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 POST-HEARING MEMORANDUM

Revity Energy LLC ("Revity"), by and through its undersigned attorney, hereby files this Post-Hearing Memorandum and, through it, respectfully requests that the Commission find that the Net-Metering Statute defines "excess renewable net-metering credit" to the exclusion of third-party off-takers in contract with "stand-alone" configuration host developers and conclude that Proposal No. 3 (and the billing charges proposed in conjunction therewith) should not be applied to stand-alone configurations. Short of that ruling, Revity respectfully requests that the Commission order as follows: (1) Billing charges should be assessed only for credits issued in the future (*i.e.*, beginning with credits issued in 2024) and billing charges should be assessed on satellite offtaker accounts (as opposed to host developer accounts) and (2) Reject Proposal No. 2 requiring stand-alone projects to allocate "as close to 100% of credits as possible" before receiving authority to interconnect ("ATI") because Proposal No. 2 does not address the problem of excess net-metering credits and will only create additional administrative burdens.[1]

[1] During the final hearing in this docket matter on November 9, 2023, the Commission (as memorialized in its Attachment to Provisional Briefing Rules) requested that the parties brief the question of whether the Commission has the statutory authority to adjust the last resort service rate for the purposes of the annual reconciliation of Excess Net Metering Credits. Revity has no position on that question.

For years, the Company has failed to administer the net-metering program in a manner that complies with the Net-Metering Statute (R.I. Gen. Laws § 39-26.4-1, *et seq.*).[2] No one contests that. At the commencement of these proceedings, the Chairman summarized the Company's historic failure as follows:

> Over time the utility has represented to the Commission that it was implementing the crediting rules relating to the lower value excess credits consistent with the statute. * * * However, during the last year of National Grid's ownership of the Company, the Commission discovered that National Grid had not been implementing the excess generation credit consistent with the statute. In fact, all generation was apparently being credited at the higher net metering credit amount without the adjustment, including the excess generation, that should have been credited at Last Resort Service rates that was stipulated by statute. As a result, for many years National Grid was overcompensating net metering customers whose annual consumption of electricity was less than the total amount of electricity produced by the customer for the year. * * * After the Commission discovered the noncompliance, the Commission held a technical session, later went on to an open meeting, and indicated that the company needed to make a filing to correct the noncompliance on a prospective basis.[3]

On February 15, 2023, the Company made that filing in the form of a Tariff Advice which seeks the Commission's approval of revisions to the Company's Net Metering Tariff (R.I.P.U.C. No. 2257) to make 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

[2] TR at 153:19-23 ("MR. NYBO: I don't mean to belabor this point. The company had historically been out of compliance with the net metering statute? MS. RUSSELL SALK: Yes, the chair stated that at the beginning.").
[3] TR at 9:2-10:8. The Company quibbles with this summary: "DR. GILL: * * * It's not that we are proposing this because we were out of compliance. That we were out of compliance is irrelevant to what the statute says that we should be doing. The statute says that we should be conducting an annual reconciliation. So noncompliance is irrelevant to the company's proposal." TR at 156:2-7.

to 100% of the credits as possible before the project receives authority to interconnect ("ATI");[4]

(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 LRS rate, after the reconciliation billing charges apply.[5]

In that Tariff Advice filing, the Company stated that it "has experienced challenges in administering net metering" and that "[e]xcess credits have accumulated on net metered accounts for a variety of reasons."[6] According to the Company, those reasons include "rate class discrepancies between host and satellite, the fact that allocations are made based on estimates of generation and estimates of consumption, the possibility of satellites having multiple hosts, the possibility of satellites having an independent third-party supplier, the variation of rates throughout a year, [and] the fact that the host and satellite accounts may not be on the same billing cycle (satellite could get and pay for a bill before the credits are transferred), * * *."[7] Moreover, even though it was the Company which has historically failed to comply with the Net-Metering Statute, the Company is proposing to assess billing charges to host developers to "reconcile" overcompensation for excess net metering credits which were issued in 2022 and 2023.[8]

The Commission held four (4) hearings on this matter (on October 5, 2023, October 25, 2023, October 26, 2023 and November 9, 2023) during which the Commission heard witness testimony from the Company, intervenor MassAmerican Energy LLC (d/b/a Gridwealth

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[4] The Schedule B generally contains the following information: "[I]nformation on the host account, contact, general information, some details about the system, such as size and annual output, and we're also providing the list of the satellite accounts, the account numbers, addresses, and the percentages of -- the percentages for each account is added to the Schedule B and the three-year average consumption for each satellite account is on the Schedule B as well." TR at 648:21-649:5.
[5] *Tariff Advice* at p. 12 of 19.
[6] *Id*. at 9 of 19.
[7] July 7, 2023 Response to PUC 1-2(b).
[8] TR at 153:24-154:11; 156:8-25.

Development), intervenor Revity Energy, and the Division. The Commission ordered the parties to file their post-hearing briefs on or before November 29, 2023 (one day after the transcript of the November 9, 2023 hearing was made available to the parties).

I. THE NET-METERING STATUTE DEFINES "EXCESS RENEWABLE NET-METERING CREDITS" TO THE EXCLUSION OF THIRD-PARTY OFF-TAKERS IN CONTRACT WITH "STAND-ALONE" CONFIGURATION HOST DEVELOPERS AND THUS PROPOSAL NO. 3 (AND ASSOCIATED BILLING CHARGES) SHOULD NOT BE APPLIED TO SUCH OFF-TAKERS.

Revity raised this statutory argument at the beginning of these proceedings. Revity will not fully restate the argument here but, for sake of preserving this argument for appeal, Revity does hereby incorporate the arguments from Revity's previous briefing on this issue.[9] As a summary synopsis of the argument, there are two types of net metering configurations under Rhode Island law: the "behind the meter" configuration and the "stand-alone" (remote) configuration. The Rhode Island Net-Metering Statute 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</u> at the eligible net-metering 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.

[9] Revity's September 11, 2023 Memorandum of Law in Response to the Narragansetts Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend the Net Metering Provision – Proposal for Administration of Excess Net Metering Credits & Revity's October 2, 2023 Reply Memorandum to the Division of Public Utilities & Carriers' September 26, 2023 Memorandum and September 22, 2023 Response of the Narragansett Electric Company d/b/a Rhode Island Energy to the Memoranda of Law Addressing Tariff Advice Filing.

R.I. Gen. Laws § 39-26.4-2(8) (emphasis supplied). In contrast, 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 <u>usage</u> 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 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 *consumption* whereas the "renewable net-metering credit" is defined by the renewable self-generator's *usage*.

Consumption and usage are different words with fundamentally different dictionary definitions. 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";[10] whereas "use" is defined as "[t]o employ for the accomplishment of a purpose; to avail oneself of."[11] Use is a much broader term. Electricity can be used in many ways and can be repeatedly used: it can be sold, it can be re-sold, it can be transmitted, it can be re-transmitted, it can be grounded, it can be stored and, ultimately, it can be consumed. Electricity can only be consumed once and, upon consumption, it is exhausted and no further use can be made. Host developers of stand-alone configurations do not consume the electricity generated by their facilities.[12] Host developers do, however, make use of the electricity generated by their facilities insofar as the developer transmits the electricity to the Company in

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[10] BLACK'S LAW DICTIONARY (11th ed. 2019).
[11] *Id*.
[12] TR at 119:23-25 ("MS RUSSELL-SALK: * * * As we heard earlier from Revity's counsel, standalone has a de minimus value of onsite consumption."); *Tariff Advice* at pp. 6-7 ("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 credits recipients referred to as 'off-takers.'").

return for credits and then sells those credits to satellite off-takers. The Company then uses that electricity by transferring it for value. Ultimately, a ratepayer consumes the electricity.

The Company,[13] the Division[14] and the Commission[15] have all asserted that there is no difference between the word "usage" and the word "consumption"—this triumvirate has asserted that "usage" and "consumption" are the same word with the same meaning. Of course, they are not the *same* word (one is spelled with more letters than the other and each has a different dictionary definition). "[W]hen the legislature uses certain language in one part of the statute and different language in another, the courts assume different meanings were intended."[16] Common understanding does not trump a dictionary definition; nor does the context of the statute trump dictionary definitions if the words at issue have common dictionary definitions, which these words do. 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

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[13] September 22, 2023 Response of the Narragansett Electric Company d/b/a Rhode Island Energy to the Memorandum of Law Addressing Tariff Advice Filing at p. 6 ("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."); TR at 34:1-2 ("MR. HABIB: Our position is there is no distinction between those terms. They are the same.").

[14] Division of Public Utilities & Carriers' September 26, 2023 Memorandum at p. 5 ("The Division struggles to understand Revity's argument on this topic and its attempted distinction between consumption and usage – as it pertains to electricity."); TR at 36:7-9 ("MS. HETHERINGTON: We don't see a difference between usage and consumption, as an industry term, as a term of art, as a word.").

[15] TR at 39:19-40:13 ("MR. GERWATOWSKI: I'm not convinced that there is a difference between those words. * * * In ordinary discussions in the utility industry, talking in ordinary discussions, we all use the word consumption and the verb consume."); TR at 46:17-25 ("MR. GERWATOWSKI: "I guess the point I have is if the General Assembly intended to create a very substantive difference between the terms usage and consumption, in the context of billing utility meters, don't you think they would have put a definition in, so we would all know?").

[16] *Sosa v. Alverez-Machain*, 542 U.S. 692, 711 n.9 (2004) (*citing* 2A N. Singer, STATUTES AND STATUTORY CONSTRUCTION § 46.06, p. 194 (6th rev. ed. 2000)); *see also Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017) ("[W]hen we're engaged in the business of interpreting statutes we presume differences in language like this convey differences in meaning."); *see also U.S. v. Mason*, 692 F.3d 178, 182 (2d Cir. 2012) ("As a general matter, the use of different words within the same statutory context strongly suggests that different meanings were intended.").

account) but statutorily, the third-party offtaker is not a renewable self-generator with its *own* on-site consumption.

Accordingly, for the reasons Revity has previously (and more fully) articulated in this docket, the Commission should decline to 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 re-allocations and transfers of unused credits to other eligible offtakers with consumption capacity.

II. IF THE COMMISSION ELECTS TO PERMIT THE COMPANY TO APPLY PROPOSAL NO. 3 TO "STAND-ALONE" CONFIGURATIONS, BILLING CHARGES SHOULD ONLY BE ASSESSED FOR CREDITS ISSUED IN THE FUTURE AND BILLING CHARGES SHOULD BE ASSESSED ON SATELLITE OFF-TAKER ACCOUNTS, NOT HOST DEVELOPER ACCOUNTS.

According to the Company, the "proposed tariff changes intend to mitigate **future** excess balances."[17] According to the Commission, the Company's Tariff Advice must be construed as a prospective proposal:

> I also want to make another point that I think is very important about the subject of this case. I want to be clear about this: The Commission has not asked the company to make a proposal to clawback any of the overcompensation from any net metering customer that has occurred in the past. That is not an issue in this docket, nor do I expect the company will ever make a filing proposing such a clawback.
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> I think it is important to point out, because it's understandable if net metering customers would be concerned that a clawback of charges might occur from our decision in this docket, but that's not the case. Any decision of the Commission in this will be prospective implementation only. It's designed to bring the utility into compliance with the law.
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> This case should not be interpreted as signaling that the Commission expects the utility to be reaching back to net metering customers in order to recoup overcompensation caused by past noncompliance of the utility. I thought that was an important point for everyone to understand as we got started.[18]

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[17] *Tariff Proposal* at 18 of 19 (emphasis supplied).
[18] TR at 10:18-11:13.

Nevertheless, from the very beginning of these proceedings, the Company has made clear that it is, in fact, proposing to clawback the value of credits issued in past years:

> MR. MARCACCIO: We're just trying to take overpayments that we **made** to net metering customers and reconcile those overpayments. * * * In terms of what we're trying to accomplish is just to reconcile those overpayments that **were made**.
> MR. GERWATOWSKI: On a prospective basis?
> MR. MARCACCIO: On a prospective basis, and only to large net metering customers at this time.[19]

Simply intoning the word "prospective" does not make it so. Reaching back to net metering customers to recoup overcompensation through retroactive billing charges to clawback the value of those credits is precisely what the Company is proposing.

The Company is proposing to conduct a reconciliation in 2024 of credits issued in 2022 and 2023 for the purpose of assessing billing charges on net metering customers to the extent that those credits are determined by the Company to have been "excess net metering credits" as defined by the Net-Metering Statute. The Company appears to believe that such an exercise is "prospective":

> MS. RUSSELL SALK: This proposal is a go-forward approach. It is not looking at historic and excess credits.
> MR. NYBO: Okay. Very good. You are proposing to perform a reconciliation of net metering credits issued in 2022.
> MS. RUSSELL SALK: That is our correct proposal, yes.
> MR. NYBO: Okay. And you're going to apply billing charges to host accounts based on credits issued in 2022.
> MS. RUSSELL SALK: That is our proposal.
> MR. NYBO: And you're proposing to perform a reconciliation of net metering credits issued in 2023?
> MS. RUSSELL SALK: Yes.
> MR. NYBO: And you're going to apply billing charges to host accounts based on credits that were issued in 2023?
> MS. RUSSELL SALK: Yes.
> MR. NYBO: And you're going to do all of this in 2024?
> MS. RUSSELL SALK: Correct.
> MR. NYBO: And this is a prospective exercise in the company's view?

[19] TR at 13:12-14:5 (emphases supplied).

MS. RUSSELL SALK: That's correct.[20]

The Commission's witness, Michael Brennan, also testified that the Company assessing billing charges in 2024 to clawback credits issued in 2022 is a prospective exercise.[21] Mr. Brennan testified that the Commission would not even oppose the Company going back to 2019 to assess billing charges to clawback credits issued four years ago.[22] Mr. Brennan explained that the "process is going to require a look back at the prior calendar year in order to complete the math that is needed to do the reconciliation."[23] Revity fully understands that future reconciliations of excess net metering credits will have to be performed the year after the credits are issued because the Company cannot know the actual consumption of the satellite accounts for a given year until after the year has concluded. However, it is nonsensical for the Company (and the Division) to suggest that the Tariff Advice is not proposing to retroactively clawback legacy credits.

The term "retroactive" is defined as "extending in scope or effect to matters that have occurred in the past."[24] Conversely, "prospective" is defined as "[e]ffective or operative in the future."[25] "Retroactive application of a law means that it changes the legal consequences of conduct that took place before the law went into effect."[26] "Retrospective laws are often viewed with some suspicion."[27] "[R]etroactive laws that overturn vested property rights are subject to 'special scrutiny.'"[28] Retroactive application of statutory provisions "to pre-existing consensual

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[20] TR at 407:5-408:7 *see also* TR 154:25-155:6 ("We are prospectively putting in place an annual reconciliation process for, you know, what we had proposed for '22 and then for each year thereafter where we're going to be within a year after doing this annual reconciliation. It's not going to affect legacy credits already exist as a result of noncompliance.").
[21] TR at 787:12-788:19.
[22] TR at 788:20-24 ("MR. NYBO: Okay. Would the division oppose the utility going back to say calendar year 2019 and assessing billing charges for that year? MR. BRENNAN: No.").
[23] TR at 791:3-6.
[24] BLACK'S LAW DICTIONARY (11th ed. 2019).
[25] *Id*.
[26] *U.S. ex rel. Anderson v. N. Telecom, Inc.*, 52 F.3d 810, 814 (9th Cir. 1995), *as amended* (May 26, 1995).
[27] *Adams Nursing Home of Williamstown, Inc. v. Mathews*, 548 F.2d 1077, 1080 (1st Cir. 1977).
[28] *Kenyon v. Cedeno-Rivera*, 47 F.4th 12, 24 (1st Cir. 2022).

contracts would significantly impair vested contract rights" constituting "an unconstitutional impairment of the obligation of contract."[29] A law cannot be given retroactive effect where to do so "would significantly impair and interfere with the vested rights of the parties, and would significantly interfere with the long-established economic relationship between them."[30] Here, clawing back credits issued and sold in 2022 and 2023 interferes with the contractual relationship between host developers and satellite offtakers in a manner prohibited under Rhode Island law. "[I]f a serious doubt of constitutionality is raised, it is a cardinal principle that [a] Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided" and so, "[i]n keeping with this long-recognized principle of constitutional scrutiny, [the Court] shall, in construing statutory language, adopt that interpretation which allows [the Court] to avoid a finding of unconstitutionality."[31]

The distinction the Company appears to be drawing is that its proposal is prospective because—even if the reconciliation is clawing back credits issued two years ago—the actual reconciliation will occur in the future. If the General Assembly enacted a law stating that all drug offenders convicted and sentenced over the past decade were to be re-sentenced—the re-sentencing would obviously occur in the future but that law would nevertheless be viewed by the courts as retroactive. The Company's proposal to administer billings charges for credits issued in 2022 and 2023 clearly impacts matters that have occurred in the past. It is, without a doubt, a retroactive proposal.

In addition to seeking to apply the billing charges retroactively, the Company is also proposing to apply these billing charges to the host developer accounts. Imposing liability on host

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[29] *Scungio Motors, Inc. v. Subaru of New England, Inc.*, 555 F. Supp. 1121, 1130-32 (D.R.I. 1982).
[30] *Pascale Service Corp. v. International Truck and Engine Corp.*, 558 F. Supp. 2d 217, 222 (D.R.I. 2008).
[31] *Hometown Properties, Inc. v. Fleming*, 680 A.2d 56, 60 (R.I. 1996) (*quoting Crowell v. Benson*, 285 U.S. 22, 62 (1932) & *Advisory Opinion to the Governor (DEPCO)*, 593 A.2d 943, 946 (R.I. 1991)).

developers for these billing charges is inequitable for three reasons. *First*, the Company receives the value of the host developers' electricity production regardless of whether the credits are beyond 100% of the offtakers' consumption:

> MR. NYBO: The reference to zero dollar credit, is the idea that, I think, that if generation is over 125 percent of consumption, that the credit should be nil, right?
> MR. RUSSELL SALK: That's our interpretation of the definition of excess net metering credit.
> MR. NYBO: When a system, a facility is generating electricity over 100 percent of its off-takers' consumption, is the company proposing to divest or somehow refuse to take the electricity from that system?
> MS. RUSSELL SALK: No.
> MR. NYBO: So the company is still going to take the electricity from the system, even though its 125 percent of the off-takers' consumption, correct?
> MR. RUSSELL SALK: That's correct.[32]

The Company retains the value of the electricity produced by host developers but provides no compensation for it.

Second, the Company has conceded that it is impossible for anyone to know ahead of time whether a given customer will have a generation to load differential that results in billing charges: "As generation and load may vary substantially year to year, it is not feasible to accurately determine if a given customer will have a billing charge until the year has concluded."[33] If it is impossible for host developers to determine whether there will be billing charges before the credits are issued, it would be inequitable to assess host developers those billing charges based on consumption patterns over which the host has no control. *Third* (and relatedly), of the three participants in the stand-alone net-metering regime, host developers have the least control over this historic issue. As the Company has conceded, it has failed to administer this program in a statutorily compliant manner for many years. Moreover, it is the satellite offtakers who control their consumption patterns. The Company has provided myriad explanations for how satellite

[32] TR at 129:20-130:12.
[33] Company's Response to MAE 1-13.

offtakers find themselves in a position of having significant excess credits on their accounts. These reasons were stated as follows:

> Satellite accounts also have the potential to have unused credits for various reasons such as, but not limited to, rate class discrepancies between host and satellite, the fact that allocations are made based on estimates of generation and estimates of consumption, the possibility of satellites having multiple hosts, the possibility of satellites having an independent third-party supplier, the variation of rates throughout a year, the fact that the host and satellite accounts may not be on the same billing cycle (satellite[s] could get and pay for a bill before the credits are transferred), etc.[34]
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> * * *
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> The Company also observed or speculated that the following factors may have influenced excess credit balances:
> - Net metering customers allocating credits may have used kWh in their assumptions rather than billed electricity amounts, and as discussed above, per kWh rates differ from one account to another;
> - Some recipients of net metering credits were billed separately by their competitive suppliers and could not apply net metering credits to those electricity charges (i.e., to maximize their use of net metering credits, customers should have the Company issue a consolidated bill instead of receiving a separate bill from their supplier);
> - Some recipients of net metering credits may have paid electric bills before net metering credits were applied to them; and
> - Net metering customers may have allocat[ed] too many credits to one account and not enough to other accounts that were listed on the Schedule B.[35]

With respect to some of these issues—for example, in the case of competitive supply contracts or customers pre-paying their bills before the credits transfer—the Company does not provide their customers with any guidance as to how to properly use to the program so as to avoid excess credits.[36]

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[34] July 7, 2023 Response to PUC 1-2(b).
[35] Company's October 23, 2023 Response to Record Request No. 1.
[36] TR at 418:5-23 ("MR. NYBO: * * * My question is, when they decide to go to a supplier, a competitive supplier, Mr. Rowen here is suggesting that, to avoid excess credits, they should, the customer should at the very least ask the company to issue a consolidated bill. That's how I read this statement. And my question is, when a customer decides to do that, has the company historically made sure to advise that customer, look, make sure you get the consolidated bill or else you might have an excess net metering issue? Has the company does that? MS. ROSSI: I, I would very highly doubt that it ever gets to that level

The Company has provided no reason why a host developer would accumulate excess credits (or even if host developers actually do accumulate excess credits). Revity's testimony explained its experience with the root causes of the misallocation:

> The items we have experience with are satellite account customers procuring net metering credits in kilowatt hours rather than matching credits with dollars, the customers are not aggregating their third-party competitive supply on their Rhode Island energy bill, the customers have material changes in their consumption after receiving -- after procuring net metering credits, an example would be efficiency or different consumption patterns that were exacerbated by COVID, and that would be it.[37]

Mr. Brennan, for the Division, agreed:

> What contributes to accumulated balances of credits, as your witness testified, can be a number of things, related to a difference between the rate at which the credits are created and initially valued and the rate that the offtaker customer is on, that can create an issue. Something like what happened in COVID where a business or a municipality or a school has a situation where there's a temporary significant reduction in load.[38]

Most of these root causes are not things that are within the control of the host developers. The historic consumption patterns of satellite offtakers are provided by those offtakers and there is no ability of a host account to independently verify that information beyond simply relying on the information provided by the satellite offtakers.[39] Certainly, the Company is uniquely positioned to scrutinize the consumption patterns of their ratepayers but, even still the Company has "taken

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of conversation. Because, again, enrollments with the suppliers are all done electronically. There's not a conversation."); TR at 420:25-421:7 ("MR. NYBO: Okay. So the customer has credits coming, now for whatever reason they jump the gun, if you will, and pay their bill, and now they're in a situation where they paid cash on their bill and now, for whatever reason, there's been some lag time on the credit, now they have credits, and we have a situation of excess credits because there wasn't the ability to apply those credits to a bill. The company sort of -- That's the situation, the company just allows that to continue forward? The company doesn't refund the cash? MS. ROSSI: The company would, upon the customer request, issue a refund. MR. NYBO: Would the Company reach out to the customer and say, look, you're a net metering offtaker, you're going to have credits coming here very soon, you should sit tight, wait for the credits to come through? MS. ROSSI: No, the company does not do that.").

[37] TR at 654:10-21.

[38] TR at 792:15-24.

[39] TR at 649:9-20; id. at 658:22-25 ("[W]e don't have the ability to control consumption patterns of the customer and we don't have the ability to force the customer to consolidate their third-party supply.").

the data from the Schedule B at the host account/developers' word."[40] The Company does not go into its own records and check whether the historic consumption patterns presented by the satellite offtaker are accurate.[41] In summary, it is not "feasible" for anyone to "determine if a given customer will have a billing charge until the year has concluded"[42] and the Company has never taken any steps to ensure that satellite offtakers avoid an excess credit issue and, yet, the Company wants to impose retroactive billing charges on host developers to reconcile its historical misadministration of the statutory program.

The Division, for its part, has suggested that host developers can simply pass the liability onto its satellite offtakers through their net-metering financing arrangements. Mr. Brennan's pre-filed testimony offered as follows:

> The Company is proposing that any billing charges resulting from the annual reconciliation calculations for stand-alone systems will be charged to the net metering system host account. The host account will then be responsible for any true-up transactions with offtake accounts based on contractual agreements among the parties with no involvement from the Company.[43]

The Company agrees that host accounts may be able to simply pass these billing charges on to their satellite offtakers.[44] The Company's analysis—from Docket No. 5127, which was incorporated in this docket's record through the Company's response to Record Request No. 1 (dated October 5, 2023)—shows that the billings charges for 2020, using the preferred volumetric approach, would have been $1,095,782. The Company testified that the billing charges for 2022 will likely be higher than those estimated for 2020.[45] Indeed, the Company's Response to PUC 3-2 reflects that the net-metering credit program has more than doubled in size from 2020 (with

[40] TR at 138:4-5.
[41] TR at 435:3-10.
[42] Company's Response to MAE 1-13.
[43] September 13, 2023 Pre-filed Testimony of Michael Brennan at 7:22-8:2.
[44] TR at 422:13-16.
[45] TR at 423:22-424:7.

$34,267,097 of credits issued) to 2022 (with $74,329,968 of credits issued). So, the proposed billing charges will be a seven-figure annual burden for the net-metering community to bear in 2022 and 2023.

The Company is aware that there are cities and towns in the State that have significant excess net metering credit issues.[46] Revity's testimony explained that these cities and towns include Providence, Pawtucket, Cumberland and Warwick.[47] Based on Revity's knowledge, Providence has accumulated millions of dollars in excess credits, Cumberland has accumulated about a million dollars in excess credits, and Pawtucket has accumulated about a million dollars in excess credits.[48] The Company is not aware of what portion of the aforementioned billing charges will be assessed to host accounts for these municipal offtakers.[49] The Company has not given any thought as to whether these municipal offtakers have the financial wherewithal to sustain significant billing charges.[50] The Company has not communicated to these municipal offtakers its proposal to assess billing charges for 2022 and 2023.[51] The Company has not given any

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[46] TR at 429:6-11.
[47] TR at 651:13-16.
[48] TR at 653:1-20.
[49] TR at 429:17-20; *see also* TR at 427:21-428:1 ("MR. NYBO: When it comes to net metering credits in 2022, all standalone offtakers will be cities, towns, non-profits, hospitals, or universities. Is that true? MS. RUSSELL SALK: That's correct.").
[50] TR at 424:24-425:11 ("MR. NYBO: * * * My question was, assuming the billing charge can be passed along. So I'm no[t] going to ask you whether legally it can. Assuming it can, and understanding that these offtakers are cities, towns, non-profits, has the company given any thought to whether those cities, towns, and non-profits are going to be in a financial position to be able to pay what could be hundreds of thousands of dollars in billing charges? DR. GILL: We can't speak to the financial positions they're planning with other entities.").
[51] TR at 425:12-23 ("MR. NYBO: Has the company advised any of its customers, its customers who may be impacted by this proposal that there may be billing changes, you know, in the magnitude of five figures, six figures coming down the road, depending on what the PUC orders? MS. RUSSELL SALK: At this point, the compan[y] is working on a communication plan. We're awaiting the final order through this docket to ensure that we're giving the right information to these customers.").

consideration to how clawing back net-metering credits issued over the last two years will erode market's confidence in this program.[52]

No one has contested the proposition that the historic overcompensation of net-metering credits was the product of the Company's failure to properly administer this program. But the Net-Metering Statute does not contemplate "billing charges" and the Net-Metering Statute does not contemplate zeroing out credits issued in excess of 125% of consumption.[53] Nevertheless, the Company is proposing to assess billing charges to clawback credits issued in 2022 and 2023 which were above 100% of off-taker consumption and is proposing to lay those billing charges at the feet of host developers.

Revity agrees that—assuming the "excess net-metering credit" statutory regime applies to stand-alone configurations (an assumption which Revity contests)—reconciliation of excess net-metering credits requires an annual lookback and billing charge allocation. However, Revity requests that the Company only be permitted to apply those billing charges for credits issued beginning in 2024[54] and further requests that those billing charges be allocated to satellite offtaker

[52] During the October 25, 2023 hearing, the Company testified as follows:

> MR. NYBO: Again, I just want you to assume that the contract[s] allow host accounts to pass billing charges along to offtakers. I totally appreciate that you can't speak to whether they do [or] not. But just for my question, assume that. Does the company, if they do, and these offtakers find themselves with five figures, six figures in billing charge liability for '22 and '23, for example, does the company have any concerns about hurting the confidence in the state's net metering system?
>
> DR. GILL: We've put forward a proposal that we think most accurately reflects the statute and the tariff and enacting that proposal and enacting what we believe to be the, you know, rules of the tariff and the statute should not impose any perception of lack of confidence.
>
> MR. NYBO: Okay. Where in the statute does it say billing charges?
>
> DR. GILL: I did a quick Control F for the term "billing charge," and it did not appear in the statute as a term.

TR at 432:7-433:4.

[53] Company's Response to PUC 1-7.

[54] TR at 665:10-16.

accounts so that those offtaker accounts can use their excess credits to offset those billing charges.[55]

III. THE COMMISSION SHOULD REJECT PROPOSAL NO. 2 BECAUSE 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 OFF-TAKER ACCOUNTS AND, THUS, IMPOSES AN UNNECESSARY ADMINISTRATIVE HURDLE FOR HOST DEVELOPERS BEFORE RECEIVING AUTHORITY TO INTERCONNECT.

The Company's Proposal No. 2 would require host developers of stand-alone net metering configurations to allocate net metering credits to eligible credit recipients "as close to 100% of the credits as possible" via their Schedule B before the project receives ATI. The Company's Pre-Filed Testimony states that "[r]equiring the percentage allocation of credits to equal 100% will ensure that unused credits do not bank on the host account, unable to be used."[56] The problem with the Company's proposal is that the Company does not know whether there are *any* host developers with unused credits currently banked on their accounts.[57] Indeed, the Company has agreed that it is possible that there are no host accounts with any unused credits.[58] The Company could not provide any reason why a host developer would bank unused credits on its account.[59] And why

[55] TR at 666:8-667:14.
[56] Company's February 15, 2023 Pre-Filed Testimony p. 14 of 19.
[57] TR 124:14-23 ("MR. NYBO: But the company at this point isn't sure whether there are any host accounts with unused credits sitting on those accounts? MS. RUSSELL SALK: I don't have an exact number to share with you."
[58] TR at 132:17-25 ("MR: NYBO: * * * Is it a possibility that there are no host accounts with any unused credits as we sit here today? MS. RUSSELL SALK: Is it a possibility that there are no host accounts -- MR. NYBO: With any unused credits? MS. RUSSELL SALK: It's a possibility, sure.").
[59] On this issue, the testimony was as follows:

> MR. NYBO: * * * I'm actually asking about, you know, you provide some concrete examples here of why a satellite account might find itself with unused credits. I'm curious if you can think of any concrete reasons why a host account would not allocate credit[s] such that it ended up with unused credits on its account?
> MS. RUSSELL SALK: I can't speak to the net metering customer and their rationale for how they fill out their Schedule B for their net metering system.

would a host developer bank credits on its accounts? The entire business model is to monetize the credits—hoarding them is antithetical to the business model.

Furthermore, the Company testified that Proposal No. 2 reflects "an effort to try to minimize the amount of billing charges and to ensure that the host account gets the most value for their generation" and that "when the host account fills out the Schedule B they're taking into consideration the sum of their off-takers' loads and ensuring that's aligned with their projected generation * * *."[60] But Proposal No. 2 does not address (nevermind solve) the issue of unused credits on satellite accounts because Proposal No. 2 only requires that the host accounts allocate 100% of its generated credits without any regard for the actual consumption of the satellite offtaker accounts. If a host developer allocates 100% of its 1,000,000-kilowatt hour facility to an offtaker with annual consumption of 500,000 kilowatt hours, the developer will have complied with Proposal No. 2 and, yet, this offtaker will have a 200% excess net metering credit issue.

The Company's response to PUC 2-4 presents the following hypothetical scenario:

	Generator	A	B
Credit	$ (400.00)	$ -	$ -
Charge	$ -	$ 50.00	$ 200.00
Total	$ (400.00)	$ 50.00	$ 200.00
AFTER TRANSFER			
	Generator	**A**	**B**
Credit	$ (400.00)	$ (200.00)	$ (200.00)
Charge	$ 400.00	$ 50.00	$ 200.00
Total	$ -	$ (150.00)	$ -

MR. NYBO: I ask, because you were able to speak about, about satellite accounts and what could happen to them. I'm curious if anybody at the company can think of any reason why a host account would want to keep unused credits on their account.
MS. RUSSELL SALK: Again, I can't speak for why a host account would fill out their Schedule B the way they do, their business reasons for it.
MR. NYBO: Did you say there are business reasons for it?
MS. RUSSELL SALK: No. Just I can't speak to the host account business reasons for not allocating all of their credits.

TR at 133:16-134:11.

[60] TR at 126:21-127:2.

The Company agreed that, in this hypothetical scenario, the host generator would have fully complied with the proposed rule requiring 100% allocation before ATI; but the allocation will still result in an unused credit problem.[61] The Division agrees that Proposal No. 2 only protects against the host developers holding credits in their accounts.[62] This proposed rule does nothing to solve the problem.

Moreover, Proposal No. 2 is flawed because "as close to 100% of the credits as possible" is not a readily enforceable standard. The Commission explained the standard as follows:

> MR. NYBO: * * * How does one define "as close to a hundred percent as possible"? How do you define it?
>
> MR. BRENNAN: Well, I mean, I think that there could be situations where the next incremental customer that you, that you have, that you have recruited, for lack of a better word, could get you to 99 percent, and, and at that point you feel like that's good, I feel like I'm close enough, and you would take it to Rhode Island Energy.
>
> And I'm saying that because, you know, these are -- you can't just -- you may not just be able to add, you know, the exact perfect amount of additional load that would get you, you know, right to a hundred percent or even, you know, to have more, more load than generation, which would be fine. So I think the company was recognizing that there could be situations where you're very close to that 100 percent mark and we don't want to stop your process toward authority to interconnect, but we also don't want to encourage the creation of excess renewable net metering credits in the future. And therefore, we want to make sure that you get as close as you can get to that point.[63]

According to the Division, it will be "incumbent upon the host accounts to convince Rhode Island Energy that they have done their best to get a hundred percent, and Rhode Island Energy, in its discretion, will make the call as to whether they're going to let [ATI] go forward."[64] The Company has fervently opposed the net-metering statutory program (both before this Commission and in lobbying before the General Assembly) because—according to the Company—the program is too

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[61] TR at 141:13-16.
[62] TR at 811:19-25.
[63] TR at 810:17-811:18.
[64] TR at 814:7-14.

expensive. Yet, the Division is comfortable with the Company playing this gatekeeper role using a wildly subjective standard.[65]

The issue of unused credits on stand-alone, remote configurations is only a legacy issue and will not persist 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, structural oversubscription will now be easily addressed with the introduction of a new offtaker to absorb excess credits from an oversubscribed offtaker.[66] Moreover, 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 ATI.[67] Additional conditions precedent imposed on ATI present risks that the facility will be delayed—a delay which, depending on the value of the credit in a given year, could place millions of dollars at risk. This risk is unreasonable given that the proposal will not address the purported problem.

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[65] TR at 814:1-18.

[66] TR at 502:21-503:15 ("MR. VALE: * * * Several months ago, the Rhode Island legislature passed and the governor signed, you know, amendments to that bill and enabled any commercial or industrial account to receive those credits. Now there's a much larger pool of need than there was previously. So we do have a situation, which I think is, could be almost a one time situation of a lot of excess accounts, a lot of excess credits sitting on accounts, and I believe that, you know, with collaboration from Rhode Island Energy, we could do some one time transfers to remove the excess credits sitting on, you know, call it, you know, Warwick City Hall account, and transfer it to some business nearby or in state and, you know, clean up that excess that's sitting there and submit a new Schedule B going forward and, you know, prevent excess credits from accruing on those offtaker accounts going forward.").

[67] 26 U.S.C. § 48(a)(1) (the "energy credit for any taxable year is the energy percentage of the basis of each energy project placed in service during such taxable year.").

WHEREFORE, for the foregoing reasons, Revity respectfully requests that the Commission find that the Net-Metering Statute defines "excess renewable net-metering credit" to the exclusion of third-party off-takers in contract with "stand-alone" configuration host developers and conclude that Proposal No. 3 (and the associated billing charges) should not be applied to stand-alone configurations. Short of that finding, Revity respectfully requests that the Commission rule as follows: (1) Billing charges should be assessed only for credits issued in the future (beginning in 2024) and billing charges should be assessed on satellite offtaker accounts (as opposed to host developer accounts) and (2) Reject Proposal No. 2—requiring stand-alone projects to allocate as close to 100% of credits before receiving authority to interconnect—because it does not address the problem of excess net metering credits and will create additional administrative burdens.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post-Hearing Memorandum was electronically transmitted to the individuals listed below.

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

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November 29, 2023

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