STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

In Re:	**RIE's Petition for Acceleration**	**)**	
	Due to DG Project – Weaver Hill	**)**	**Docket No. 23-38-EL**
		)	
In Re:	**RIE's Petition for Acceleration**	**)**	**Docket No. 23-37-EL**
	Due to DG Project – Tiverton	**)**	**(Unconsolidated)**

DIVISION'S POST-HEARING BRIEF

I. INTRODUCTION

Under regularly accepted ratemaking principles, regulatory lag associated with the recovery of costs between rate cases has tended to discourage public utilities from making capital investments in their distribution systems.[1] To address this issue, the General Assembly enacted R.I. Gen. Laws § 39-1-27.7.1 (the "ISR Statute"). The ISR Statute facilitates the recovery of capital spending on utility infrastructure, among other capital investments, on a more-timely basis as long as the proposed spend "is reasonably needed to maintain safe and reliable distribution service over the short and long term."[2] Under the ISR process, Rhode Island Energy ("RIE" or "Company") is permitted to begin recovering costs for capital assets that are placed in service within the ISR fiscal year pursuant to a pre-approved budget.[3] If there is an under or over-recovery of costs during the year, then rates are adjusted for a future period to reconcile those costs.[4]

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[1] *See e.g., In Re: Providence Water Supply Board,* Dkt. 1314, Order No. 9598 (R.I.P.U.C. August 3, 1978); *In Re: Tariff Filing of Blackstone Valley Electric Co.*, Dkt. 1121, Order No. 8882 (R.I.P.U.C. September 10, 1973).

[2] R.I. Gen. Laws § 39-1-27.7.1(d).

[3] R.I. Gen. Laws § 39-1-27.7.1(c).

[4] *Id.*

The timelier cost-recovery of the Company's capital investments provided under the ISR Statute, however, does not address the interest of DG developers: to interconnect their DG projects to the Company's electric distribution system ("EDS") and obtain cost recovery for the interconnection work as expeditiously as possible in order to start generating a profit.[5] Cognizant of the increasing amounts of distributed generation in Rhode Island and to attempt to harmonize ratepayer and DG developer interests, in June 2017, the General Assembly enacted R.I. Gen. Laws § 39-26.3-4.1 (the "Interconnection Statute"). Following suit, the Commission amended R.I.P.U.C. 2180[6] ("Interconnection Tariff") in Dkt. 4763 to synchronize the then existing interconnection tariff, R.I.P.U.C. 2163, with the newly enacted statute.

The Interconnection Statute and Interconnection Tariff provide a mechanism for the Company to advance a narrow subset of potential ISR capital spend that also serves to connect DG projects to the EDS (*i.e.,* for "System Modifications"),[7 & 8] under an enumerated set of conditions,[9] to a period *even earlier* than would be available under the ISR process. Regardless of the timetable, the review process for determining whether cost recovery is appropriate under the Interconnection Statute and Interconnection Tariff does not depart from the manner traditionally employed by the

[5] Dkt. 23-37-EL & Dkt. 23-38-EL, *Transcript of Hearing dated June 6, 2024* at 55 & 89.

[6] Effective September 6, 2018, R.I.P.U.C. 2180 "Standards of Connecting Distributed Generation" replaced R.I.P.U.C. 2163 in Dkt. 4763. R.I.P.U.C. 2244 replaced R.I.P.U.C. 2180, effective September 1, 2021, in Dkt. 5077. R.I.P.U.C. 2258 replaced R.I.P.U.C. 2244, effective September 1, 2022.

[7] The term "System Modification" is defined as "Modifications or additions to Company facilities that are integrated with the Company EDS for the benefit of the Interconnecting Customer." R.I.P.U.C. 2258 § 1.2.

[8] Column (I) Work in Response to PUC 2-3 and Column (J) Work in PUC 2-4.

[9] That is, when the Commission determines that a "System Modification": (i) has been properly accelerated by the Company—has been identified in the Company's work plan to be installed within a five-year period of the date the Company begins the impact study of the proposed DG project, and (ii) benefits other customers. R.I.P.U.C. 2258 § 5.4 (b) & (c).

Commission. Ratemaking remains largely a prospective endeavor;[10] thorough Commission scrutiny review and approval (with Division input and recommendation) takes place *before* any costs are incurred and recovered.[11]

Section 5.4(c) of R.I.P.U.C. 2258 provides, in pertinent part, "[t]he Company will file with the Commission all executed ISAs for Renewable Interconnecting Customer DG projects with an identified Accelerated Modification by July 1 of each year."[12] After each annual filing is made, the Commission has the opportunity to review the identified System Modifications that are to be undertaken in the Annual Electric ISR Reconciliation, which the Company files on August 1 of each year. If the Commission determines that the identified System Modification is an "Accelerated Modification" under § 5.4(c) and benefits other customers, then the Commission may order the interconnecting customer to fund the modification at its depreciated value determined as of the time it "would have been necessary" for ratepayers.[13] Upon receiving Commission approval or disapproval, the ISR factor is adjusted (or not) for the work that was identified for review.

Nowhere does the Interconnection Statute or Tariff authorize the retroactive cost recovery of System Modifications. The Company and Green Development, LLC ("Green") executed the relevant ISAs for the Tiverton Project on July 14, 2021 and July 22, 2021.[14] The Company and Green executed the relevant ISAs for the Weaver Hill Project on July 22, 2020.[15] The Company did

[10] *See e.g., In Re: Providence Water Supply Bd. Application to Change Rate Schedules*, 989 A.2d 110, 115 (R.I. 2010) ("The central principle is that ratemaking must be prospective…"); *Providence Gas v. Burke*, 475 A.2d 193, 197 (R.I. 1984) (same). *See also* R.I. Gen. Laws § 39-1-27.7.1 (where ISR cost recovery occurs pursuant to an annual "pre-approved budget").

[11] *See In Re: Island Hi-Speed Ferry, LLC,* 852 A.2d 524, 528 (R.I. 2004) (commenting that allowing recovery for rate changes for a ferry season that has passed would constitute retroactive ratemaking).

[12] R.I.P.U.C. 2258 § 5.4(c).

[13] R.I.P.U.C. 2258 § 5.4(b).

[14] *Petition* at 116 & 130.

[15] *Petition* at 184 & 204.

not make any filings of these ISAs "with identified System Modifications" by July 1, 2021 (for Weaver Hill) or by July 1, 2022 (for Tiverton) as required by Section 5.4(c). The Chairman obtained the Company's concession on this point:

> CHAIRMAN GERWATOWSKI: No one ever thought you were out of compliance with the tariff and needed to do something about it?
>
> A. I mean, I -- you know, I don't know how to answer that question. But I mean, you know, this, again, is a complicated thing that we were all struggling with.[16]

Accordingly, in no way does the Company possess "clean hands" when it seeks to blame the Division for the retroactive review which the Commission is now compelled to undertake.

The Company impliedly acknowledged these tariff violations as "lesson[s] learned" at hearing.[17] Nonetheless, the Company and DG Developers still expect ratepayers to bear all the costs of their non-compliance. Instead of advocating for project acceleration and the reimbursement of developers for projects that have been developed *in accordance with ISR principles*, the Company and DG developers ask that ratepayers pay entirely for System Modifications and System Improvements, after the fact, no matter how unauthorized and unnecessary they are, sanctioning project development and reimbursement regardless of the regulatory requirements and regulatory risk. No matter how the Company and DG developers may try to "spin" the language of the Interconnection Statute or Interconnection Tariff, however, it remains uncontested that nowhere does the statute or the tariff:

[16] Dkts. 23-37-EL & 23-38-EL, *Transcript of Hearing dated July 9, 2024* at 153.

[17] *See id.* at 214-15 ("…a lot of the details that came out during discovery and the hearings could have been presented right up front in the petitions going in the door. Lesson learned. Perhaps even waiting until all of the reconciliation of these costs were done before putting a number before the Commission is a better methodology. Lesson learned. There are other lessons learned from these dockets that the company will take back in terms of a next shot at this when circumstances will justify it.").

- Authorize the acceleration of *System Improvements*[18] & [19] by the Company;[20]

- Authorize an Order requiring DG customers to advance the funding of *System Improvements*, subject to reimbursement; [21]

- Authorize an Order advancing the funding of "System Modifications," subject to reimbursement, *other than under the speci- fically enumerated conditions in Section 5.4(b) & (c)*; and

- Authorize overriding Dkt. 4600-A's instruction that "the goals, principles and framework" of Dkt. 4600 which applies to "any proponent of a rate, rate design or program proposal with associate cost recovery, not just the utility."

Rather, as System Improvements are explicitly defined as "capital investments" that are "economically justified" and associated with "improving the capacity or reliability of the EDS," the Interconnection Statute and Tariff contemplate recovery of their costs exclusively through the electric ISR process. Under that process, the Company may obtain cost recovery for investments only if it is able to show that the proposed System Improvements are investments in "utility infrastructure,"[22] are "reasonably needed to maintain safe and reliable distribution service over the short and long term,"[23] are "used and useful,"[24] and survive Dkt. 4600 Analysis.[25]

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[18] The term "System Improvement" is defined as "Economically justified upgrades determined by the Company in the Facility study phase for capital investments associated with improving capacity or reliability of the EDS that may be used along with System Modifications to serve an interconnecting customer." R.I.P.U.C. 2258 § 1.2.

[19] Column (J) Work in PUC 2-3 and Column (K) Work in PUC 2-4.

[20] R.I.P.U.C. 2258 § 5.4(c) (using the term "accelerated" only in respect to the term "system modification").

[21] R.I.P.U.C. 2258 § 5.4(b) (only a "system modification" that "benefits other customers" that has been properly "accelerated" may be the subject of a Commission order advancing funding, subject to reimbursement).

[22] R.I. Gen. Laws § 39-1-27.7.1(c).

[23] R.I. Gen. Laws § 39-1-27.7.1(d).

[24] *See In Re: NGrid FY 2023 Gas Infrastructure, Safety, and Reliability Plan Proposal,* Dkt. 5099, Order No. 24042 at 18 (R.I.P.U.C. May 6, 2021) ("Rhode Island Supreme Court precedent . . . has recognized the principle that ratepayers should not be required to pay for plant that is not yet being used in the rendition of services").

[25] *Public Utilities Commission's Guidance and Goals, Principles and Values for Matters Involving The Narragansett Electric Company d/b/a National Grid* ("*Guidance Document*"), Dkt. 4600-A at 2.

At any hearing involving any proposed increase in any rate, toll or charge, the burden of proof to show that the increase is necessary is upon the public utility.[26] Through their tardy and overly broad requests for relief, RIE and DG Intervenors seek to upend the carefully constructed review process and guardrails enumerated in the Interconnection Statute and Section 5.4 of the Interconnection Tariff that allows DG Developers limited, earlier cost recovery than would be available under the ISR Statue. In requesting relief beyond what has been authorized by the General Assembly and the Commission, the Company and DG Intervenors not only fail to state legally cognizable requests for relief but also fail to meet their burden of proof. The Commission should deny their requests in their entirety.

II. ARGUMENT

A. SYSTEM IMPROVEMENTS MAY NOT BE ACCELERATED BY THE COMPANY OR BE ORDERED FUNDED IN ADVANCE, SUBJECT TO REIMBURSEMENT.

1. The Interconnection Statute Does Not Authorize The Acceleration Of, Or The Issuance Of An Order To Fund System Improvements In Advance, Subject To Reimbursement.

The Rhode Island Supreme Court has held that when the language of a statute is clear and unambiguous, the Commission must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.[27] When the language of a statute is clear and unambiguous, the Commission has no authority to extend its scope.[28] A statute that is devoid of any language suggesting authority to adopt an interpretation as a party requests, must be interpreted

[26] R.I. Gen. Laws § 39-3-12; *Providence Water Supply Bd.*, 989 A.2d at 117 (the utility has the unequivocal burden of proof to demonstrate its case for a rate increase).

[27] *Iselin v. Retirement Bd of the Employees Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008).

[28] *Id.*

according to its literal terms.[29] The Commission's assigned task is to simply interpret the statute, not to redraft it.[30] In all events, the General Assembly is presumed to know the state of existing relevant law when it enacts or amends a statute.[31]

The Interconnection Statute provides, in pertinent part:

> (a) The electric distribution company may only charge an interconnecting renewable energy customer for any *system modifications* to its electric power system specifically necessary and directly related to the interconnection.
>
> (b) If the public utilities commission determines that a specific *system modification benefiting other customers* has been accelerated due to an interconnection request, it may order the interconnecting customer to fund the *modification* subject to repayment of the depreciated value of the *modification* as of the time the modification would have been necessary as determined by the public utilities commission. Any system *modifications* benefiting other customers shall be included in rates as determined by the public utilities commission.[32]

By its plain and unambiguous language, Subsection (a) of the Interconnection Statute only authorizes RIE to charge renewable interconnecting customers for System Modifications to its EDS, not for System Improvements.[33] Subsection (b) of the statute instructs how a "specific System Modification" may be funded. Namely, after determining that a specific System Modification benefiting other customers has been accelerated, the Commission may order an interconnecting customer to fund the System Modification, subject to "repayment of the depreciated value of the

[29] *Citizens for Preservation of Waterman Lake v. Davis,* 420 A.2d 53, 57 (R.I. 1980).

[30] *Sindelar v. Leguia*, 750 A.2d 967, 972 (R.I. 2000).

[31] *Purcell v. Johnson*, 297 A.3d 464, 470 (R.I. 2023); *Power Test Realty Company Limited Partnership v. Coit*, 134 A.3d 1213, 1222 (R.I. 2016) (quoting *Retirement Board of Employees' Retirement System of Rhode Island v. DiPrete*, 845 A.2d 270, 287 (R.I. 2004)).

[32] R.I. Gen. Laws § 39-26.3-4.1 (emphasis added).

[33] The terms "electric power system" or "EPS" used in the Interconnection Statute is synonymous with EDS.

modification as of the time the modification would have been necessary..."[34] The Interconnection Statute is completely "devoid of any language" authorizing the Company to accelerate "System Improvements." The Interconnection Statute is also completely "devoid of any language" that authorizes the advanced funding of "System Improvements." The Commission's assigned task is to interpret the statute according to its clear and unambiguous language, not to redraft it.[35] A statute that is devoid of any language suggesting authority to adopt an interpretation a party requests, must be interpreted according to its terms.[36]

The regulatory backdrop against which the Interconnection Statute was enacted in June of 2017 corroborates the statute's plain meaning. Like R.I.P.U.C. 2258, R.I.P.U.C. 2163 (a precursor tariff to R.I.P.U.C. 2258) defines the terms "System Modification" and "System Improvement" separately and distinctly.[37 & 38]

The General Assembly is presumed to know the state of existing relevant law when it enacts or amends a statute.[39] Thus, the General Assembly is presumed to have been aware of the separate

[34] R.I.P.U.C. 2258 § 5.4(b).

[35] *See Sindelar,* 750 A.2d at 972 (by its plain language the Wrongful Death Act did not contain an "absentee parent" exception and would not be construed as having one).

[36] *See Iselin*, 943 A.2d at 1049 (statute which does contain not any suggestion of equitable tolling will not be construed as providing for such tolling); *Davis,* 420 A.2d at 57 (Wetlands Act's language does not contain a private cause of action and would not be construed to contain one).

[37] R.I.P.U.C. 2163 § 1.2.

[38] In R.I.P.U.C. 2163 § 1.2, the term "System Improvement" was defined as "Economically justified upgrades determined by the Company in the Facility interconnection design phase for capital investments associated with the capacity or reliability of the EPS." In the same tariff, the term "System Modification" was defined as "Modifications or additions to distribution related Company facilities integrated with the Company EPS for the benefit of the Interconnecting Customer."

[39] *Purcell,* 297 A.3d at 470; *Power Test Realty*, 134 A.3d at 1222.

and distinct definitions for the terms "System Modification" and "System Improvement" in R.I.P.U.C. 2163 as well as aware of the ISR Statute and the process then in effect.[40] Had the General Assembly intended to include System Improvements within the scope of the statute or intended to authorize the Commission to order DG developers to fund System Improvements outside the ISR process it certainly would have said so.[41] But it did not. The terms were separately defined, and the statute's authority was only extended to System Modifications. The Commission may not now substitute its will for that of the Legislature by redrafting the Interconnection Statute to include "System Improvements" as a type of capital investment that may be accelerated by the Company or that is subject to a funding Order, subject to reimbursement.[42]

2. The Interconnection Tariff Does Not Authorize The Acceleration Of, Or The Issuance Of An Order To Fund System Improvements In Advance, Subject To Reimbursement.

Like statutes, public utility tariffs are binding law[43] that must be construed strictly against the drafter.[44] When the language of a tariff is clear and unambiguous, the Commission must interpret the tariff literally and must give its words their plain and ordinary meanings.[45] The Commission

[40] *See Purcell,* 297 A.3d at 470 (General Assembly was presumed to have been aware of the existing relevant law when it ratified the Town of Richmond Home Charter).

[41] *See Barrett v. Barrett*, 984 A.2d 891, 898 (R.I. 2006) ("if the General Assembly intended to limit the type of conveyance necessary to defeat a surviving spouse's life estate it could have done so").

[42] *Iselin*, 943 A.2d at 1049; *Davis,* 420 A.2d at 57; *Sindelar,* 750 A.2d at 972.

[43] *Reiter v. Cooper*, 507 U.S. 258 (1993).

[44] *Norfolk & W. Ry. Co. v. B.I. Holser & Co.*, 629 F.2d 486, 488-89 (7th Cir. 1980).

[45] *Verizon Virginia LLC v. XO Communications LLC*, 144 F. Supp.3d 850, 858 (E.D. Va. 2015). *See also Providence Gas Co. v. Burke*, 380 A.2d 1334,1339-40 (R.I. 1977) (PUC could not issue a stay where the tariff did not permit one).

may not engage in equitable reformation of a tariff.[46] Tariffs, like statutes, also cannot be interpreted to lead to an absurd result or to defeat the underlying purposes of the tariff.[47]

Like the Interconnection Statute, nowhere does Section 5.4 of the Interconnection Tariff (or anywhere else in the tariff for that matter) authorize the Company to accelerate System Improvements or authorize the Commission to order renewable interconnecting customers to fund System Improvements, subject to reimbursement. As mentioned previously, the Interconnection Tariff contains separate and distinct definitions for the terms "System Modification" and "System Improvement" and different procedures for their review. The plain and unambiguous language of the Interconnection Tariff must control.[48]

Beyond the plain language of the tariff, the inherent characteristics of System Modifications and System Improvements as defined in R.I.P.U.C. 2258, corroborates this conclusion. System Modifications are integrated with the Company's EDS and are constructed for the benefit of the Interconnecting Customer. These are the capital investments that modify the EDS to connect the Interconnecting Customer's DG project to the EDS. Without these investments, the Interconnecting Customer cannot operate its DG project.[49] When System Modifications only serve to connect the Interconnecting Customer to the EDS, the customer is obligated to pay for them.[50] If, however, they have been identified in the Company's work plan (*i.e.,* the ISR's 5-year plan) as a necessary capital investment to be made within Section 5.4(c)'s 5-year window, they may be accelerated.[51] When they

[46] *W. Transp. Co v. Wilson & Co.*, 682 F.2d 1227 (7th Cir. 1982).

[47] *See O'Connell v. Walmsley*, 156 A.3d 422, 428 (R.I. 2017) (statute may not be interpreted in a way that results in absurdities or defeats Legislative intent).

[48] *See Verizon,* 144 F. Supp.3d at 868; *Providence Gas*, 380 A.2d at 1339-40.

[49] Dkts 23-37-EL & 23-38-EL, *Transcript of Hearing dated June 6, 2024* at 17-19.

[50] R.I. Gen. Laws § 39-26.3-4.1.

[51] R.I.P.U.C. 2258 § 5.4(c).

are further determined to benefit other ratepayers, properly Accelerated Modifications are paid for by ratepayers at their depreciated value as of the time the modifications would provide benefit ratepayers.[52]

Advancing this work under these circumstances makes sense. These investments represent a narrow subset of ISR work that becomes used and useful when the DG project is connected to the EDS and would have been shown in an ISR reconciliation review proceeding to benefit other customers and comply with ISR principles.

By contrast, "System Improvements" do not possess the same characteristics. System Improvements are reserve facilities that initially serve no one and may not be activated for many years, if ever.[53] They are neither "used nor useful,"[54] and are only reimbursed at their undepreciated value when they become used and useful. The Company conceded as much at hearing:

> Q. …However, the tariff does not require renewable energy customers to fund system improvements; thus, it does not establish any process for reimbursement or depreciation of system improvements. Correct?
>
> A. Correct.
>
> Q. That's your understanding of the tariff that is in place today; correct?
>
> A. My layman understanding, yes.
>
> Q. Okay. That's Section 5.4 of the tariff that we have been speaking about; correct?
>
> A. Yes.[55]

[52] R.I.P.U.C. 2258 § 5.4(b).

[53] Dkt. 23-37-EL, *Transcript of Hearing dated June 3, 2024* at 53 ("the primary purpose of having an empty conduit is to act as a spare in case the first one breaks").

[54] *See In Re: The Narragansett Electric Company d/b/a National Grid Gas Infrastructure, Safety, and Reliability Plan FY 2023 Proposal,* Dkt. 5210, Order No. 24541 at 7 (R.I.P.U.C. November 18, 2022) (capital project must be used and useful for cost recovery to commence under an ISR plan).

[55] Dkts. 23-37-EL & 23-38-EL, *Transcript of Hearing dated June 6, 2024* at 70-71. *See also* Dkt. 23-38-EL, *RIE Response to Record Request 9* (showing proposed undepreciated "System Improvement Cost" to be paid to developer).

Given these inherent characteristics, accelerating System Improvements and issuing an order for DG developers to fund them in advance, subject to reimbursement only leads to absurd results. First, accelerating System Improvements requires ratepayers to overpay for them as they must pay for them at full cost, rather than at their depreciated value. Second, accelerated System Improvements are constructed and paid for before they are used and useful. This leads to the further absurd result that early reimbursement to DG developers for System Improvements diverts ratepayer resources from ISR projects with more immediate and greater criticality—all of which compromises the safety and reliability of the EDS. Tariffs, however, may not be interpreted to lead to absurd results.[56] Even if the Commission ignores the plain language of the Interconnection Tariff (which it should not), the purpose and function of the tariff precludes an interpretation that authorizes the Company to accelerate, or the issuance of an Order to fund, System Improvements in advance, subject to reimbursement.[57]

3. The System Improvements Here Are Not Used And Useful.

The Rhode Island Supreme Court has recognized that "…property ordered and purchased but for other reasons not placed into service might be useful but not used."[58] Alternatively, antiquated property, such as a "horse and buggy," might be "used" in a modern facility but it might not be very "useful."[59] In all events, the Supreme Court stated, property is only considered "used and useful" when it is "presently being devoted to providing the regulated service."[60] Other decision-

[56] *See Verizon,* 144 F. Supp.3d at 858 (rejecting an unreasonable interpretation of a tariff); *In Re Falstaff Brewing Corp.,* 637 A.2d 1047, 1050 (R.I. 1994) (a statute may not be construed in a way that would result in absurdities).

[57] *See e.g., O'Connell,* 156 A.3d at 428.

[58] *Newport Elec. Corp. v. PUC,* 624 A.2d 1098, 1101 (R.I. 1993).

[59] *Id.*

[60] *Providence Gas Co. v Burman*, 376 A.2d 687, 692 (R.I. 1992).

making bodies, follow the holdings of *Newport Elec*. and *Burman*. The Court of Appeals for the D.C. Circuit has held that construction of a new plant that has not yet provided benefits to customers will not be considered "used and useful" until the plant is placed in service.[61]

This Commission has adhered these holdings recognizing that the "used and useful standard generally requires that a utility plant must be in commercial operation *and* providing net benefits to customers in order for expenses associated with it to be included in rate base."[62] "Allowing the utility to commence recovery of costs for projects not yet in service" the Commission recognized, "conflicts with long-standing ratemaking precedent . . . Rhode Island Supreme Court precedent . . . has recognized the principle that ratepayers should not be required to pay for plant that is not yet being used in the rendition of services . . . [citation omitted] . . . Including capital costs in rates for projects not in service is inconsistent with this principle."[63]

In the pending matter, the additional ductwork that is installed to meet RIE standards and are denominated System Improvements are neither used nor useful. Additional ductwork is not "used" because it is not "presently being devoted to providing the regulated service to customers."[64] The following dialog from the hearing in this matter shows how additional ductwork is not presently being used by customers:

[61] *See New England Power Co. Mun. Rate Comm. v. FERC,* 668 F.2d 1327, 1333 (D.C. Cir. 1981), *cert. denied,* 457 U.S. 1117 (1982).

[62] *In Re: The Narragansett Electric Company d/b/a National Grid Gas Infrastructure, Safety, and Reliability Plan FY 2023 Proposal,* Dkt. 5210, Order No. 24541 at 6 (R.I.P.U.C. November 18, 2022) (emphasis added).

[63] *In Re: The Narragansett Electric Company d/b/a National Grid Gas Infrastructure, Safety, and Reliability Plan FY 2023 Proposal,* Dkt. 5099, Order No. 24042 at 18 (R.I.P.U.C. May 6, 2021).

[64] *See Burman*, 376 A.2d at 692.

> CHAIRMAN GERWATOWSKI: In column J [for PUC 2-3], which sounds like that means none of these, none of this duct space or conduits were necessary for the developer, and you were adding them for future benefits for customers but had no relationship to the developers' needs.
>
> MR. CONSTABLE: Yes.
>
> CHAIRMAN GERWATOWSKI: Okay. And you've classified it as a system improvement.[65]

The System Improvements in the pending matters are not "useful" either. In order to be considered "useful," the Commission has held that a utility facility must be providing "net benefits to ratepayers," *i.e.*, satisfy the purposes of the statute for which it was constructed.[66] Thus, new gas pipe installed to replace leak-prone pipe does not provide climate benefits under the Rhode Island Act on Climate until the abandonment of leak-prone mains is complete.[67] Likewise, System Improvements are not "useful" to ratepayers until they fulfill the purposes of the ISR statute by providing safety and reliability net benefits to customers.

The undisputed evidence in the Record is that the additional ductwork here are reserve facilities that do not currently provide *any* benefits to ratepayers (let alone safety and reliability net benefits) until 2035 at the earliest, if at all.[68] Pursuant to Commission precedent, cost recovery should not commence until the Company can show that the System Improvements provide safety and reliability net benefits to its customers.[69]

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[65] Dkt. 23-37-EL, *Transcript of Hearing* dated June 3, 2024 at 66-67.

[66] *Narragansett Electric's FY 2023 Gas ISR Proposal,* Dkt. 5210, Order No. 24541 at 6.

[67] *Id.*

[68] Dkts. 23-37-EL & 23-38-EL, *Division Responses to Record Requests 1 and 4* at 5-6. *See also* Dkt. 23-37-EL, *Transcript of Hearing dated June 3, 2024* at 53 ("the primary purpose of having an empty conduit is to act as a spare in case the first one breaks").

[69] *Narragansett Electric's FY 2023 Gas ISR Proposal,* Dkt. 5210, Order No. 24541 at 6.

B. NEITHER THE COMPANY NOR DG INTERVENORS HAVE SHOWN THAT THE PROPOSED SYSTEM IMPROVEMENTS ARE COST-BENEFICIAL UNDER DKT. 4600.

In Dkt. 4600-A, the Commission recognized that in Dkt. 4600, the Commission "adopted the goals, updated design principles, and a new Rhode Island Benefit-Cost Framework."[70] The Commission proceeded to advise that "[t]he goals, principles, and framework will apply to all parties to cases that affect National Grid's electric rates, not just to the utility."[71] The Commission further admonished, "[a]ny proponent of a rate, rate design or program proposal associated with cost recovery will need to meet the same standards."[72] Since the issuance of the *Guidance Document* and the Commission's decision in Dkt. 4600, the Company has supported each proposed capital investment reflected in its Electric ISR Plans with a Dkt. 4600 Analysis. Among its many purposes, a Dkt. 4600 Analysis is intended to "appropriately charge customers for the cost they impose on the grid."[73] The burden is always on the proponent of the rate design or rate design proposal to show that the proposal is just, reasonable and appropriately balances the interests of ratepayers and the utility.[74]

In the pending matter, the Company and DG Intervenors seek an Order that shall authorize, among other things, the cost recovery of certain System Improvements from the Company's ratepayers.[75] The Company and/or DG Intervenors, therefore, are required to support their proposals with Dkt. No. 4600 Analyses that show how their proposed System Improvements are cost-

[70] *Guidance Document*, Dkt. 4600-A at 2.

[71] *Id.*

[72] *Id.*

[73] *Id.* at 4.

[74] *Id.* at 5.

[75] *See Petition (Weaver Hill)* at 14; *Petition (Tiverton)* at 13.

beneficial. That is, under Dkt. No. 4600, the Company and/or DG Intervenors must show that the proposed System Improvements for the Tiverton and Weaver Hill Projects each have a Benefit-Cost ("B/C") ratio greater than one.

A "proposal can pass the B/C test even if all of the components are not beneficial;" however, there must be a showing that "the overall proposal is net beneficial."[76] That is, if one of the proposal's components has a B/C ratio that is less than one, and another component has a B/C ratio that is greater than one, the proposal may be consider "net beneficial" if the former component is "integral to the overall proposal."[77]

With respect to the Weaver Hill and the Tiverton Projects, the Company has failed to meet its burden of proof. It is undisputed that neither the Company nor the DG Intervenors prepared a Dkt. No. 4600 Analysis for the proposed Tiverton Project.[78] While the Company did prepare a B/C Analysis for the proposed Weaver Hill Project in Dkt. No. 22-53-EL in 2021, it did not submit an *updated* B/C analysis for this project in the pending docket.[79] A review of that outdated analysis further shows a B/C ratio of .67, substantially less than one.[80]

While a .67 B/C ratio could conceivably survive Dkt. No. 4600 scrutiny if the overall Weaver Hill cost recovery proposal has a B/C ratio greater than one,[81] the Commission cannot make that determination because the B/C analysis is out-of-date (providing net present value benefit-cost assessments as of 2022 only)[82] and admittedly does not "specifically use the values in Columns (j)

[76] *Guidance Document* at 7.

[77] *Id.* at 7-8.

[78] Dkt. 23-37-EL, Response to Record Request No. 5.

[79] Dkt. 23-38-EL, Response to Record Request No. 5.

[80] *Id.*

[81] *Guidance Document* at 7.

[82] Dkt. 22-53-EL, *Proposed FY 2024 Electric ISR Plan* at 151.

and (k) in PUC 2-4."[83] Without current, relevant data, the B/C Analysis prepared for Weaver Hill in Dkt. 22-53-EL cannot be "critically link[ed]" to a program component with a positive B/C to show that "the overall proposal is net beneficial."[84] The outdated and irrelevant Weaver Hill B/C analysis, then, cannot be used to satisfy the Company's evidentiary burden to show the System Improvements for the Weaver Hill project satisfy a Dkt. 4600 Analysis despite presenting a B/C ratio of less than one.

C. THE PROPOSED SYSTEM MODIFICATIONS WERE NOT IDENTIFIED IN THE COMPANY'S WORK PLANS TO BE INSTALLED WITHIN A FIVE-YEAR PERIOD AS OF THE DATE THE COMPANY BEGAN THE RESPECTIVE IMPACT STUDIES OF THE PROPOSED DG PROJECTS.

The Rhode Island Supreme Court has held that it is the deciding body's responsibility "to consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections."[85] It is a "fundamental maxim of statutory construction that statutory language should not be viewed in isolation."[86] Finally, the Supreme Court has recognized that a statute may not be construed in a way that would result in absurdities or that would defeat the underlying purpose of the statute.[87]

R.I.P.U.C. § 5.4(c) defines the term "Accelerated Modification."[88] This definition specifies the prerequisites that must exist for "the Commission" to determine "that a specific System Modification . . . has been accelerated…" in Section 5.4(b).[89] Namely, the System Modification

[83] Dkt. 23-38-EL, Response to Record Request No. 5.

[84] *Guidance Document* at 7-8.

[85] *E.g., In Re Brown*, 903 A.2d 147, 149 (R.I. 2006).

[86] *Id.* at 149.

[87] *E.g., Falstaff,* 637 A.2d at 1050.

[88] R.I.P.U.C. § 5.4(c).

[89] R.I.P.U.C. 2258 § 5.4(b).

must be "identified in the Company's work plan to be installed within a five-year period of the date the Company begins the impact study of the proposed DG project."[90] The table below shows the dates the Company began the impact study for each DG project and the dates that the System Modifications were to be installed as identified in the Company's work plan:

Project	**Date Company Began Work On The Impact Study For Each DG Project**	**Date System Modifications Were Identified In The Company's Work Plan To Be Installed (Without DG Project)**
Tiverton	June 6, 2019[91]	April 1, 2028 (FY 2029)[92]
Weaver Hill Nooseneck Robin Hollow Studley Solar	 April 1, 2019[93] January 6, 2020[94] August 7, 2019[95]	April 1, 2026 (FY 2027) [96]

These dates reflect that the System Modifications that were identified in the Company's work plan were to be installed beyond the maximum five-year period, as measured from the date the Company began work on the Impact Study for each DG Project. These modifications, then, were not properly accelerated, and directing DG developers to fund them in advance, subject to reimbursement, is not authorized as well.

[90] R.I.P.U.C. 2258 § 5.4(c).

[91] *Petition* at 14.

[92] *Petition* at 19; Dkt. 23-48-EL, *Proposed FY 2025 Electric Infrastructure, Safety, and Reliability Plan* at 118 & 153. *See also* Div. 1-13; *Proposed FY 2025 Electric Infrastructure, Safety, and Reliability Plan* (D.P.U.C.) at 27.

[93] *Petition* at 15.

[94] *Petition* at 15.

[95] *Petition* at 16.

[96] *Petition* at 24-25; *Proposed FY 2025 Electric Infrastructure, Safety, and Reliability Plan* (D.P.U.C.) at 27. At hearing, Mr. Constable identified this date as "FY 2028." *See* Dkts. 23-37-EL & 23-38-EL, *Transcript of Hearing dated July 9, 2024* at 115 & 118.

The Company does not really contest these legal conclusions. Rather, the Company's only real rebuttals are that: (i) Section 5.4(b) represents a pathway independent of 5.4(c)'s definition of "Accelerated Modification" by which the Company may accelerate, and DG developers may obtain reimbursement of, System Modifications,[97] and (ii) the Interconnection Tariff should be "interpreted" to preclude acceleration if the System Modifications are installed, "in part," within the five-year period.[98]

To the former rebuttal, the Commission is required to construe Section 5.4 "as a whole."[99] Section 5.4(b) may not be viewed in isolation but must be construed together with Section 5.4(c).[100] When viewed together with Section 5.4(b), the definition of "Accelerated Modification" in Section 5.4(c) plainly identifies what System Modifications may be accelerated in Section 5.4(b), and therefore, are subject to advanced funding and reimbursable in the latter section. As shown by the above table, those System Modifications are plainly prohibited by the 5-year provision in Section 5.4(c). The Company's first argument fails.

To the Company's second argument, the five-year requirement in Section 5.4(c) provides an important guardrail on the ISR interconnection work that may be accelerated by the Company for the benefit of DG Developers, and thus, must be paid for by ratepayers earlier than they otherwise would have to through the ISR process. As the Company would have it, partially completed System Modifications may be advanced and receive priority over other ISR work that is immediately needed to maintain the safety and reliability of the EDS. The argument is absurd. Virtually every DG interconnection project then would require advancement over other ISR projects because the term

[97] *RIE's Response to Green's Motion for Summary Disposition* at 8-9.

[98] *Id.* at 9.

[99] *In Re Brown*, 903 A.2d at 149.

[100] *See id.* ("individual sections must be considered in the context of the statutory scheme, not as if each section were independent of all other sections").

"installed" in Section 5.4(c) would encompass System Modifications no matter what their state of completion.

Prioritizing partially completed System Modifications will compromise the safety and reliability of the EDS. Investment capital will flow to projects aimed at connecting DG projects rather than to ISR projects that are immediately necessary to ensure the delivery of safe and reliable electric service. The Rhode Island Supreme Court and this Commission have never condoned such a result.[101] The Company's second argument fails as well.

D. THE PROPOSED SYSTEM MODIFICATIONS AND SYSTEM IMPROVEMENTS ARE NOT NECESSARY INVESTMENTS THAT IMPROVE THE CAPACITY OR RELIABILITY OF THE EDS SO THAT THEY SHOULD BE ACCELERATED.

Absent acceleration, the System Modifications and System Improvements that the Company has proposed should receive accelerated treatment are capital projects which the Company mentioned in its 2023, 2024 and 2025 ISR Plan and opines but for the pertinent DG Project will be installed by FY 2027 (Weaver Hill) and FY 2029 (Tiverton).[102] The Company suggests the need to interconnect these projects to its EDS merits advancing this ISR work forward, allowing cost recovery for them commencing in FY 2026.[103] The substantial weight of the evidence on the Record, however, shows that neither the Weaver Hill nor the Tiverton project would survive ISR scrutiny in FY 2026, FY 2027, FY 2029 (or FY 2028 if RIE's testimony at hearing is to be credited).

[101] *See Falstaff,* 637 A.2d at 1050 (holding statute may not be interpreted to lead to an absurd result); *McCain v. Town of North Providence*, 41 A.3d 239, 248 (R.I. 2012) (holding a statute may not be construed to defeat the underlying purpose of the statute).

[102] *Petition* (Tiverton) at 19; *Petition* (Weaver Hill) at 24-25.

[103] Dkt. 23-37-EL, *Transcript of Hearing dated June 3, 2024* at 257-58.

For the Weaver Hill Project, the Area Study projects very little load growth on the Hopkins Hill or Coventry Circuits.[104] Of the loads the Company did project on these circuits, the Division's expert consultant, Gregory L. Booth, PE, testified that the current load analysis shows loads far below the Company's 2020 projections:[105]

CRIW Area Feeder Loading % Summer Normal	**Current Forecast**			**CRIW Study**	
	2024	**2025**	**2026**	**2020**	**2035 Forecast**
Hopkins Hill 63F6	88%	89%	89%	93%	94%
Coventry 54F1	84%	84%	84%	102%	104%

Mr. Booth opined that "the feeders have experienced decreasing load and considering projected nominal growth, it is likely that summer normal overloads will occur well past 2035."[106] Without such load growth, Mr. Booth testified, "voltage or loading violations are unlikely through the end of the study period or 2035."[107] "Both Weaver Hill and Coventry projects," Mr. Booth further opined, "could be deferred past the implementation period identified in the study;" therefore, "the Weaver Hill project absent the DG projects would not be incorporated into an ISR Plan before 2035."[108]

[104] Dkt. 23-38-EL, *Direct Testimony of Gregory L. Booth, PE* at 14.

[105] Dkts. 23-37-EL & 23-38-EL, *Division Responses to Record Requests 1 and 4* at 6.

[106] *Id.*

[107] 23-38-EL, *Direct Testimony of Gregory L. Booth* at 14.

[108] *Id.*

For the Tiverton Project, a review of the Company's current load analysis results in a similar conclusion. The current forecasts indicates that all four feeders are at or slightly lower than initial 2022 study values:[109]

Tiverton Feeder Loading % Summer Normal	Current Forecast	Tiverton Study	
	2024	2021	2035 Forecast
33F1	97%	97%	98%
33F2	91%	95%	96%
33F3	87%	100%	101%
33F4	92%	88%	89%

Again, according to Mr. Booth, "there is very little projected load growth and most likely no load growth in the Tiverton substation area. That means voltage or loading violations are very unlikely through the end of the study period or 2035."[110] What remains, according to Mr. Booth, is *contingency at-risk exposure during peak times*, but since "these circuits have a lower frequency of outages,"[111] and, as there is additional work planned to improve 33F4 reliability, "there is a lower probability the contingency at-risk scenario will develop."[112] According to Mr. Booth, "a new 33F6 feeder" solely to resolve the limited N-1 exposure," therefore, is not "an appropriate solution in an ISR Plan until approximately 2035, and possibly even beyond that year."[113]

Aside from violating R.I.P.U.C. 2258, the acceleration of the System Improvements and System Modifications and ordering reimbursement to DG Developers is harmful to ratepayers. RIE

[109] Dkts. 23-37-EL & 23-38-EL, *Division Responses to Record Requests 1 and 4* at 6.

[110] Dkt. 23-37-EL, *Direct Testimony of Gregory L. Booth, PE* at 12.

[111] *Id.* at 13.

[112] *Id.*

[113] *Id.*

is "now moving into a period of significantly higher capital investment,"[114] significant substation investment, FLISR reclosers in the CEMI-4 Program and additional feeder projects to name a few.[115] Accelerating the Tiverton and Weaver Hill DG projects (and no doubt those of many other DG developers in future dockets) outside the parameters of Section 5.4 will divert capital investment from ISR work that is truly needed now to improve the safety and reliability of the EDS, to the substantial detriment of ratepayers. The Commission should not interpret the Interconnection Tariff and Statute to lead to such an absurd result. [116]

III. CONCLUSION

For all of the foregoing reasons, the Company's Petitions for Acceleration Due to DG Projects should be denied.

Respectfully submitted,

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[114] *Id.* at 14.

[115] *Id.* at 14-16; Dkt. 23-38-EL, *Direct Testimony of Gregory L. Booth, PE* at 15.

[116] *See e.g., Falstaff,* 637 A.2d at 1050 (holding statute may not be interpreted to lead to an absurd result).

CERTIFICATE OF SERVICE

I certify that a copy of the within Brief was forwarded to the Service Lists in Dkts. 23-37-EL & 23-38-EL on the 7th day of August, 2024.

/s/ Leo J. Wold
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