REVITY ENERGY

April 26, 2024

VIA EMAIL (Luly.Massaro@puc.ri.gov)

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Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Commissioner Abigail Anthony
Rhode Island Public Utilities Commission
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Commissioner John C. Revens, Jr.
Rhode Island Public Utilities Commission
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Re: Docket No. 24-10-EL – The Narragansett Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend the Net Metering Provision Proposal to Incorporate 2023 Legislative Changes

Dear Commissioners:

I write in my capacity as Senior Legal Counsel for Revity Energy LLC and its affiliates ("Revity") and to submit Revity's public comment regarding the above-referenced Docket matter. Revity is a Rhode Island-based utility scale solar developer which has successfully developed over 158 megawatts, direct current (MW_{DC}) of solar capacity in Rhode Island and Massachusetts. I write to offer Revity's limited comments regarding The Narragansett Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend the Net Metering Provision Proposal to Incorporate 2023 Legislative Changes (the "Tariff Advice"). By and large, the Tariff Advice properly reflects the revisions to the Net Metering Act (R.I. Gen. Laws § 39-26.4-1, *et seq.*) enacted by the Rhode Island General Assembly last session through H 5853A and S 0684A.

However, the Tariff Advice proposes to revise the definition of a "Net Metering Financing Arrangement" which would add the following restriction:

> For purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Act), the requirement that an Eligible Net Metering Resource be located on property owned or controlled by a Public Entity, Educational Institution, Hospital, Municipality, Multi-Municipal Collaborative, or Commercial or Industrial Customer **is satisfied by showing documentation of ownership or, for control, granting an irrevocable license or sublicense to the Eligible Net Metering Customer or equivalent.**

(Emphasis supplied).

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The emphasized language proposes new regulatory guidance that was not contained in the legislative changes enacted by H 5853A and S 0684A. This language suggests that an irrevocable license or sublicense are the only instruments that would satisfy the control requirement under R.I. Gen. Laws § 39-26.4-2(16)(i). That restriction would conflict with the Commission's Order in Docket No. 4694.

On March 9, 2017, in Docket No. 4694, Southern Sky Renewable Energy RI filed a Petition for Declaratory Judgment seeking a determination from the Commission that the ownership or control requiring of the Net Metering Act "is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property." On April 19, the Company filed a Motion to Intervene and Response in which the Company acknowledged that "the requirement that an eligible net metering resource be located on property 'owned or controlled' by the public entity or municipality may be satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property." On May 9, the Commission entered an Order declaring as follows:

> For purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Act), the requirement that an eligible net metering resource be located on property owned or controlled by a public entity or municipality is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property.

The Commission's Order in 4694 determined that leases and easement agreements satisfy the ownership or control requirement under R.I. Gen. Laws § 39-26.4-2(16)(i) and any changes to the Net Metering Tariff should reflect that prior determination. Revity would respectfully request that this Tariff provision read as follows:

> For purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Act), the requirement that an Eligible Net Metering Resource be located on property owned or controlled by a Public Entity, Educational Institution, Hospital, Municipality, Multi-Municipal Collaborative, or Commercial or Industrial Customer is satisfied by showing documentation of ownership or, for control, granting an irrevocable license or sublicense, *lease or sub-lease, or easement* to the Eligible Net Metering Customer or equivalent.

Next, the General Assembly has recently enacted additional (largely typographical) revisions to the Net Metering Act through S 2151A and H 7431A. On April 9, 2024, the Senate passed S 2151A (Y: 29 N: 4 NV: 5 Abs: 0) and, on April 24, 2024, the House passed H 7431A (Y: 61 N: 7 NV: 7 Abs: 0). Specifically, S 2151A and H 7431A revise R.I. Gen. Laws § 39-26.4-2(6) as follows:

"Eligible net-metering system" means a facility generating electricity using an eligible net-metering resource that is 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. A projected annual consumption of energy may be used until the actual 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 becomes available for use in determining eligibility of the generating system. The eligible net-metering system may be owned by the same entity that is the customer of record on the net-metering accounts or may be owned by a third party that is not the customer of record at the eligible net-metering system site and which may offer a third-party, net-metering financing arrangement or net-metering financing arrangement, as applicable. Notwithstanding any other provisions of this chapter, any eligible net-metering resource: (i) Owned by a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative; or (ii) Owned and operated by a renewable-generation developer on behalf of a public entity, educational institution, hospital, nonprofit or multi-municipal collaborative for net metering shall be treated as accounts eligible for net metering within an eligible net-metering system site; or (iii) Owned and operated by a renewable-generation developer on behalf of one or more commercial or industrial customer(s) through net-metering financing arrangement(s) shall be treated as an eligible net-metering system within an eligible net-metering system site. Notwithstanding any other provision to the contrary, effective July 1, 2060, an eligible net-metering system means a facility generating electricity using an eligible net-metering resource that is interconnected behind the same meter as the net-metering customer's load.

This year's legislation also revises R.I. Gen. Laws § 39-26.4-2(7) as follows:

"Eligible net-metering system site" means the site where the eligible net-metering system or community remote net-metering system is located or is part of the same campus or complex of site contiguous to one another and the site where the eligible net-metering system or community remote net-metering system is located or a farm on which the eligible net-metering system or community remote net-metering system is located. Except for an eligible net-metering system owned by or operated on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative or for a commercial or industrial customer through a net-metering financing arrangement, the purpose of this definition is to reasonably assure that energy generated by the eligible net-metering system is consumed by net-metered electric service account(s) that are actually located in the same geographical location as the eligible net-metering system. All energy generated from any eligible net-metering system is, and will be considered, consumed at the meter where the renewable energy resource is interconnected for valuation purposes. Except for an eligible net-metering system owned by, or operated on behalf of, a public entity, educational institution, hospital, nonprofit, or multi-

municipal collaborative or for a commercial or industrial customer through a net-metering financing arrangement, the purpose of this definition is to reasonably assure that energy generated by the eligible net-metering system is consumed by net-metered electric service account(s) that are actually located in the same geographical location as the eligible system. All energy generated from any eligible net-metering system is, and will be considered, consumed at the meter where the renewable energy resource is interconnected for valuation purposes. Except for an eligible net-metering system owned by, or operated on behalf of, a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative, or for a commercial or industrial customer through a net-metering financing arrangement, or except for a community remote net-metering system, all of the net-metered accounts at the eligible net-metering system site must be the accounts of the same customer of record and customers are not permitted to enter into agreements or arrangements to change the name on accounts for the purpose of artificially expanding net-metering system site to contiguous sites in an attempt to avoid this restriction. However, a property owner may change the nature of the metered service at the accounts at the site to be master metered in the owner's name, or become the customer of record for each of the accounts, provided that the owner becoming the customer of record actually owns the property at which the account is located. As long as the net-metered accounts meet the requirements set forth in this definition, there is no limit on the number of accounts that may be net metered within the eligible net-metering system site.

Next, the legislation amends R.I. Gen. Laws § 39-26.4-3(a)(1)(ii) as follows:

For systems developed in core forests on preferred sites, no more than one hundred thousand square feet (100,000 sq. ft) of core forest shall be removed, ~~including~~ except for work required for utility interconnection or development of a brownfield, in which case no more core forest than necessary for interconnection or brownfield development shall be removed.

The legislation also amends R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) as follows:

The maximum aggregate capacity of remote net metering allowable for ground-mounted eligible net-metering systems, as defined by § 39-26.4-2(6), with the exception of systems that have, as of April 15, 2023, submitted a complete application to the appropriate municipality for any required permits and/or zoning changes or have requested an interconnection study for which payment has been received by the distribution company, or if any interconnection study is not required, a completed and paid interconnection application by the distribution company ~~date of passage~~ as of June 24, 2023, shall be two hundred seventy five megawatts, alternating current (275 ~~MWac~~ MWAC), excluding off-shore wind. None of the systems to which this cap applies shall be in core forests unless on a preferred site located within the core forest. A project counts against this maximum if it is in operation or under construction by July 1, 2030, as determined by the local distribution company. All eligible ground-mounted net-metering systems must be

under construction or in operation by July 1, 2030. This restriction shall not apply to the following: (A) The eligible net-metering system is interconnected behind the same meter as the net-metering customer's load; and/or (B) The energy generated by the eligible net-metering system is consumed by net-metered electric service account(s) of the same owner of record that are actually located on the same or contiguous parcels as the eligible net-metering system.

The legislation further amends R.I. Gen. Laws § 39-26.6-1 as follows:

> The purpose of this chapter is to enable the state to meet its climate and resilience goals, including those established in the act on climate. This includes the goals to facilitate and promote the installation of grid-connected generation of renewable energy; support and encourage development of distributed renewable energy generation systems while protecting important core forest areas essential to climate resilience and complying with Rhode Island's climate change mandates; reduce carbon emissions that contribute to climate change by encouraging the siting of renewable energy projects in the load zone of the electric distribution company and in preferred areas that have already been disturbed by industry or other uses; diversify the energy-generation sources within the load zone of the electric distribution company; stimulate economic development; and improve distribution-system resilience ~~with~~ within the load zone of the electric distribution company.

The legislation also amends R.I. Gen. Laws § 39-26.6-3(6) as follows:

> "Core forest" refers to unfragmented forest blocks of single or multiple parcels totaling two hundred fifty (250) acres or greater unbroken by development and at least twenty-five (25) ~~acres~~ yards from mapped roads, with eligibility questions to be resolved by the director of the department of environmental management. Such determination shall constitute a contested case as defined in § 42-35-1. Notwithstanding any other provisions of this chapter, no renewable-distributed-generation project that is located or planned to be located in or on a core forest, shall be considered an eligible renewable-distributed-generation project or otherwise be eligible to participate in this program, unless it is on a preferred site.

Lastly, the legislation amended R.I. Gen. Laws § 39-26.6-3(7) as follows:

> "Distributed-generation facility" means an electrical-generation facility located in the electric distribution company's load zone with a nameplate capacity no greater than five megawatts (5 MW), except for solar projects as described in § 39-26.6-7 that may exceed five megawatts (5 MW) but shall not be greater than fifteen megawatts (15 MW), unless located on preferred sites, in which case they may be sized up to thirty-nine (39 MW), using eligible renewable energy resources as defined by § 39-26-5, including biogas created as a result of anaerobic digestion, but, specifically excluding all other listed eligible biomass fuels, and connected to an electrical power system owned, controlled, or operated by the electric distribution company. For facilities developed in core forests on preferred sites, no

more than one hundred thousand square feet (100,000 sq. ft.) of core forest shall be removed, ~~including~~ except for work required for utility interconnection or development of a brownfield, in which case no more core forest than necessary for interconnection or brownfield development shall be removed. * * *

Again, both S 2151A and H 7431A have passed their respective chambers. Revity would respectfully request that these Tariff Advice proceedings also incorporate this year's legislative changes so as to avoid having to return to the Commission against next year to incorporate these revisions.

Revity would respectfully request that the Commission conduct a non-evidentiary hearing to review these proposed changes to the Tariff. If the Commission has any additional questions regarding the positions taken in this correspondence, please feel free to contact my office.

Regards

Nicholas L. Nybo
REVITY ENERGY LLC AND AFFILIATES

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