not comport with its prior position that it should have been awarded new COEs for the Ecogy RI Projects to "capitalize on…increased ceiling prices."[7] Ecogy only took the position that the Ecogy RI Projects were unviable, and unable to be completed within existing deadlines, after its apparent intention to "capitalize" on an increase in customer funded incentives was communicated to the Company.[8]

A. The relief sought by Ecogy is inconsistent with the purposes of the RE Growth Program and the interests of those customers who fund it.

Ecogy has failed to provide the Commission with the critical context that: (1) justifies the Company's denial of new COEs for the Ecogy RI Projects; and (2) explains why Ecogy thus far has refused to terminate existing COEs for projects that it maintains are no longer viable.

At an Open Meeting on March 29, 2022, the Commission approved an increase to the ceiling price for Non-Residential medium-scale projects from 21.65 cents per kWh to 24.45 cents per kWh.[9] This marked the first substantial ceiling price increase in the history of the RE Growth Program. This unprecedented increase in ceiling price also led to an unprecedented opportunity for solar developers whose projects already had unperformed obligations arising

[6] Petition, at 5-6.
[7] *See* Ex. A, E-mail from B. Friese dated June 27, 2022.
[8] *Id.*
[9] The Company's Renewable Energy Growth Program Tariff for Non-Residential Customers contains the ceiling prices and is available at the following link: https://www.rienergy.com/media/pdfs/billing-payments/tariffs/ri/regrowthnon-residentialtariff.pdf.

under existing COEs issued in prior Program years. Specifically, developers now had an opportunity to abandon existing projects and seek new COEs for those very same projects, which would afford higher returns through higher ceiling prices. In other words, rather than fostering renewable energy growth by incentivizing new projects, higher ceiling prices would actually serve to delay feasible projects with existing COEs as developers hoped to cash in on higher ceiling prices afforded to new projects by seeking new COEs with later output certification deadlines. Additionally, these still viable but now delayed projects could erode the Program funds that are intended to incentivize additional renewable energy growth—not to offer higher returns to developers of still viable projects that remained eligible for incentives under existing COEs (albeit somewhat smaller incentives).

The change in the ceiling prices to incentivize additional renewable energy growth required the Company to evaluate closely all bids in the 2022 First Open Enrollment that had unterminated COEs from prior years. A developer's unwillingness to terminate existing COEs seemed to provide ample basis for questioning any claims that its projects are not viable since there could be no rational justification for seeking to retain a COE for an unviable project. Critically, Ecogy never made such a claim until it had already communicated that its hope was to "capitalize" on the increased ceiling prices.[10] On the other hand, a developer's willingness to terminate an existing COE, either by right or with the Company's consent as permitted under the Tariff, would be a strong indication that a project actually was unviable such that the higher ceiling prices available in the 2022 First Open Enrollment actually could serve the intended purpose of fostering renewable energy growth.

[10] *See* Ex. A.

If, as Ecogy maintains in its Petition, the Ecogy RI Projects are not economically viable under the terms of the existing COEs[11], then presumably Ecogy has no reason to seek to maintain its existing COEs for those projects. Ecogy's insistence on being awarded new COEs, with higher ceiling prices, while keeping its existing COEs to hedge its bets runs counter to the very purpose of the Program and the recent increase in ceiling prices approved by the Commission, i.e., the incentivization of growth and not the delay of existing projects for the purpose of "capitalizing" on additional incentives.

The Company is sensitive to the concerns raised by Ecogy in both its Demand Letter and again in its Petition to this Commission regarding the impacts that the COVID-19 pandemic has had on solar and wind development.[12] The Company, however, is tasked with administering the Program to ensure that the growth of solar development is accomplished in a manner consistent with the Program's objectives and the best interests of customers who bear the incremental costs associated with the RE Growth Program. The practical implications of ruling in Ecogy's favor would be to compel issuance of new COEs, with delayed Output Certification Deadlines, for still viable projects already slated to receive incentives only so the developers could maximize returns through increased ceiling prices. The Company submits that this outcome is inconsistent with the policies that underlie the Program generally, and the apparent purpose of raising ceiling prices—to incentivize new projects or existing projects that are no longer viable.

B. Ecogy's reliance arguments are without merit.

Ecogy's Petition hinges on its argument that the Company is required to continue a prior practice of offering new COEs and informing applicants that they needed to terminate the

[11] Petition at 5-6.
[12] Presumably some of the impacts of the COVID pandemic on development and cost of supply were already factored into Ecogy's bidding price since the Ecogy RI Projects participated in the Open Enrollments during the 2021 Program Year.

existing COE prior to accepting a new COE offer.[13] While Ecogy provides no legal basis for this argument, it can only be characterized as a claim of estoppel. Ecogy's estoppel arguments fail because it has not claimed (1) to have relied upon the Company's prior practice, or (2) that it was harmed by any such reliance. A party claiming equitable estoppel must establish:

> First, an affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, that such representation or conduct in fact did induce the other to act or fail to act to his injury.[14]

Even if, *arguendo*, Ecogy could establish the necessary reliance because of the Company's 2021 communications that allowed developers to terminate existing COEs *after* being offered new COEs (which the Company maintains it cannot), Ecogy cannot establish that this reliance has caused any injury.[15] Ecogy can still terminate its existing COEs and, after doing so, Ecogy may still bid the Ecogy RI Projects in the next Open Enrollment as the Company invited it to do. Rather than pursuing these available avenues, Ecogy claims that it should be permitted to keep alive existing COEs, for projects it claims are not viable, simply to seek enhancement of the incentives that are intended to promote *new* renewable energy projects (not to offer higher returns on old ones).

IV. RESPONSE TO ALLEGATIONS OF PETITION

With respect to the numbered allegations contained in the Petition, the Company responds as follows:

---

[13] Petition at 9.
[14] *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1233 (R.I. 2000).
[15] *See Richardson*, 746 A.2d at 1233.

1. The Company admits Ecogy is a solar developer that operates in Rhode Island. The Company lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 1 and leaves Ecogy to its proof of its allegations.

2. The Narragansett Electric Company d/b/a Rhode Island Energy is a gas and electric distribution company in Rhode Island. Rhode Island Energy's parent company, PPL Rhode Island Holdings, LLC, acquired 100 percent of the outstanding shares of common stock of The Narragansett Electric Company from National Grid USA on May 25, 2022. The Company denies any remaining allegations contained in paragraph 2 of the Petition.

3. Paragraph 3 sets forth a legal conclusion that does not require a response. The Company does not dispute that the Commission has jurisdiction over this proceeding.

4. The Company admits that paragraph 3 of the Petition accurately quotes R.I. Gen. Laws § 39-26.6-1 and that the provisions of that statute speak for themselves. The Company denies any remaining allegations contained in paragraph 4 of the Petition.

5. In response to the allegations contained in paragraph 5 of the Petition, the Company states that the policy objectives of the Program are intended to be effectuated through implementation of the statutes establishing and governing the Program and the rules and tariffs promulgated in accordance with such statutes.

6. The Company admits that Ecogy has accurately quoted R.I. Gen. Laws § 39-26.6-5(a) in the Petition and that the provisions of that statute speak for themselves. The Company denies any remaining allegations contained in paragraph 6 of the Petition.

7. The Company lacks sufficient knowledge to admit or deny what the General Assembly recognized in the development of the Program and that the General Assembly's goals and intentions are embodied in the statutes establishing and governing the Program. The

Company admits paragraph 7 of the Petition accurately quotes R.I. Gen. Laws § 39-26.6-6 and that the provisions of that statute speak for themselves. The Company denies any remaining allegations contained in paragraph 7 of the Petition.

8. The Company admits that the open enrollment program for Program applications are governed by the statutes cited in paragraph 8 of the Petition and that the statutes speak for themselves. The Company denies any remaining allegations of fact or characterizations of the cited statutes contained in paragraph 8 of the Petition.

9. The statutes cited in support of the allegations contained in paragraph 9 of the Petition speak for themselves. The Company denies any remaining factual allegations or characterizations of law contained in paragraph 9 of the Petition.

10. In response to the allegations in paragraph 10 of the Petition, the Company states that the cited Tariff provisions speak for themselves.

11. The Company lacks sufficient knowledge to admit or deny the allegations contained in paragraph 11 of the Petition concerning Ecogy's focus and beliefs and leaves Ecogy to its proof thereof.

12. The Company admits the that Ecogy RI Projects are described accurately in paragraph 12 of the Petition. The Company lacks sufficient knowledge to admit or deny any remaining allegations contained in paragraph 12 of the Petition and leaves Ecogy to its proof thereof.

13. The Company admits the allegations in paragraph 13 of the Petition.

14. The Company lacks sufficient knowledge to admit or deny the facts contained in paragraph 14 of the Petition and, by way of further response, states that Ecogy's professed

purpose for seeking new COEs for the Ecogy RI Projects was to "capitalize" on increased ceiling prices—not to make unviable projects viable again. *See* Ex. A.

15. The Company admits that in 2021 it offered potential COEs to projects with the condition that the projects relinquish existing COEs but the Company notes that the circumstances surrounding these projects were materially different. The Company lacks sufficient knowledge to admit or deny the remaining allegations contained in paragraph 15 of the Petition, including whether it was Ecogy's "intention" of "relinquishing any rights to the existing COEs" for the subject projects if it was awarded new COEs.

16. The Company denies that this was contrary to past practices as the circumstances surrounding its issuance of COEs in the past were materially different. The Company admits that it notified Ecogy that is was not eligible to participate in the 2022 First Open Enrollment because the Ecogy RI Projects had been awarded COEs in a prior enrollment round. The Company admits that Exhibit B to the Petition is a true and accurate copy of correspondence from the Company to Ecogy and that the correspondence speaks for itself. The Company lacks sufficient knowledge to admit or deny any remaining allegations contained in paragraph 16 of the Petition and leaves Ecogy to its proof thereof.

17. The Company admits that is received a Demand Letter from Ecogy on June 30, 2022, and that a true and accurate copy of the letter is attached to the Petition as Exhibit C. The Company states that the correspondence speaks for itself and denies and remaining allegations contained in paragraph 17 of the Petition.

18. The Company admits that it responded to Ecogy's Demand Letter and a true and accurate copy of that response, which speaks for itself, is attached to the Petition as Exhibit D. The Company denies any remaining allegations contained in paragraph 18 of the Petition.

V. CONCLUSION

The Company submits that the Program's ceiling prices were not raised to provide developers the option of seeking enhanced incentives for viable projects with existing COEs. Accordingly, the Company requests that the Commission deny Ecogy's Petition and affirm that the Company has discretion consistent with applicable statues, tariffs, and rules, to grant or deny COEs for projects that already have outstanding obligations under existing COEs when reviewing its bids during open enrollment for the RE Growth Program in light of the facts and circumstances attendant to those bids.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC COMPANY d/b/a
RHODE ISLAND ENERGY
By its attorneys,

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August 10, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2022, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the Service List for Docket No. 22-14-REG.

EXHIBIT A

From:	Brittany Friese <brittany@ecogyenergy.com>
Sent:	Monday, June 27, 2022 7:37 PM
To:	Renewable Contracts; Kender, Thomas
Cc:	projectmanagement@ecogyenergy.com; Mattiello, Joseph (RI Energy); Marcello, Felicia (RI Energy); Kate Nota
Subject:	[EXTERNAL] Re: Rhode Island Renewable Energy Growth Program - Application Submission (Ecogy Energy RI XX LLC)
Attachments:	Ecogy Solar Mail - RE_ EXT __ Re_ Rhode...gibility Offer_ Ecogy Energy RI IX LLC.pdf

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe. If you suspect this email is malicious, please use the 'Report Phish' button.

Good afternoon,

I'm following up on this morning's email in hopes of receiving more information around the decision to not award a new COE for this project, in addition to a suite of Ecogy's other projects.

During previous enrollments, Ecogy has been able to terminate the existing COE prior to accepting the newly awarded COE. Please see the PDF attached below serving as proof during the previous Open Enrollment. Has there been a change to the Tariff or Solicitation Rules that I was unaware of?

One of the reasons the RE Growth program justifiably increased ceiling prices was because of the blanket cost increases faced by developers in the renewable energy space. A competitive bid should be able to capitalize on these increased ceiling prices. If our bid was not competitive enough, please let me know. Otherwise, I would appreciate your direction towards the specific Tariff language that prohibits this scenario.

Thank you,
Brittany Friese
Senior Project Manager
Ecogy Energy
www.ecogyenergy.com
Brooklyn, NY
Cell: 646-983-2867 *new phone number
Office: 718-304-0945

On Mon, Jun 27, 2022 at 10:04 AM Brittany Friese <brittany@ecogyenergy.com> wrote:

> Hi Tom,
>
> During previous enrollments, we were able to terminate our existing COE prior to accepting the newly awarded COE. Is this no longer possible?
>
> Best,
>
> **Brittany Friese**
> Senior Project Manager

Ecogy Energy
www.ecogyenergy.com
Brooklyn, NY
Cell: 646-983-2867 *new phone number
Office: 718-304-0945

On Mon, Jun 27, 2022 at 9:56 AM Renewable Contracts <RenewableContracts@nationalgrid.com> wrote:

Hello Julia and Brittany,

Your application for **Ecogy Energy RI XXV LLC** has not been awarded a Certificate of Eligibility in the Rhode Island Renewable Energy Growth Program 2022 First Open Enrollment, due to the projects existing Certificate of Eligibility awarded per the Renewable Energy Growth Program Tariff for Non-Residential Customers, RIPUC No. 2152-H. Currently, the **Ecogy Energy RI XX LLC project** has an awarded Certificate of Eligibility from the Rhode Island Renewable Energy Growth Program 2021 First Open Enrollment, with a Certificate Issue Date of 6/24/2021 and an Output Certification Deadline of 6/24/2023.

Regards,

Tom

Tom Kender

Lead Renewable Energy Trader

Energy Procurement – Long Term Clean Energy Supply

national**grid**
Cell: (516) 329-2431

Thomas.Kender@nationalgrid.com

Long Term Clean Energy Supply

RenewableContracts@nationalgrid.com

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