

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

In Re: The Narragansett Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend Net Metering Provision)))))	Docket No. 23-05-EL
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**RESPONSE OF THE NARRAGANSETT ELECTRIC COMPANY
D/B/A RHODE ISLAND ENERGY TO THE MEMORANDA OF LAW
ADDRESSING TARIFF ADVICE FILING**

The Narragansett Electric Company d/b/a Rhode Island Energy (“Narragansett” or the “Company”) hereby responds to: (1) the Memorandum of Law submitted by Revity Energy LLC (“Revity”) in this proceeding (the “Revity Memorandum”); and (2) the Memorandum of Law submitted by MassAmerican Energy LLC d/b/a Gridwealth Development (“Gridwealth”) in this proceeding (“Gridwealth Memorandum”). Revity’s Memorandum asks the Rhode Island Public Utilities Commission (the “Commission”) to decline to allow the Company to provide cash for Excess Renewable Net Metering Credits attributable to “stand-alone” net metering facilities through language offered by the Company in a proposed revised Net Metering Provision, R.I.P.U.C. No. 2268 (the “Tariff”).¹ Revity Memorandum at 11. The Gridwealth Memorandum asks the Commission to “take an equitable approach to assessing net metering customers charges for excess production. Gridwealth Memorandum at 8-9.

I. BACKGROUND

In accordance with 810-RICR-00-00-1.10(C), the Company filed this tariff advice to amend the Company’s Tariff, effective April 1, 2023. The purpose of the amendments is to

¹ Certain capitalized terms, such as “Excess Renewable Net Metering Credits” are defined in the Tariff and/or applicable state law. Such definitions will be provided herein for ease of reference.

improve the administration of Excess Renewable Net Metering Credits on a going-forward basis. Among the amendments proposed is a new subsection (II)(12) that would authorize the Company to cash out any remaining Excess Renewable Net Metering Credits following an annual reconciliation process. Specifically, the amendment authorizes the Company to cash out Excess Renewable Net Metering credits (credits for energy produced that is between 100% and 125% of the net metering customer's usage during the billing period) on an annual basis at the average annual Last Resort Service ("LRS") rate, after the reconciliation billing charges apply (Company Joint Testimony at 12). This proposal is to facilitate providing value to an eligible net metered account for the credits that an associated net metering facility produces, up to 125% of such usage during the applicable billing period.

II. STANDARD OF REVIEW

Reivity's Memorandum asks the Commission to interpret the definition of Excess Renewable Net Metering Credits in the Tariff and the Net Metering Statute, among other terms. The Rhode Island Supreme Court has explained that "all tariffs should be interpreted in accordance with equity and good conscience regardless of the specific language in which they may be couched." Narragansett Elec. Co. v. Pub. Utilities Comm'n, 773 A.2d 237, 242 (R.I. 2001).

Similarly, applying principles of statutory interpretation by analogy, the "ultimate goal is to give effect to the purpose of the act as intended by the Legislature." Progressive Cas. Ins. Co. v. Dias, 151 A.3d 308, 311 (R.I. 2017); citing Cummings v. Shorey, 761 A.2d 680, 684 (R.I. 2000); GSM Industrial Inc. v. Grinnell Fire Protection Systems Co. 47 A.3d 264, 268 (R.I. 2012). Clear and unambiguous terms are interpreted according to their plain and ordinary meaning. Raiche v. Scott, 101 A.3d 1244, 1248 (R.I. 2014). "However, the plain meaning approach must not be confused with 'myopic literalism'; even when confronted with a clear and unambiguous statutory provision, 'it is entirely proper for us to look to the sense and meaning fairly deducible from the

context.” Id., quoting Alessi v. Bowen Court Condominium, 44 A.3d 736, (R.I. 2012); see also In re Brown, 903 A2d 147, 150 (R.I. 2006); O’Connell v. Walmsley, 156 A.3d 422, 426 (R.I. 2017); Ryan v. City of Providence, 11 A3d 68, 71 (R.I. 2011) (“it would be foolish and myopic literalism to focus narrowly on one statutory section without regard for the broader context.”).²

III. RESPONSE TO REVITY MEMORANDUM

Revyt posits in its Memorandum that the Commission cannot legally authorize the Company to cash out Excess Renewable Net Metering Credits by operation of the Rhode Island Net Metering Statute (R.I. Gen. Laws § 39-26.4-1, *et seq.*)³ to third party offtakers in contract with host generators of non-community “stand alone” configurations. Revity Memorandum at 3. As noted herein, Revity’s interpretation of both the Tariff and applicable state law is flawed, and does not support its requested action.

A. Revity’s Attempt to Distinguish the Definitions of “Excess Renewable Net Metering Credit” and “Renewable Net Metering Credit” for Purposes of Authorizing a Cash Out of Excess Renewable Net Metering Credits is Unpersuasive.

Revyt’s argument that the Commission cannot, by law, authorize the cash out of Excess Net Metering Credits to non-community remote net metering systems rests on its attempt to distinguish the definitions of “Excess Renewable Net-Metering Credit” from “Renewable Net Metering Credit in the Net Metering Statue and the Tariff. In the Net Metering Statute, the term “Excess Renewable Net Metering Credit is defined as follows:

“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-

² Gridwealth’s Memorandum posits recommendations based on its opinions about net metering policy, but does not provide any legal analysis addressing whether the Company’s petition is consistent with the Net Metering Statute or its Tariff.

³ The Net Metering Statute was recently amended in P.L. 2023, c. 300 and P.L. 2023, c. 301.

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. 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-metering system or applicable to the customer of record for the community remote net-metering system. *The commission shall have the authority to make determinations as to the applicability of this credit to specific generation facilities to the extent there is any uncertainty or disagreement.*

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

The Tariff defines the term as:

“Excess Renewable Net Metering Credit” shall mean a credit that applies to an Eligible 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 Net Metering Customer's *own consumption* at the Eligible Net Metering System Site or the aggregate *consumption* of the Net Metered Accounts during the applicable billing period. Such Excess Renewable Net Metering Credit shall be equal to the Company's avoided cost rate, defined for this purpose as the Last Resort Service kilowatt-hour (kWh) charge for the rate class and time of-use billing period, if applicable, that is applicable to the Net Metering Customer for the Eligible Net Metering System. The Commission shall have the authority to make determinations as to the applicability of this credit to specific generation facilities to the extent there is an uncertainty or disagreement.

Tariff at Section I.

The term “Renewable Net-Metering Credit” is defined in the Net Metering Statute, in relevant part, as:

[A] credit that applies to an eligible net-metering system or a community remote net-metering system up to one hundred percent (100%) of either the renewable self-generator's *usage* at the eligible net-metering system site or the sum of the *usage* of the eligible credit-recipient accounts with the community remote net metering system over the applicable billing period.

R.I. Gen. Laws § 39-26.4-2(22) (emphasis added).

The term “Renewable Net-Metering Credit” is defined in the Tariff, in relevant part, as: a credit that applies up to one hundred percent (100%) of a Net Metering Customer's *consumption* at the Eligible Net Metering System Site or the aggregate *consumption* of the Net Metered Accounts over the applicable billing period.

Tariff at Section I.

Reivity selectively attempts to highlight the use of the word “usage” in the Net Metering Statute definition of “Renewable Net Metering Credit” and compares it to the word “consumption” in the Net Metering Statute definition of “Excess Renewable Net Metering Credit” for purposes of its argument. It does so by concluding that “Usage and consumption are fundamentally different concepts.” Reivity Memorandum at 5. In making this argument, Reivity overlooks clear language in the Net Metering Statute authorizing the Commission to allow the Company to “cash-out” net metering credits in the manner it proposes. It also ignores the broader context of the Net Metering Statute, and the language in the Company’s Commission approved Tariff, which interprets the Net Metering Statute for application to Reivity.

1. The Net Metering Statute Explicitly Allows the Company to “Cash-Out” Net Metering Credits to Customers of Non-Community Remote Net Metering Systems.

As the Commission is aware, On December 7, 2022, the PUC held an Open Meeting during which it expressed an expectation that the Company would propose a solution to the challenges associated with the administration, calculation, and recovery of net metering credits in a manner consistent with the Net Metering Statute. The Net Metering Statute includes language that authorizes the Company to facilitate the administration of net metering. See R.I. Gen. Laws § 39-26.4-3(a)(2). This filing represents the Company’s solution, which is proposed to be implemented on a prospective basis. Importantly, the Net Metering Statute explicitly states that, in an effort to ease administering net-metered accounts, the Company:

“...may elect (but is not required) to issue checks to any net-metering customer in lieu of billing credits or carry-forward credits or charges to the next billing period.”

Id.

The term “net metering customer” is defined as:

“a customer of the electric distribution company receiving and being billed for distribution service whose distribution account(s) are being net metered.”

Id.

This authority to issue checks for (or “cash out”) net metering credits is not limited to customers served by behind-the-meter facilities, or Community Remote Net Metering Systems. It is authorizes the Company to issue checks to “any net-metering customer.” Reivity’s Memorandum fails to acknowledge this, in an attempt to focus the Commission’s attention on a meaningless comparison of the definitions of Excess Renewable Net Metering Credit and Renewable Net Metering Credit. In fact, they mistakenly state that:

“Imposing a forced (and discounted) cash-out of unused credits that belong to third party offtakers in contract with “stand-alone” configuration hosts (such as Reivity) is not expressly permitted by the Net-Metering Statute and does not encourage development of renewable generation systems.”

Reivity Memorandum at 8.

Accordingly, Reivity’s request should be denied on this basis alone.

2. The Terms “Consumption” and “Usage” in the Definitions of “Excess Renewable Net Metering Credit” and “Renewable Net Metering Credit” are not Meaningfully Different for the Purpose of Implementing the Net Metering Statute.

As noted, rather than acknowledge that the Net Metering Statute explicitly authorizes the Company to cash-out Net Metering Credits to any net metering customer, Reivity attempts to distinguish the terms “usage” and “consumption” in the definitions of “Renewable Net Metering Credit” and “Excess Renewable Net Metering Credit”, respectively, for purposes of its argument, suggesting that they are “fundamentally different concepts.” Reivity Memorandum at 5. For purposes of easing the administrative burden of administering net metering credits, however (and arguably the Net Metering Statute in general), no distinction between the terms needs to be made.

First, Reivity appears to focus on that part of the definitions of Excess Renewable Net Metering Credit and Renewable Net Metering Credit refencing a generator’s “consumption” or

“usage” rather than a net metering customer’s “consumption” or “usage”.⁴ However, this ignores the parts of each definition that also allow each definition (both statutory and Tariff) to apply to a customer’s “consumption” or “usage”. The statutory definition of Renewable Net Metering Credit (the only definition at issue that includes the term “usage”) states that a Renewable Net Metering Credit may include “the sum of the *usage* of the eligible credit-recipient accounts with the community remote net metering system over the applicable billing period.” In comparison, the Tariff defines a Renewable Net Metering Credit to be, in part, “the aggregate *consumption* of the Net Metered Accounts over the applicable billing period.”

Moreover, the Company’s Commission-approved Tariff uses consistent terms for these definitions. The term “consumption” in the Tariff was reviewed and approved by the Commission, presumably because it has not distinguished a customer’s “consumption” of Net Metered Accounts from the customer’s “usage” of such accounts. To then suggest that an “Excess” Renewable Net Metering Credit should be distinguished from a Renewable Net Metering Credit strains credulity, more so because the purpose of the Company’s proposal is merely to provide a check to an eligible net metering customer in lieu of a credit in order to ease the administrative burden of implementing net metering. In fact, If Revity’s argument that the definition of excess renewable net-metering credit does not apply to them because it uses the term “consumption”, it raises the question of whether they are entitled to any renewable net-metering credits since the tariff definitions for excess renewable net-metering credit and renewable net-metering credits use the same terminology.” Tariff at Section I.

⁴ Accordingly, the “excess renewable net metering credit” is defined by “the renewable self-generator’s own consumption at the eligible net-metering system site” whereas the “renewable net-metering credit” is defined by “the renewable self-generator’s usage at the eligible net-metering system site.” Memorandum at 5.

The terms are arguably intended to reflect the value of the amount of electricity both generated by an Eligible Net Metering Facility and allocated to a Net Metering Customer. Revity's Memorandum is based on the "myopic literalism" of statutory construction argued against by the Rhode Island Supreme Judicial Court in Raiche v. Scott, 101 A.3d 1244, 1248 (R.I. 2014). quoting Alessi v. Bowen Court Condominium, 44 A.3d 736, (R.I. 2012); see also In re Brown, 903 A2d 147, 150 (R.I. 2006); O'Connell v. Walmsley, 156 A.3d 422, 426 (R.I. 2017); Ryan v. City of Providence, 11 A3d 68, 71 (R.I. 2011). As such, the Commission should reject Revity's legal argument because it ignores statutory language allowing Excess Renewable Net Metering Credits to be defined by customer accounts, versus generator "consumption" or "usage". Moreover, it is inconsistent with the intent of the Net Metering Statute as it relates to facilitating the administration of net metering.

Finally, Revity fails to cite the following language in the statutory definition of Excess Renewable Net Metering Credit:

"The commission shall have the authority to make determinations as to the applicability of this credit to specific generation facilities to the extent there is any uncertainty or disagreement."

R.I. Gen. Laws § 39-26.4-2.

3. The Decision to Accept a "Cash-Out" is Optional

Revity's Memorandum is also based on an assumption that the Company will force net metering customers to cash-out their Excess Renewable Net Metering Credits. Specifically, they state that:

The Tariff Advice suggests giving net-metering customers "the option to cash out" but the Company appears to be proposing a forced cash-out to "drive down the balance of excess credits" and, additionally, to require customers to compensate the Company for the costs of creating the forced cash-out system in the first place.

Revity Memorandum at 9.

This conclusion is incorrect. The language the Company is proposing for its Tariff clearly makes acceptance of a “cash-out” for Excess Renewable Net Metering Credits optional.

Following the annual reconciliation described in subsection (5) above, the Company may issue payment to the Net Metered Account for the remaining Excess Renewable Net Metering Credit at the annual average Last Resort Service rate. No payments permitted under this subsection will be issued until after the annual reconciliation of the Net Metered Account. *In lieu of payment, the Net Metered Account customer may elect to roll over remaining Excess Renewable Net Metering Credits.*

R.I.P.U.C. No. 2268, Section II (12) (proposed)(emphasis added).

Accordingly, the Commission should reject even the premise of Revity’s concern about the Company’s proposed “cash-out” provision.

B. Revity’s Request that the Commission Deny the Company’s Proposal Regarding Host Allocations is Not Supported by Legal Arguments.

Revity also challenges the Company’s “Proposal “No. 2” that would require, for “stand alone” configurations, “that allocations on Schedule B add up as close to 100% as possible before the project receives authority to interconnect” which will, according to the Company, “ensure that unused credits do not bank on the host account, unable to be used.” Memorandum at 9, citing Tariff Advice at p. 14. However, they offer no legal basis supporting their recommendation. The Memorandum should not be used by Revity to make policy arguments that, if intended to be brought to the attention of the Commission for review, should be in the form of expert testimony, with substantial evidence. Accordingly, the Commission should give no weight to this request based on the information provided in the Memorandum.

IV. RESPONSE TO GRIDWEALTH MEMORANDUM

The Gridwealth Memorandum focuses on the Company’s proposal to apply an average Last Resort Service rate to provide a monetary value for Excess Renewable Net Metering Credits in the context of performing reconciliations. Gridweatlth Memorandum at 2-3. However, it is

based on policy positions regarding Net Metering generally, rather than a legal analysis of whether the Company's proposal is consistent with the Net Metering Statute and/or its Tariff. In fact, the Gridwealth Memorandum appears to be more appropriate as testimony from an expert witness, rather than a Legal Memorandum. Indeed, a review of Gridwealth's testimony submitted on September 13, 2023, in this proceeding includes many of the same arguments included in the Memorandum. As such, the Company will respond to such testimony through its own witness testimony. Accordingly, the Commission need not address the policy arguments in Gridwealth's Memorandum in its review of the legal support for the intervenor's positions in this docket.

V. CONCLUSION

For the reasons addressed herein, the Commission should reject Revity's legal basis supporting its request to deny the Company the option to "cash out" Excess Renewable Net Metering Credits. In addition, the Commission should give no weight to the Gridwealth Memorandum as legal support for its policy positions in this proceeding.

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

By its attorneys,



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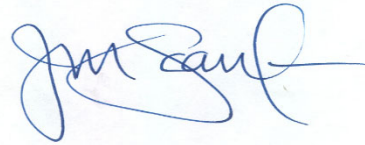
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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2023, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the Service List for Docket No. 23-05-EL.



Joanne Scanlon

Dated: September 22, 2023