STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: 2023 RENEWABLE ENERGY GROWTH – CLASSES, CEILING PRICES, AND CAPACITY TARGETS AND 2023 RENEWABLE ENERGY GROWTH PROGRAM – TARIFFS AND SOLICITATION AND ENROLLMENT PROCESS RULES	:	**DOCKET NO. 22-39-REG**

REPORT AND ORDER

I. Overview

In 2014, to facilitate and promote grid-connected generation of renewable energy within The Narragansett Electric Company d/b/a National Grid's (National Grid or Company) load zone (generally Rhode Island), the Rhode Island General Assembly enacted the Renewable Energy Growth Program (Program).[1] Under the Program, each year the Public Utilities Commission (Commission) is required to approve: (1) the classes of renewable energy projects that can participate in the Program; (2) the target amount of capacity that National Grid may enroll in each class; and (3) the ceiling prices the projects may seek from what is generally known as a "feed-in tariff."[2] The Commission is also required to approve annual Tariffs, Solicitation, and Enrollment Rules filed by National Grid.

On November 17, 2022, the Distributed Generation Board (DG Board) filed with the Commission a Report and Recommendations Relating to the 2023 Renewable Energy Growth Classes, Ceiling Prices, and Capacity Targets (2023 Report).[3] On November 15, 2022, Rhode

[1] R.I. Gen. Laws § 39-26.6-1 to 27. Unless otherwise noted, all filings in this matter can be accessed at https://ripuc.ri.gov/Docket-22-39-REG or at the Commission's office at 89 Jefferson Blvd., Warwick, RI 02888.
[2] The Distributed Generation Board and Office of Energy Resources (OER) recommend classes, targets, and ceiling prices to the Commission. Projects in the small classes are paid at the ceiling prices. All other classes must bid into the program up to the ceiling price. An explanation of a feed-in tariff can be found on the U.S. Energy Information Administration's website at: https://www.eia.gov/todayinenergy/detail.php?id=11471 (last visited February 16, 2023).
[3] Report and Recommendations Relating to the 2023 Renewable Energy Growth Classes, Ceiling Prices, and Capacity Targets (Nov. 16, 2022).

Island Energy (RI Energy) filed with the Commission its proposed 2023 Renewable Energy Growth Program Tariffs, Solicitation, and Enrollment Process Rules.[4]

Following a full review of the filings made by the DG Board,[5] RI Energy, and the Division, at an Open Meeting held on March 13, 2023, after an exchange of discovery and evidentiary hearing, the Commission approved all proposed classes, targets, and ceiling prices that include the incorporation of post-tariff revenue, as recommended by DG Board. The Commission also directed SEA to include consideration of recent law changes to the treatment of bonus depreciation in the 2024 Renewable Energy Program ceiling price setting.

The Commission approved RI Energy's tariffs and enrollment rules with modifications made to the reallocation of unenrolled capacity to the small solar classes, limiting it to the period following the last open enrollment period. The Commission also directed RI Energy to incorporate language to reflect new information that will be required of applicants. The modifications to the tariffs and enrollment rules were filed on March 20, 2023.

II. Classes, Ceiling Prices, and Capacity Targets

A. Classes

The DG Board proposed thirteen renewable energy classes, including different sized solar, wind, anaerobic digestion, hydropower, and community remote distributed generation. Except for the Small Solar I category, the tariff length for each technology and type was twenty years. As in prior years, Small Solar I had a tariff length of fifteen years.[6] No party objected to the proposed classes which are the same as those approved in the 2022 Program Year. The Commission found that the classes are consistent with the law.

[4] Renewable Energy Growth Program Tariffs, Solicitation, and Enrollment Process Rules.
[5] On February 2, 2023, the DG Board filed Rebuttal Testimony in response to the Division's testimony on the treatment of bonus depreciation.
[6] DG Board Recommendation at 5.

B. Ceiling Prices

The DG Board sets a proposed ceiling price for each Program Year through a facilitated stakeholder process. The DG Board and OER contract with a consultant, Sustainable Energy Advantage, LLC (SEA). SEA utilizes the CREST model, a publicly available discounted cash flow analysis tool. According to witnesses Jim Kennerly and Tobin Armstrong of SEA, the CREST model "is designed to calculate the cost of energy, or minimum revenue per unit of production, necessary for the modeled project to cover its expenses, service its debt obligations (if any), and meet its equity investors assumed minimum required after-tax rate of return."[7] The Commission has previously accepted the CREST model and its results for setting ceiling prices in the Renewable Energy Growth Program tariffs. Projects enrolled in the Small Solar classes receive the ceiling price while projects in all other classes are enrolled through a competitive bid solicitation.

New for Program Year 2023, SEA had included assumptions about the impact of a law change requiring new labor standards applicable to projects sized 3 MW and above. The new labor standards, including the payment of prevailing wage, were incorporated into all ceiling price calculations in the 1 to 5 MW category.[8] The assumptions were based on developer projections of the increased costs. However, SEA did not have a clearly established baseline against which to assess the claimed incremental impact.[9] Also, this year, SEA highlighted drivers of upward pressure on the recommended ceiling prices based on a term sheet provided by one debt financier for REG-eligible projects in Rhode Island.[10]

---

[7] Joint Test. at 22.
[8] DG Board Recommendations, Kennerly and Tobin Test. (Joint SEA Test.) at 24-25.
[9] OER Responses to PUC 1-1.
[10] Joint SEA Test. at 28-29; OER Responses to PUC 1-2 and PUC 1-3.

In Program Year 2022, the Division's witness had raised concerns that the ceiling prices did not appropriately capture revenue a customer could realize following the term of the tariff. After hearing the issue in 2022, the Commission found that there was insufficient information in the record to support any adjustment to the proposed ceiling prices but directed SEA to further review this issue when setting of the proposed 2023 ceiling prices. Accordingly, as part of the ceiling price setting process for Program Year 2023, SEA considered changes for calculating forecasted post-tariff revenue, or revenue available to REGrowth participants following the expiration of the tariff term.

SEA explained that prior to Program Year 2022, SEA only projected this revenue based on forecasted wholesale revenue and if that revenue would be insufficient to cover a project's operating expenses, there would be no post-tariff revenue included. In response to the Division's position in 2022, pointing out that R.I. Gen. Laws § 39-26.6-23 entitles REGrowth projects to net metering following the tariff term, SEA incorporated a discounted post-tariff revenue stream based on a forecast of applicable net metering credits.[11] SEA related that a developer had objected to the assumption that there would be post-tariff revenue available. The developer argued that customers would need to reconfigure their systems from two meters to one. Such a requirement would inject too much economic uncertainty into the setting of the ceiling prices. SEA advised that this was an issue for the Commission to rule on.[12] Therefore, SEA proposed two sets of ceiling prices, one that included post-tariff revenue assuming no reconfiguration necessary for net metering and the other excluding post-tariff revenue.[13]

[11] Joint SEA Test. at 38-39.
[12] *Id*. at 39-40.
[13] *Id*. The CRDG class receives an automatic statutory adder of up to 15% above the non-CRDG equivalent class. As in prior years, the DG Board recommended allowing the full 15%.

In his testimony, the Division's witness, Michael Brennan indicated that the Division supported the proposed ceiling prices that included the assumption of post-tariff revenue.[14] He noted that SEA had incorporated many of the Division's recommendations during the public engagement process, including an adjustment related to the taxability of small solar projects, another issue raised in Program Year 2022.

While the Division supported the proposed ceiling prices that included post-tariff revenue, Mr. Brennan nonetheless suggested that they should be further modified to include bonus depreciation for all classes. He reasoned that because the federal Inflation Reduction Act that was passed in August 2022 allowed tax credits to be transferred between unrelated parties, the ceiling prices should reflect that benefit. However, at the hearing, he conceded that he had not run alternative ceiling price calculations for consideration by the Commission.[15] In addition, the joint SEA witnesses explained that the IRS had not yet issued guidance about the rules pertaining to the bonus depreciation transferability. This, according to the joint SEA witnesses, made it difficult to perform updated calculations with certainty. They agreed to review this issue in the setting of the 2024 Program Year ceiling prices.[16]

The Commission approved the ceiling prices that include post-tariff revenue, as recommended by DG Board. The Commission also directed SEA to include consideration of recent law changes to the treatment of bonus depreciation in the 2024 Renewable Energy Program ceiling price setting. Furthermore, in setting the Program Year 2023 ceiling prices, where SEA relies on information from a single developer, it would be helpful if SEA provides additional explanation in the testimony about how SEA verified the reasonableness of reliance on that

[14] Brennan Test. at 15, 18.
[15] *Id*. at 9-10; Hr'g. Tr. at 210-11 (Feb. 8, 2023).
[16] Joint Reb. Test. at 3-4.

information for setting an entire class's ceiling price. Also, with respect to the impact of the labor standards law, it would be helpful for SEA to provide information about the actual impact on ceiling prices, particularly where, without a pre-statutory change baseline, the record does not indicate whether REGrowth project developers were paying prevailing wages and otherwise complying with the labor standards prior to passage of the law.

C. Targets and Allocations

In accordance with R.I. Gen. Laws § 39-26.6-4(a)(1), the DG Board made recommendations to the Commission regarding annual solicitation targets for each of the proposed renewable energy classes. The Program has an annual target of 40 MW with an overall goal of 400 MW through the end of the Program in 2029.[17] The DG Board proposed a total target of 66.615 MW to include terminated projects that had been awarded capacity from the 2017-2022 program years that were made available since the capacity was set for the 2022 program year.[18,19] Small Solar categories are enrolled on a continuous open enrollment through a first come, first serve basis. The remaining classes are enrolled through a competitive bid process that occurs three times during the program year.[20]

[17] DG Board Recommendations at 14-15. This proposed allocation requires an interpretation of § 39-26.6-12(c)(5) which provides that from the year 2020 through the year 2029, the annual target for each program year will be an additional 40 MW (nameplate) above the preceding Program year's annual target. The most reasonable interpretation is to read the first use of "annual target" as 40 MW over the prior year's cumulative target and to read the second use of "annual target" to mean the amount necessary in that program year to reach the prior year's cumulative target plus 40 MW. The language in subsections (c)(1)-(4) provides that in each of the first four years, there is a fixed target of 40 MW. Then in year five (2019), there was a total target designed to achieve 160 MW. The statutory language changes for the years 2020-2029 to provide for an "additional 40 MW above the annual target for the preceding program year" instead of a fixed number. The 2019 annual target was set at 55.330 MW. The stated goal of the proponents of the amended language in 2017 was to expand the Renewable Energy Growth Program by 400 MW. Therefore, the use of 40 MW over the prior year was intended to refer to the prior year's cumulative program target. Thus, 2019 was 160 MW, 2020 would be 200 MW, 2021 would be 240 MW, etc. The annual program year target enrollment for each year 2020 through 2029 would be 40 MW plus carryover from the prior program years.

[18] *Id*.

[19] *Id*. at 16.

[20] *Id*. at 17.

For the 2023 Program Year, the DG Board recommended an identical allocation to each class as in the 2021 Program Year except for Small Solar which was allocated a total of 9.0 MW, a 29% increase from what was approved in 2022, and Large Solar which was proposed to be 14% higher with a 27.615 MW allocation. No party objected to the allocations.

After a review of the targets and allocations, the Commission unanimously approved the proposed targets and allocations.[21]

D. Tariffs, Solicitation, and Enrollment Process Rules

1. Approval of the Tariffs, Solicitation, and Enrollment Process Rules

The Tariffs, Solicitation, and Enrollment Process Rules filed by RI Energy on November 15, 2022, (1) provide a multi-year stream of performance-based incentives to eligible renewable distributed generation projects for a term of years; (2) set forth the rights and obligations of the owner of the distributed generation project and the conditions upon which payment of performance-based incentives will be paid; and (3) contain reasonable non-price conditions. The Solicitation and Enrollment Rules include how the solicitations take place, they include the ceiling prices and term lengths for each tariff, and they include the statutory prohibitions on project segmentation.[22]

RI Energy's filing of the Tariffs and Enrollment Rules included its name change and the alternative ceiling prices.[23] The Commission approved the name change amendments and required a compliance filing to only list the ceiling prices that included post-tariff revenue, subject to two additional modifications. First, RI Energy had proposed to reallocate excess capacity to the Small Solar category, a new change for those Enrollment Rules. The Division objected to this change

[21] The approved classes, targets, and ceiling prices are attached to this order as Appendix A.
[22] *See* R.I. Gen. Laws § 39-26.6-5, setting forth requirements of the Solicitation and Enrollment Rules.
[23] Tariffs and Enrollment Rules (Nov. 15, 2023).

because of the cost differential between the larger and smaller classes.[24] After reviewing testimony from previous REGrowth dockets about prior practice together with responses to record requests showing that Small Solar had only received additional capacity after the close of the final enrollment for the competitive classes,[25] at an Open Meeting held on March 13, 2023, the Commission ordered this condition to be included in the Enrollment Rules.

Second, the joint SEA witnesses explained that they were seeking additional information from applicants about which tax credit bonuses they plan to qualify for. This information would be useful to the development of future ceiling price calculations.[26] RI Energy had not included any additional language in the proposed Enrollment Rules. Following discovery and the hearing, in response to a record request RI Energy suggested new language to clarify an applicant's responsibility to provide such information. The Commission ordered additional clarification at its Open Meeting on March 13, 2023.

On March 20, 2023, RI Energy submitted compliance filings amending the Tariffs and Enrollment Rules to reflect the Commission's March 13, 2023 Open Meeting decisions.

Accordingly, it is hereby

(24660) ORDERED:

1. The 2023 Renewable Energy Growth Program Classes and Ceiling Prices filed by the Distributed Generation Board on November 17, 2022, that include post-tariff revenue, are hereby approved.

---

[24] Brennan Test. at 17-18.

[25] RI Energy Response to RR-2; Previously, the DG Board has explained that as the year progresses, some classes may be under-enrolled while others reach their cap. Following the results of the third enrollment, the DG Board has reallocated capacity where there is a higher demand. Order 24319 at 9 (Feb. 2, 2022).

[26] Joint SEA Test. at 28.

2. The 2023 Renewable Energy Growth Program Targets filed on November 17, 2022, are hereby approved.
3. The Narragansett Electric Company d/b/a National Grid's Renewable Energy Growth Program Tariff for Residential Customers, filed on March 20, 2023, reflecting the March 13, 2023 Open Meeting decision, is hereby approved for effect April 1, 2023.
4. The Narragansett Electric Company d/b/a National Grid's Renewable Energy Growth Program Tariff for Non-Residential Customers, filed on March 20, 2023, reflecting the March 13, 2023 Open Meeting decision, is hereby approved for effect April 1, 2023.
5. The Narragansett Electric Company d/b/a National Grid's Renewable Energy Growth Enrollment Rules for Residential Customers, filed on March 20, 2023, reflecting the March 13, 2023 Open Meeting decision, is hereby approved for effect April 1, 2023.
6. The Narragansett Electric Company d/b/a National Grid's Renewable Energy Growth Enrollment Rules for Non-Residential Customers, filed on March 20, 2023, reflecting the March 13, 2023 Open Meeting decision, is hereby approved for effect April 1, 2023.
7. The parties shall comply with all other orders and directives of the Public Utilities Commission as set forth in this order.

EFFECTIVE AT WARWICK, RHODE ISLAND ON APRIL 1, 2023, PURSUANT TO AN OPEN MEETING DECISION ON MARCH 13, 2023. WRITTEN ORDER ISSUED MAY 16, 2023.

PUBLIC UTILITIES COMMISSION

Ronald T. Gerwatowski

Ronald T. Gerwatowski, Chairman

Abigail Anthony

Abigail Anthony, Commissioner

John C. Revens, Jr.

John C. Revens, Jr., Commissioner

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