

August 18, 2023

**VIA HAND DELIVERY & ELECTRONIC MAIL**

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

**Re: Docket No. 23-24-REG – Legal Memorandum on Recovery of Remuneration**

Dear Ms. Massaro:

On behalf of Rhode Island Energy,<sup>1</sup> and as requested by the Public Utilities Commission, I have enclosed a legal memorandum that addresses the Company's right to remuneration as part of the Renewable Energy Growth Reconciliation Factor proposed in the above-referenced docket.

Thank you for your attention to this matter. If you have any questions, please contact me at (401) 709-3337.

Sincerely,



Leticia C. Pimentel

Enclosure

cc: Docket No. 23-24-REG Service List  
Leo Wold, Esq.  
Al Mancini  
John Bell

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<sup>1</sup> The Narragansett Electric Company d/b/a Rhode Island Energy ("Rhode Island Energy" or "the Company").

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate were electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.



Elaina M. Weir

August 18, 2023

Date

**Docket 23-24-REG The Narragansett Electric Co. d/b/a Rhode Island Energy  
RE Growth Factor Filing (Program Year 2023)  
Service List updated 07/10/2023**

<b>Parties' Name/Address</b>	<b>E-mail</b>	<b>Phone</b>
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*the factor.* <http://webserver.rilin.state.ri.us/PublicLaws/law23/law23301.htm>

(Emphasis added). For the reasons described in greater detail below, Pub. L. c. 301 does not impact the Company’s legal right to remuneration for the 2022 Program Year because the Company earned the remuneration from April 1, 2022, through March 31, 2023—prior to the enactment and effectiveness of the new law.

## **II. BACKGROUND**

The reconciliation component of the RE Growth Factor Filing includes:

(1) a “true-up” between actual revenue billed through the prior RE Growth Program Factors for the period June 2022 through September 2022, and revenue that was estimated for the same period in the previous RE Growth Reconciliation filing, Docket No. 22-04-REG; (2) actual revenue billed for the period October 2022 through May 2023; (3) estimated revenue for the period June 2023 through September 2023; and (4) actual costs incurred to administer the RE Growth Program during the 2022 Program Year.<sup>1</sup>

Prior to the recent amendment to R.I. Gen. Laws § 39-26.6-12, the remuneration and incentives framework for the Long-Term Contracting Standard for Renewable Energy<sup>2</sup> applied to the RE Growth Program subject to three conditions. These conditions included that the remuneration payable to the Company would be “one and three quarters percent (1.75%) of the annual value of performance-based incentives.” R.I. Gen. Laws § 39-26.6-12(j)(3) (repealed by Pub. L. c. 301). As part of the Company’s actual costs incurred to administer the RE Growth

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<sup>1</sup> Joint Pre-filed Direct Testimony of Peter R. Blazunas and Jeffrey D. Oliveira, at 7.

<sup>2</sup> Chapter 26.1 of Title 39 provides the legal framework for the Long-Term Contracting for Renewable Energy Program. Section 39-26.1-4 provides: “In order to achieve the purposes of this chapter, electric distribution companies shall be entitled to financial remuneration and incentives for long-term contracts for newly developed renewable energy resources, which are over and above the base rate revenue requirement established in its cost of service for distribution ratemaking. Such remuneration and incentives shall compensate the electric distribution company for accepting the financial obligation of the long-term contracts....”

Program, the Company included remuneration of 1.75 percent of actual Performance-Based Incentive (“PBI”) Payments made during Program Year 2022, totaling \$663,229, as permitted by R.I. Gen. Laws § 39-26.6-12(j) throughout the 2022 Program Year.<sup>3</sup>

On June 24, 2023, Pub. L. c. 301 became effective. Among other changes, this law struck R.I. Gen. Laws § 39-26.6-12(j), which allowed for remuneration to the Company equal to 1.75 percent of performance-based incentives provided to distributed generation projects in a given RE Growth Program year. Importantly, Section 3 of the act provides that it “shall take effect upon passage,” which was months after the close of the 2022 Program Year. Pub. L. c. 301, § 3.

### **III. LEGAL STANDARD**

Rhode Island General Laws § 43-3-22 provides that “[t]he repeal of any statute shall in no case affect any act done, any right accrued, acquired, or established, or any suit or proceeding had or commenced in any civil case before the time when the repeal takes effect.” Section 43-3-22 has been categorized by the Rhode Island Supreme Court as a “general-savings clause” which establishes that a statutory repeal will not extinguish any right accrued before its passage.

Brennan v. Kirby, 529 A.2d 633, 641 (R.I. 1987).

It is also a fundamental rule of statutory construction that statutes and their amendments are given prospective application. Wayland Health Ctr. v. Lowe, 475 A.2d 1037, 1040–41 (R.I. 1984). Courts will only give retrospective application to a statute when the General Assembly, by express language or necessary implication, manifests its intent that the statute be given

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<sup>3</sup> See Schedule NECO-3, Page 3, Line (14).

retrospective application. Id. In other words, it is generally “presumed that statutes and their amendments are ‘to operate prospectively unless it appears by clear, strong language or by necessary implication that the Legislature intended to give the statute retroactive effect.’” Pion v. Bess Eaton Donuts Flour Co., 637 A.2d 367, 371 (R.I. 1994) (quoting VanMarter v. Royal Indemnity Co., 556 A.2d 41, 44 (R.I.1989)).

#### **IV. ANALYSIS**

Rhode Island law is clear, the repeal of § 39-26.6-12(j)(3) on June 24, 2023 does not affect the Company’s right to remuneration – a right that had accrued prior to that date (i.e., during the 2022 Program Year). *See* R.I. Gen. Laws § 43-3-22. By its own terms, Pub. L. c. 301 became effective upon passage, on June 24, 2023, and it does not contain any language indicating that its provisions would apply prior to that date. The Company now is seeking to reconcile the actual costs incurred to administer the RE Growth Program during the 2022 Program Year including \$663,229 of remuneration calculated in accordance with the then applicable statutory formula. Importantly, the costs contained in the reconciliation portion of the RE Growth Factor Filing—including remuneration—were incurred by the Company at a time when remuneration recovery was expressly authorized pursuant to Rhode Island law. *See* R.I. Gen. Laws § 39-26.6-12(j)(3) (repealed by Pub. L. c. 301). Any disallowance of this remuneration would amount to retroactive application of a statutory amendment that contains no indication of legislative intent that it be applied retroactively and would be an extinguishment of a right that had accrued. *See* Rhode Island Insurers’ Insolvency Fund v. Leviton Mfg. Co., 716 A.2d 730, 735 (R.I. 1998) (stating, “when the adverse effects of the statute are activated by events that occurred before the effective date of its enactment will the statute’s reach be declared

retrospective.”) Not only would such retroactive application of the amendments to R.I. Gen. Laws § 39-26.6-12(j) violate the basic tenet of statutory interpretation against implied retroactivity; it would also violate the Constitution’s guarantee of Due Process by depriving the Company of remuneration it earned prior to the statutory amendment eliminating its right to remuneration. *See Rhode Island Depositors Econ. Prot. Corp. v. Brown*, 659 A.2d 95, 102 (R.I. 1995) (stating, “Due process prohibits legislation that would retroactively unreasonably impair substantive rights, or ‘impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.”) quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 280, 114 S.Ct. 1483, 1505, 128 L.Ed.2d 229, 262 (1994)).

If the General Assembly intended to disallow recovery of remuneration earned prior to June 24, 2023, then it would have needed to include clear and strong language of its intent to have Pub. L. c. 301 applied retroactively. *See Pion*, 637 A.2d at 371. Rather than expressing an intent to apply the law retroactively, the General Assembly made its intent for prospective application very clear – it noted that the new law “shall take effect upon passage.” Pub. L. c. 301, § 3.

## **V. CONCLUSION**

Consequently, the fact that the Company filed its 2023 RE Growth Factor Filing and corresponding reconciliation on June 30, 2023 (six days after the passage of Pub. L. c. 301) cannot alter the Company’s legal right to fully reconcile its administrative costs—inclusive of remuneration—for the 2022 Program Year.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC  
COMPANY d/b/a RHODE ISLAND  
ENERGY**

By its attorneys,



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Dated: August 18, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2023, I delivered a true copy of the foregoing memorandum via electronic mail to the parties on the Service List for Docket No. 23-24-REG.