STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: 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	Docket No. 23-05-EL

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

NOW COMES, Revity Energy, LLC ("Revity"), by and through undersigned counsel, and hereby files its Memorandum of Law in Response to the Narragansett Electric Company d/b/a Rhode Island Energy's February 15, 2023 Tariff Advice to Amend the Net Metering Provision – Proposal for Administration of Excess Net Metering Credits (the "Tariff Advice").

The Company's Tariff Advice proposes the following changes:

(1) Authorize the Company to isolate the largest net-metered accounts for reconciliation on an annual basis from smaller accounts to facilitate flowing the largest potential excess balances back to distribution customers in an administratively efficient manner (the "Volumetric Method");

(2) 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");

(3) Permit a cash out provision 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] rate, after the reconciliation billing charges apply.

Tariff Advice at p. 12. The Company states that these proposed changes are necessary because of the challenges that the Company has faced in administering net metering and, more specifically,

"[e]xcess credits have accumulated on net metered accounts for a variety of reasons." *Id*. at p. 9. The Company is proposing to "drive down the balance of credits." *Id*. at p. 18. The Tariff Advice states that R.I. Gen. Laws § 39-26.4-3(a)(2) "provides options for the Company to facilitate the administration of net metering."[1] *Id*. at p. 10. The Company states that the proposal will "improve the administration of excess net metering credits on a go-forward basis" and "includes proposed changes to the Net Metering Provision ('Net Metering Tariff') which is currently codified as R.I.P.U.C. No. 2257." *Id*. at p. 4.

[1] R.I. Gen. Laws § 39-26.4-3(a)(2) provides as follows:

> (2) For ease of administering net-metered accounts and stabilizing net-metered account bills, the electric-distribution company may elect (but is not required) to estimate for any twelve-month (12) period:
>
> > (i) The production from the eligible net-metering system or community remote net-metering system; and
> >
> > (ii) Aggregate consumption of the net-metered accounts at the eligible net-metering system site or the sum of the consumption of the eligible credit-recipient accounts associated with the community remote net-metering system, and establish a monthly billing plan that reflects the expected credits that would be applied to the net-metered accounts over twelve (12) months. The billing plan would be designed to even out monthly billings over twelve (12) months, regardless of actual production and usage. If such election is made by the electric-distribution company, the electric-distribution company would reconcile payments and credits under the billing plan to actual production and consumption at the end of the twelve-month (12) period and apply any credits or charges to the net-metered accounts for any positive or negative difference, as applicable. Should there be a material change in circumstances at the eligible net-metering system site or associated accounts during the twelve-month (12) period, the estimates and credits may be adjusted by the electric-distribution company during the reconciliation period. The electric-distribution company also 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. For residential-eligible net-metering systems and community remote net-metering systems twenty-five kilowatts (25 KW) or smaller, the electric-distribution company, at its option, may administer renewable net-metering credits month to month allowing unused credits to carry forward into the following billing period.

R.I. Gen. Laws § 39-26.4-3(a)(2).

As a preliminary matter, setting aside the key legislative distinction between BTM configurations and "stand-alone" configurations (discussed in detail below), the Tariff Advice is fundamentally proposing to take away the consideration originally paid by the Company in exchange for the provision of electricity to the grid. Regardless of whether a configuration (BTM or "stand-alone") produced 100%, 125% or 200% of "consumption," the Company received all the electricity generated and sold it. The Company's consideration for that electricity was net-metering credits. The Company's Tariff Advice proposes revoking that consideration either at a steep discount (for credits between 100% and 125%) or for no compensation (for credits above 125%). The Company is not going to return the electricity (or the money made from the electricity). The Net-Metering Statute should be strictly construed against such revocation and any ambiguities should be resolved in favor of those with rights in the credits which have already been allocated.

For the following reasons, the Company's Proposal No. 3—permitting the "cash out" of excess renewable net metering credits based on the Last Resort Service rate—cannot be applied, by operation of the Net Metering Statute (R.I. Gen. Laws § 39-26.4-1, *et seq.*), to third party offtakers in contract with host generators of non-community "stand-alone" configurations. Second, the Company's Proposal No. 2—requiring a stand-alone net metering project to allocate as close to 100% of the credits as possible before the project receives authority to interconnect—will not solve the issue of unused net metering credits arising from non-community "stand-alone" configurations. If the Commission intends to resolve the issue of unused net metering credits on non-community "stand-alone" configurations, the Commission should permit third party offtakers to transfer unused credits to other eligible offtakers (a group which has exponentially expanded after this past legislative session).

ARGUMENT

1. THE NET-METERING STATUTE DEFINES "EXCESS RENEWABLE NET-METERING CREDITS" TO THE EXCLUSION OF THIRD-PARTY OFFTAKERS IN CONTRACT WITH "STAND-ALONE" CONFIGURATION HOSTS AND THUS THE PROPOSAL NO. 3 SHOULD NOT BE APPLIED TO SUCH OFFTAKERS.

The Company's Tariff Advice explains the two types of net metering configurations as follows:

> There are two types of net metering configurations. The simplest form is when a customer is self-supplying electrical energy and power at the net metering system site. These systems are behind the meter ("BTM") and the Company does not know how much that customer generates or consumes. Rather, the Company knows the customer's net generation or consumption in kWh at the time of the monthly meter reading.
>
> The other type of net metering configuration is referred to as a stand-alone, when the electrical energy and power is generated at a net metering system site for the purpose of generating net metering credits. There is no onsite load to offset the generation, so the net metering credits are applied to the electric bills of eligible credit recipients referred to as "off-takers." If the off-taker is a municipality or other specialized off-taker given preference by the Net Metering Statute, a net-metering finance agreement may be executed.

Tariff Advice at pp. 6-7. In the first instance (the BTM configurations), the generator "is self-supplying electrical energy and power at the net metering system site" and, in the second instance (the "stand-alone" configurations), "[t]here is no onsite load to offset the generation." Stated differently, BTM configurations involve on-site consumption by the generator whereas the "stand-alone" configurations involve a transfer of credits and remote consumption by third party offtakers under contract with the host generator.

The Rhode Island Net Metering Statute (R.I. Gen. Laws § 39-26.4-1, *et seq.*) sets forth the following definition for "excess renewable net-metering credits":

> [A] credit that applies to an eligible net-metering system or community remote net-metering system for that portion of the production of electricity beyond one hundred percent (100%) and no greater than one hundred twenty-five percent (125%) of **the renewable self-generator's <u>own consumption at the eligible net-metering system site</u> 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.

R.I. Gen. Laws § 39-26.4-2(8) (emphasis supplied). By comparison, the Net Metering Statute defines the "renewable net-metering credit" as follows:

> [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 supplied). Accordingly, the "excess renewable net-metering credit" is defined by "the **renewable self-generator's <u>own consumption</u>** at the eligible net-metering system site" whereas the "renewable net-metering credit" is defined by "the **renewable self-generator's <u>usage</u>** at the eligible net-metering system site."

The "excess renewable net-metering credit" regime only applies to the "self-generator's own consumption at the eligible net-metering system site" (or community remote net-metering site account) but statutorily, the third-party offtaker is not a renewable self-generator with its *own* on-site consumption. Usage and consumption are fundamentally different concepts. The law defines "consumption" as "the act of destroying a thing by using it; the use of a thing in a way that exhausts

it." BLACK'S LAW DICTIONARY (11th ed. 2019). The law defines "use" as "[t]o employ for the accomplishment of a purpose; to avail oneself one." BLACK'S LAW DICTIONARY (11th ed. 2019). Consumption is a form of usage but usage is a far broader concept. A hamburger can be used many times and in many different ways: by selling it, reselling it, throwing it away, or consuming it. A hamburger can only be consumed once. The host developer "uses" the renewable net-metering 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 self-generator's *own* consumption at the site.

The host for a "stand-alone" configuration has little to no personal consumption at the site. "There is no onsite load to offset the generation, so the net metering credits are applied to the electric bills of eligible credit recipients referred to as "off-takers." *Tariff Advice* at p. 7. The Company's Response to MAE 2-2 confirms that "[a]ssuming immaterial site consumption, the meter reading at the stand-alone site represents generation." "For standalone configurations, the credits are transferred to off-taker accounts based on the customer's allocation as presented through Schedule B of the Net Metering Tariff." *Tariff Advice* at p. 9. The consumption is remote. Thus, the "excess renewable net-metering credits" regime established by R.I. Gen. Laws § 39-26.4-2(8), which only applies to personal consumption at the site, does not apply to non-community "stand-alone" configurations.

The Net-Metering Statute treats "stand-alone" configurations differently from BTM configurations in other areas as well. The Net-Metering Statute's definition of the "renewable net-metering credit" reduces the value of the credit by twenty percent (20%) for "stand-alone" configurations not safe-harbored pursuant to R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) before April 15, 2023. Additionally, a BTM configuration must be "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." R.I. Gen. Laws § 39-26.4-2(6). The design and sizing of "stand-alone" configurations have never been limited by the historic consumption of the host developers or their third-party offtakers. Given that BTM configurations are so limited in their design and sizing, it makes sense to apply the excess credit regime to such configurations which are over-sized. That same logic does not adhere to "stand-alone" configurations. Unused credits can simply be re-allocated to additional eligible offtakers. BTM generators do not have that option and so the excess credits must be addressed in a different fashion.

The Net Metering Tariff (R.I.P.U.C. No. 2257), effective September 1, 2022, defines "excess renewable net metering credit" as follows:

> [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 Net-Metering Tariff has expanded the definition of "excess renewable net metering credit" from over 100% of the "renewable self-generator's own consumption at the eligible net-metering system site" (as set forth in the Net-Metering Statute) to over 100% 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." The Company contends that "[e]xcess renewable net metering credits apply to the portion of the production of

electrical energy beyond 100% and no greater than 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." *Tariff Advice* at p. 7.

"As a creation of the General Assembly, the PUC derives all of its powers, duties and responsibilities from its enabling act." *Narragansett Elec. Co. v. Burke*, 122 R.I. 13, 24, 404 A.2d 821, 828 (1979) (citing *Bristol County Water Co. v. PUC*, 117 R.I. 89, 97, 363 A.2d 444, 449 (1976)). The Net-Metering Statute "shall be construed liberally in aid of its declared purposes" (R.I. Gen. Laws § 39-26.4-4) and the declared purposes of the Net-Metering Statute includes "to support and encourage customer development of renewable generation systems" and "to reduce carbon emissions that contribute to climate change by encouraging local siting or renewable energy projects." R.I. Gen. Laws § 39-26.4-1. The Company agrees that the purpose of the Net Metering Statute is to "support and encourage customer development of renewable generation systems," "reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects" and "diversify the state's energy generation sources." *Tariff Advice* at p. 6. 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 Revity) is not expressly permitted by the Net-Metering Statute and does not encourage development of renewable generation systems.

The Tariff Advice states that "[a]fter the annual reconciliation analysis and billing charges (if applicable), any excess credits remaining on the net metering accounts belong to the customer" and "the customer should have the option to cash out at the" Last Resort Service Rate. *Tariff Advice* at p. 15. According to the Company, billing charges "will be applied to certain net metered customer accounts following the reconciliation analysis" to compensate the Company for "[b]illing

operations [that] will be required to create new cons types with the Company's billing system, CSS, to implement this." *Id*. at p. 18. 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. *Id*. Whether that proposal makes sense for BTM configurations is frankly not Revity's concern, but this proposal should not be applied to third party offtakers of "stand-alone" configurations given that there is a way to facilitate the extinguishment of unused credits while preserving the economic value of those credits.

2. REQUIRING HOST ALLOCATIONS ON THE SCHEDULE B AS CLOSE TO 100% AS POSSIBLE BEFORE A PROJECT RECEIVES AUTHORITY TO INTERCONNECT WILL NOT ADDRESS THE PROBLEM IDENTIFIED BY THE COMPANY OF UNUSED CREDITS ACCRUING ON THIRD PARTY OFFTAKER ACCOUNTS.

Proposal No. 2 in the Tariff Advice proposes requiring, 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." *Tariff Advice* at p. 14. "Requiring that the Schedule B estimated generation to consumption ratio equal no greater than 100% will help minimize the number of accounts requiring a billing charge, and/or minimize the value of the billing charge." *Id*.

The issue for "stand-alone" configurations, however, is not that host accounts are accumulating significant unused credits but rather that third party off-takers' accounts are accumulating those unused credits. There are myriad reasons for why that has happened, including reduced electricity use in public buildings during peak COVD-19 and/or over-subscription based on the misperception that off-takers need a credit for each kilowatt hour of consumption. However,

requiring the host accounts to allocate 100% of the credits prior to Authority to Interconnect is not going to resolve that problem. The Company has stated that "[t]here is a total of 10,178 connected net-metered accounts" and, of those, 315 accounts account for 83% of the total connected megawatts. *Tariff Advice* at p. 13. Revity, for example, has five host accounts with a credit total of $33,774.74 at the time of this filing. While the Company has not provided detail regarding the financial magnitude of the excess credit issue—presumably, $33,774.74 is a *de minimus* amount in the grand scheme of the problem. Host accounts are financially incentivized to allocate credits.

If the Commission intends to address the Company's concerns regarding excess credits on "stand-alone" configuration, requiring host accounts to allocate 100% of the credits on Schedule B will not resolve those concerns. For a "stand-alone" configuration producing $1,000,000 of credits, the host could allocate 100% of those credits to one offtaker (thereby complying with the proposed rule) but if the offtaker only uses $750,000 of electricity annually, that offtaker account will still build up a significant pool of unused credits regardless of the host's compliance with Proposal No. 2.

Furthermore, the issue of unused credits on non-community "stand-alone" configurations is only a legacy issue and will not repeat in the future. As a result of the General Assembly's amendment of various provisions of the Net-Metering Statute this past legislative session to allow commercial and industrial offtakers to contract with host accounts on "stand-alone" configurations, structural over-subscription will now be easily addressed with the introduction of a new offtaker to re-allocate the oversubscribed offtaker's unused credits. 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.

Lastly, a renewable energy facility qualifies for federal income tax credits in the year that the facility is placed in service which cannot happen until the facility receives authority to interconnect. Additional conditions precedent imposed on the authority to interconnect present risks that the facility will be delayed—a delay which, depending on the value of the credit in a given year, could place at risk millions of dollars. This risk is unreasonable given that the proposal will not address the purported problem.

WHEREFORE, for the foregoing reasons, Revity respectfully requests that the Commission decline allow the Company to apply Proposal No. 3 to non-community "stand-alone" configurations. If the Commission decides to allow the Company to apply Proposal No. 3 to "stand-alone" configurations, Revity would respectfully request that a one-year grace period be adopted and, during that time, offtakers be allowed to engage in a one-time transfer of unused credits to other eligible offtakers with consumption capacity. Lastly, Revity requests that the Commission reject Proposal No. 2.

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CERTIFICATE OF SERVICE

The paper copies of this filing will be hand delivered to the Rhode Island Public Utilities Commission on September 11, 2023.

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September 8, 2023

Docket No. 23-05-EL Rhode Island Energy – Net Metering Provision, RIPUC No. 2268
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