STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

The Narragansett Electric Co. d/b/a Rhode Island Energy's Petition for Acceleration Due to DG Project – Tiverton Projects	:	**Docket No. 23-37-EL**
and	:	and
The Narragansett Electric Co. d/b/a Rhode Island Energy's Petition for Acceleration Due to DG Project – Weaver Hill Projects	:	**Docket No. 23-38-EL**

CLOSING BRIEF
OF
GREEN DEVELOPMENT

Green Development ("Green") submits this closing brief in support of its reimbursement for costs it incurred to build out Rhode Island Energy's ("RIE") electric distribution system for the benefit of RIE's other customers. Green moved for summary disposition before the hearings because there is no dispute that the upgrades and costs in the petition were for the benefit of other customers and because Green did not dispute reasonable depreciation of any such upgrades that were advanced to interconnect Green's projects. That motion sought to avoid the cost (monetary and time) of defending Green against the Division's misreadings of the law and tariff to contest Green's right to reimbursement.

Green acknowledges that the hearings were helpful. They enabled the parties and the Commission to clarify the definition of terms and other law, and some facts related to these upgrades.[1] There were some corrections regarding RIE's proposed allocations between what

[1] The Commission has rightfully and helpfully focused us in on proper term definition. In this brief, Green will refer to: a) general construction on the electric system as "upgrades," b)

were system improvements, system modifications and accelerated upgrades that will benefit other customers. There was factual inquiry about when upgrades needed for interconnection would have otherwise been necessary to benefit other customers, and, consequently, how much the reimbursement for those upgrades should be depreciated. The detailed explanation of RIE's allocation and accounting methodologies enable the Commission to evaluate and order implementation of a well-reasoned systemic approach to cost allocation and depreciation of accelerated system improvements moving forward. The hearings also helped reveal a lack of transparency and accountability in administration of interconnection that has long been a concern for the renewable energy industry and that can and ought to be fixed.

At the conclusion of the hearings, Green still submits that it is entitled to reimbursement as a matter of law and, therefore, renews its motion for summary disposition as to the Division's legal position. All of the upgrades included in the petitions for reimbursement were determined to be needed to serve RIE's other customers. Green disputed its responsibility for these upgrades that RIE determined necessary to benefit other customers but was given no choice but to incur the expense of building them in order to interconnect its projects. The only factual question raised by the Division's witness is *when* the improvements would have been needed. However, as long as RIE determined that the upgrades were needed for other customers, the interconnecting renewable energy customer must be reimbursed for them, even if at a depreciated value. Both the statute and the Tariff state this clearly. There is no dispute about the actual cost of any of the upgrades that are proposed for reimbursement, and no dispute that these upgrades were needed for other customers.

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upgrades necessary to interconnect renewable energy projects as "System Modifications," and c) upgrades benefiting other customers as "System Improvements."

In its closing brief, Green presents the support for its legal position in the record of these proceedings and respectfully asks the Commission to grant Green reimbursement and any other relief the Commission deems warranted.

I. The Petitions Address Charges That Clearly Cannot be Assessed to Renewable Energy Customers as a Matter of Law.

Rhode Island General Law specifies which interconnection costs may and may not be charged to interconnecting customers. It states that:

> [t]he electric distribution company may only charge an interconnecting, renewable energy customer for any system modifications to its electric power system *specifically necessary for* and *directly related to* the interconnection.

R.I. Gen. Laws § 39-26.3-4.1 (a) (emphasis added). That law is reflected in two sections of RIE's interconnection Tariff, as approved by the Commission.

> The Interconnecting Customer shall only pay for that portion of the interconnection costs resulting *solely* from the System Modifications required to allow for safe, reliable parallel operation of the Facility with the Company EDS; provided, however, the Company may only charge an Interconnecting Customer for System Modifications *specifically necessary for* and *directly related to* the interconnection. . .
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> The Company may combine the installation of System Modifications with System Improvements to the Company's EDS to serve the Interconnecting Customer or other customers, *but shall not include the costs of such System Improvements in the amounts billed to the Interconnecting Customer for the System Modifications* required pursuant to this Interconnection Tariff. Interconnecting Customers shall be directly responsible to any Affected System operator for the costs of any System Modifications necessary to the Affected Systems.

RIPUC No. 2258, The Narragansett Electric Company Standards for Connecting Distributed Generation (the "Tariff"), §§ 5.3, 5.4 (emphasis added). There is no ambiguity in the law – interconnecting renewable energy customers cannot be charged for upgrades to the electrical system that are not solely related to the interconnection, but that also or only benefit other customers.

The Petitions only seek reimbursement of costs for upgrades benefitting RIE's other customers. When asked "[a]re you seeking to recover any costs or reimburse Green for any costs that are directly associated with its interconnection in this petition?" RIE's witness testified "No, not directly related to its interconnection." Testimony of Ryan Constable (hereafter "Constable"), Transcript of Hearing June 4, 2024, (hereafter "6/4/24 TR"), p. 148. The costs labeled as "System Improvements" and "Accelerated System Modifications" in RIE's response to PUC data request 2-3 in Docket 23-37-EL and to Record Request 3 in 23-38, are the only costs presented to the Commission for reimbursement in these petitions. Green does not ask for and RIE does not seek reimbursement of any costs "specifically necessary for and directly related to the interconnection." In the Petitions themselves, RIE clearly speak of "System Improvements" needed to benefit its other customers, some of which have been accelerated in order to interconnect the renewable energy projects. Petition, Docket 23-38, pp. 2-3; Petition Docket 23-37, pp. 2-3. It was not the interconnection work itself (the "System Modifications," as defined by the Tariff) that was accelerated, it is only the work needed to benefit other customers that, in some cases, has been accelerated, as reflected in the columns (inaccurately) labelled "Accelerated Modifications."

The Division is the only party that contests reimbursement of the upgrades these renewable energy customers performed that RIE designed, intended and mandated to benefit other customers. Yet, even the Division's own witness conceded that the Division's legal position is inconsistent with the law. The Division witness testified that "if there is truly an improvement to the system, company [STET] has no business charging for that improvement." Testimony of Gregory L. Booth, P.E. (hereafter "Booth"), Transcript of Hearing June 5, 2024 (hereafter "6/5/24 TR"), p. 146. Mr. Booth acknowledged the application of the statute and

Tariff, stating that "if you're putting in a nine-way, the DG interconnecting customer only requires two, there is no question, and the Company wanted it that way for themselves, then … there's seven ducts that the Company needs to be paying for." Booth, 6/5/24 TR, pp. 147; *see also* id. at p. 167.

RIE testified that if it had built the interconnections at issue in these proceedings it would not have charged these costs to Green in the first place. Constable, 6/3/24 TR, pp. 189; 167, 224, 236 ("If the company put those facilities in, we would only charge the distributed generators their allocated portion of those duct banks in the first place.") Yet, both the Division and the RIE witnesses acknowledged that there is no basis to treat self-built upgrades any differently from Company constructed upgrades for the purposes of cost accountability. Constable, 6/3/24 TR, p. 201; Booth 6/5/24 TR., pp. 144, 165. Nor does the Commission differentiate. Commission Order #24820, Docket 5235 at pp. 8, 13-14,17 (Green has legal right to only incur costs and construct what it alone required and had right to reimbursement for the costs associated with upgrades for other customers).

The Division is wrong that renewable energy customers can or should be at risk or accountable for the cost of System Improvements, upgrades that benefit other RIE customers. Green is entitled to summary disposition on that point. The Division's legal arguments on system need and timing of need are not its call and are not pertinent to whether the renewable energy developers are entitled to reimbursement for the costs of these upgrades that RIE required to benefit other customers.[2] Booth, 6/5/25 TR., pp. 84, 90 (RIE proposes and Commission approves whether investments in system are needed, not Division).

[2] For both of these reasons, this closing brief largely does not address system need or the timing of that need, leaving those issues between RIE and the Commission. Green had no choice but to

a. The charges listed in the "System Improvement" columns are not "specifically necessary for and directly related to the interconnection;" they only benefit RIE's other customers.

The upgrades presented under "System Improvement" in Weaver Hill RR-3 and Tiverton RR-2[3] are not needed to interconnect the renewable energy projects; they are only needed to benefit other customers. The Commission made repeated, painstaking effort to define "System Improvements" as those costs that were unnecessary for the interconnections, but only needed to benefit other customers. *See e.g.*, 7/9/24 TR, pp. 57-58. The factual testimony in both dockets is also abundant and clear on that.

On Weaver Hill, Mr. Constable clearly stated that the developers could operate their projects without the upgrades accounted for in Column K. Constable, 6/4/24 TR, p. 191. When asked if "those additional ducts were not needed by the developer," Constable replied "Yes." Id. at p. 84. Specifically, RIE stated that "if the Company was to install the facilities for serving Weaver Hill [substation], it would include Column K." Id. at p. 191; *see also e.g.*, id. at p. 47 (duct bank to serve 3310 and 3311), p. 84 (additional ducts not needed by developer), p. 91 (same cable used to serve substation).

Likewise, for Tiverton, the upgrades listed in the "system improvement" column were not at all related to any interconnection, but were only meant to benefit RIE's other customers. Mr. Constable confirmed this in his testimony:

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build system upgrades that were not needed for its project in order to be authorized to interconnect its project. Whether the upgrades were otherwise needed is not Green's fight. Booth, 6/5/25 TR, p. 85 (Commission decides need, not Division; RIE can make system investments it wants at risk of Commission not approving its cost recovery). While the Division sought to make a case that these renewable energy developers assumed risk that the Commission would reject the case for need, respectfully, Rhode Island law does not at all agree with the Division's position.

[3] This data falls under Column K in the Weaver Hill exhibit and Column J in the Tiverton exhibit.

> CHAIRMAN GERWATOWSKI: In column J, 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.
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> MR. CONSTABLE: Yes.

Constable, 6/3/24 TR, p. 66-67. Mr. Constable explained that the upgrades were needed to benefit other customers at the time they were built:

> Q. … putting prioritization aside. In this case, what is the need date for Tiverton and Weaver Hill?
>
> A. So the technical need dates are, right now, the contingency issue, reliability issues exist right now, there's voltage issues that exist right now.

Constable, TR 7/9/24, p. 113; *see also e.g.,* Constable, 6/3/24 TR, p. 66, 187 (from beginning additional ducts were system improvements that had nothing to do with developer's interconnection needs). Mr. Constable was asked "you would have built, not just this, but maybe even more, you might have built a 6-way duct bank along Nooseneck Road?" he replied "Right. So for purpose of the petition, it's the same exact installation." Constable, 6/4/24 TR, p. 99.

Despite, and in total contrast to, its legal position, the Division's witness simply agreed that an interconnecting renewable energy customer cannot be charged for these System Improvements that are not at all related to the interconnection of the renewable energy project. *Supra*, pp. 4-6; Booth, 6/5/24 TR, pp. 137, 140 (DG customer not responsible for costs that are not solely for them; this case is not upgrades solely for DG customer).

b. The charges in the "Accelerated Modifications" column also benefit RIE's other customers and were only accelerated to interconnect the renewable energy customers.

The law and Tariff clearly say that costs of the type represented in the columns labeled "Accelerated Modification" may be depreciated, but are not otherwise to be charged to the renewable energy customer.

> (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.

R.I. Gen Laws § 39-26.3-4.1(b) (emphasis added). The Tariff echoes that when upgrades benefitting other customers (System Improvements) and necessary for and directly related to an interconnection (System Modifications) are combined in one installation, the interconnecting customer must not be billed for the System Improvements. Tariff § 5.4. When questioning Mr. Booth, the Chair emphasized the clarity of this Tariff provision:

> MR. GERWATOWSKI: If you look at "shall not" [in Tariff § 5.4(a)]. It says the company may combine the installation of system modifications with system improvements to the company's electric distribution system to serve the interconnecting customers or other customers, but shall not include the cost of such system improvements in the amounts billed to the interconnecting customer. Do you see where it says it "shall not?"
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> MR. BOOTH: Yes.
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> MR. GERWATOWSKI: "Shall not charge." The hypothetical that was given on the ductbank where the interconnecting customer only needed two, but the company says well, gee, we want to add four because we never go in the ground and build four more, we'd like to have a six-way, I'm really struggling why you would suggest that the interconnecting customer wouldn't get reimbursement for the additions over and above what they needed. It's a system improvement that doesn't have anything to do with need for the customer. It seems to be flying in the face of the statute -- I mean, the tariff, which I think you have kind of a strict

> interpretation of. Maybe you overlooked this provision, or there was a misunderstanding. I just want to get clarification on that. I wasn't sure if that was reflecting the Division's provision.
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> MR. BOOTH: I guess I'm trying to make the distinction as to whether it's simply meeting the company standard, or if it's actually an improvement to the system.

TR 6/5/24, p. 144-46. The Chair further described the costs in the "Accelerated Modifications" column as investments where "there is at least a portion of it that is … needed for Green Development … however, it's also benefiting the other customers, and represents something that the Company was planning on doing, now it's been accelerated." 6/6/24 TR, p. 26. Dr. Bianco's questioning of Mr. Constable illustrated most succinctly that these costs are accelerated upgrades to benefit other customers that are to be reimbursed at their depreciated value:

> Q: Your petition seeks to make Green responsible for two years of depreciation.
>
> A: Yes.
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> Q: …That depreciation is directly associated with Green needing this facility two years before ratepayers?
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> A: Yes.
>
> Q: But the remaining cost is not being charged to them because ratepayers would have needed it two years from now.
>
> A: Yes.

Constable, 6/4/24 TR, pp. 179-80.[4]

Mr. Constable confirmed. When the Chair gave his understanding of these costs, saying that they "have nothing to do really with the solar facility, you're just adding them as a matter of

[4] *See also* Constable, 6/4/24 TR, pp. 182-83 (ratepayers will need upgrades but renewable energy project just needs them sooner so Column J seeks to give them a refund for the thing which they didn't need which is everything other than a little bit of earlier timing); Constable, 6/5/24 TR, p. 36 (Column J upgrades needed to interconnect renewable energy projects and also needed for system); id. at p. 42 (RIE would have done exact same work, but two years later).

practicality at the same time you're opening up the ground," Mr. Constable replied "Yup." Constable, 6/3/24 TR, p. 56 (. *See also* id. at 139, 143, 180 (these upgrades are rightly considered accelerated System Improvements). When asked if ratepayers would need these upgrades, the Company affirmed "right. Yes. Need it and use it, yes." Constable, 6/4/24 TR, p. 182; *see also* Constable 6/3/24 TR, p. 82 (Company using same conduit required for developer), pp. 168-69 (installed risers and manholes intended to serve RIE's other customers).[5]

Green's witness confirmed that "the costs there in Columns J or K [of Weaver Hill RR-3] are beyond what would be necessary for the project." Testimony of Matthew Ursillo ("Ursillo"), 6/6/24 TR, pp. 27, 18-19 (only costs necessary to interconnect Green's project are in Column I). Revity's witness also confirmed that Column J upgrades are needed to benefit RIE's other customers but are accelerated to accommodate the interconnections. Testimony of Ryan Palumbo ("Palumbo"), 7/9/24 TR, pp. 84-87.

Likewise, here again, despite the Division's legal protestations, the Division's witness also acknowledged that these costs benefit other customers.

> Q. …this infrastructure … that is serving Tiverton and the Nooseneck projects, that benefits those projects, will also benefit customers at some point in the future; you just stated that is the Division's position, correct?
>
> A. Yes.

Booth, 6/5/24 TR, p. 85. The Division affirmed that additional work beyond what is necessary for the Interconnecting Customer benefits other customers:

> Q. Okay. So … if you could say this is an economic-based standard to benefit future development generally, we don't know who it will benefit, but that it makes

[5] *See also e.g.*, Constable, 6/4/24 TR, p. 150 (Company would have installed same thing in the future); p. 190 (cannot operate Weaver Hill substation without upgrades in Column J).

> economic sense today, could that generally then be classified that [STET] will always be a system improvement?
>
> A. Yes, you could do that. So if the company's minimum standard is a four-way, for the sake of just a hypothetical, and only two ways are needed, and I think the company articulated this, you're already pending [STET] the money to open up the trench and do everything, so two of the four are an [STET] economic benefit ultimately to the company.

Booth, 6/5/24 TR, p. 157.

The only fact that distinguishes these proceedings from an otherwise long and consistent history of Division assent to acceleration of upgrades to interconnect customers is that before now all such upgrades were done to serve load customers, not renewable energy customers. Neither the Division's witness nor the Company recall even one case where acceleration of upgrades to interconnect load customers was challenged by the Division. Booth, 6/5/24 TR, p. 141, 143; Constable, 6/4/24 TR, p. 169 (Division has not contested and RIE does not seek Commission approval for system upgrades associated with interconnecting load customers). The Division has no regulatory basis to discriminate between customer types. In fact, Rhode Island law is especially clear that renewable energy customers are not to pay for upgrades or accelerated upgrades that are needed to benefit other customers.

Despite its stark legal position on reimbursement, the Division's witness really only contested when (not whether) the upgrades would benefit other customers. *See e.g.*, Booth Prefiled, Docket 23-38, p. 5 ("The Company's Tiverton Area Study performed in 2021 identified the need for a new circuit 33F6, a portion of which is part of the accelerated system improvement in this Petition"); Booth, 6/5/24 TR, pp. 83-84 (not contesting the need for these investments to benefit other customers in the future). But, the Division's witness also confirmed: a) that interconnections must be made on a statutorily mandated timeline (*see* R.I. Gen Laws § 39-26.3-4.1(d); Booth, 6/5/24 TR, p. 133); and b) that it makes no sense to open roads twice for two

purposes (Booth, 6/5/24 TR, p.157; Palumbo, 7/9/24 TR, pp. 53-55 (municipality may not allow road opening twice for same utility work); and c) that these investments must be made now but need to be depreciated based on the Commission's determination of when they would have otherwise been needed (Booth, 6/5/24 TR, pp. 95, 164, 168). The Chair sought to further clarify the Division's position:

> MR. GERWATOWSKI: The way I interpret that is that's saying an accelerated, that would be an accelerated system modification. It may be ten years out, so it's not accelerated until like 2026 or 2029 to today, but it's accelerated from 2035 to today. That would not be an argument that says the developer has to absorb the entire cost of it. It would just be more depreciation that would be involved in what they would be charged.
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> MR. BOOTH: "Yes, that's exactly what I'm saying."

6/5/24 TR at pp. 149-50.

The Division's testimony did not at all square with its legal position that the renewable energy customers should not be reimbursed for these investments that benefit other customers. Both the Division and the Company recognize that these upgrades which benefit other customers should be done along with those that are necessary for and directly related to interconnection. When asked if those upgrades should be delayed until 2035, the Division acknowledged that the need "would be out at 2035 … [but] it would be built today." Booth, 6/5/24 TR, pp. 167-68.

RIE affirmed this, stating that "it's economically unjustified to go back and open up the road a second time." Constable, 6/4/24 TR, p. 200. Mr. Constable explained both the need to construct the upgrades at the same time and to establish a repayment and depreciation plan: "If the Company put those [self-built] facilities in, we would only charge the distributed generators their allocated portion of those duct banks in the first place. But because they self-build, they have to put it in all now and we have to figure out a way to pay them back." Constable, 6/3/24 TR, p. 189.

The Division relies on a faulty premises that the "accelerated" upgrades benefit the projects and do not benefit other customers. However, as Green, RIE, and even the Division recognize, the accelerated upgrades are ultimately to benefit other customers. *supra*. The Division's witness repeatedly took the position that the cost benefit analysis for these customer-benefitting upgrades would be better once the renewable energy customers had paid for the upgrades at issue in these petitions. Booth, 6/5/24 TR, p. 69 (viability of area studies for these projects would get different view if distributed generation already built out); id. at p. 71 (projects wouldn't rise to top of the priority list if you didn't already have facilities built by generators); id. at 107-109 (once someone else pays for it, the economic analysis is changed); *see also* id. at p. 162. The Division's suggestion that renewable energy customers should be required to build out RIE's electric system before a ratepayer investment is put to a benefit cost analysis is not only inconsistent with but also completely antithetical to Rhode Island law. Renewable energy customers cannot afford to bear the burden of system upgrades meant to benefit other customers, nor should they, nor does the law allow them to be subjected to such a totally inequitable burden. It is hard to understand how Rhode Island's regulatory ratepayer advocate could see it otherwise.

The Division also does not decide whether or when system investments are needed. Booth, 6/5/24 TR, p. 91 (not Division's role to determine whether capital investments are necessary). Moreover, system need has never been determined solely by the infrastructure safety and reliability (ISR) filings, as the Division sought to do here. Id. The Company commonly does needed system upgrades in association with interconnection without flowing them through the ISR process. Constable, 6/3/24 TR, p. 242 (interconnecting customers are commonly reimbursed for new telephone poles that meet system needs without running them through the ISR).

The Division relies on contorted definitions in its effort to hold the developers accountable (and at risk) for upgrades needed to benefit other customers. They argue that all of these upgrades needed to benefit other customers are actually "system modifications" that, at the time of construction, were solely needed to interconnect the renewable energy projects. They contest that the interconnection upgrades would not have been needed to benefit other customers within five years of the renewable energy projects' impact studies and therefore should not be refunded. That interpretation contorts the law by holding interconnecting renewable energy customers responsible for upgrades that ultimately are to benefit other customers. R.I. Gen. Laws § 39-26.3-4.1(a).

The Division claims that its position is one of strict tariff construction, but the Division's witness conceded that this is a case of first impression for application of a tariff that he describes as having "language problems." Booth, 6/5/24 TR, p. 127. The Division argues for an application of the tariff that is entirely inequitable. It would result in Green and Revity absorbing costs for upgrading the electric system that are not solely related to interconnection. This is contradictory to the Rhode Island Supreme Court's directive that "all tariffs should be interpreted in accordance with equity and good conscience regardless of the specific language in which they may be couched." Narragansett Electric Company v. Public Utilities Commission, 773 A.2d 237, 242 (R.I. 2001)

c. *The costs in the columns labeled "Accelerated Modification" have or will be properly depreciated for reimbursement.*

Green does not and has not contested RIE's proposed depreciation of upgrades that benefit other customers but were accelerated to interconnect the renewable energy projects. Ursillo, 6/5/24 TR, p. 122 at Line 25; Ursillo, 6/5/24 TR, p.114. Green understands that the Commission will exercise its authority to "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." R.I. Gen Laws § 39-26.3-4.1(b). In support of that effort, Green observes that: a) RIE mandated that Green make these improvements based on RIE's determination of need (Constable, 6/3/24 TR, p. 222; 6/4/24 TR, p. 194), b) the timing was driven by the requirement to interconnect the projects within the statutory deadlines (R.I. Gen Laws § 39-26.3-4.1(d)), and c) RIE's testimony establishes a present need even if that need may not have been an immediate priority (Constable, 6/3/24 TR, pp. 80-81 - actual need identified now, despite practicality of scheduling issues).

For Tiverton, Green notes that two lines that are contingent and dependent on the upgrades at issue in the petition have already been authorized. Mr. Constable testified that the continuation of the Tiverton feeder beyond Green's point of interconnection is dependent on upgrades contained in the petition. Constable Rebuttal Testimony, pp. 20-21; Constable, 6/3/24 TR, pp. 172-175, 212, 234-235. That continuation of the feeder was in the five-year budget and it had spend within fiscal year '24, and similar to the fiscal year '25 ISR, it was in the five-year plan, and there was spending in fiscal year '25. Id. The proposal and budgeted approval of those line extensions is clear evidence of the timing of need for the upgrades at issue in the Tiverton petition.

It would be inequitable for the Commission to penalize Green with excessive depreciation for the timing of its interconnection upgrade work that RIE determined was necessary, mandated that Green build, and required Green to financially float.

II. Renewable Energy Developers Need and Deserve More Transparency in this Procedure and for the Proper Allocation and Assessment of Interconnection Upgrade Costs.

a. RIE did not and does not meet its obligation of disclosure.

Since 2018, section 5.4(c) of RIE's Tariff has required RIE to disclose its plan and intent to conduct any upgrades to its system in the vicinity of a renewable energy project as part of the project interconnection planning process.

> c. The Company will consider a system modification to be an accelerated modification if such modification is otherwise identified in the Company's work plan as a necessary capital investment to be installed within a five-year period as of the date the Company begins the impact study of the proposed distributed generation (DG) project (defined as an Accelerated Modification). The Company will identify the Accelerated Modification and the cost thereof in the impact study. The Renewable Interconnecting Customer will be responsible for the identified Accelerated Modification costs less the depreciated value (Modified Costs), which Modified Costs will be estimated in the interconnection service agreement (ISA). Upon reconciliation, final labor, material and depreciation values will be provided based on the actual date of asset installation in the same price categories as originally proposed in the ISA to the customer so that a comparison can be made. The 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.

This Tariff provision is meant to allow the Commission and interconnecting renewable energy customers transparent insight into RIE's system upgrades so that they can properly determine how required upgrades should be allocated.

In a hearing held on January 25, 2018, in Commission Docket 4763, considering amendments to the Tariff, the Commission made the following record request to Narragansett Electric Company "Please provide language to include in the Tariff regarding the mechanics for notifying the PUC that Section 5.4 Separation of Costs has been implicated and specific system modifications have been accelerated." That record request arose out of expressed concern that the mechanics of how the Company would administer the new statutory requirement for

depreciation of system improvements necessary to interconnect renewable energy customers would not be transparent or understood. On February 23, 2018, the Company responded by proposing the Tariff revision now found at section 5.4(c).

However, on questioning from the Chair, RIE conceded that it has not complied with this Tariff provision. Constable, 7/9/24 TR, pp. 146-155; Palumbo, 7/9/24 TR, pp. 46-47 (company does not disclose to a DG developer what upgrades are being planned for the system in the area of interconnection and did not do so here). In these dockets, the interconnecting customers only found out about the planned system improvements by independently reviewing the Company's ISR filings. *See* 7/9/24 TR, pp. 47-48, 101-102. As Mr. Ursillo testified,

> The lack of transparency in system planning means that renewable energy customers do not have the information or capacity to contend that their project upgrades benefit other customers. Without that transparency, the history certainly suggests that the Company is not proactively acknowledging such benefit and reimbursing renewable energy customers as required by law and as needed to achieve of Rhode Island's energy and climate goals.

Ursillo Prefiled, Docket 23-38, p. 33. Mr. Palumbo also testified that "the reconciliation process I think as a whole for customers is a bit of a black box." 7/9/24 TR, p. 45; *see also* pp. 105-106 (in every project impossible for us to discern whether upgrades benefit other customers with example of Johnston project). If these interconnecting customers had not been building the interconnection upgrades themselves, they may not have ever been able to determine what upgrades they should and should not have been forced to fund. With the transparency of self-build, the Commission is able to see into a black box that the utility has used to administer and allocate interconnection expenses.

b. The changed allocation methodology implemented part way through this docket indicates how significantly RIE's discretion can impact proper allocation of cost, commonly without any regulatory oversight or control.

The administration of interconnection also lacks sufficient transparency for the interconnecting customer to have confidence in Company's exercises of discretion. Green explained how "overbuilding" can expand the cost significantly:

> … it's beyond what is necessary for the Green projects, and it does come at a significant additional cost. I wouldn't say that it is purely an incidental cost. Having a larger duct bank may require you to go deeper to go under utilities, existing utilities, as opposed to going over existing utilities. You may have to go deeper and encounter ledge, and that could require some additional excavation. You may encounter a water table and require certain environmental measures. So deeper is not just an incremental cost; it can be a significant additional cost. Whereas, Green's project only required two, we contested that there is the standard for a two-way duct bank, and Green's has, in fact, built a two-way duct bank for the Company before for the Coventry wind turbine projects. It was authorized in that case.

Ursillo, 6/5/24 TR, pp. 15-16; *see also* Palumbo, 7/9/24 TR, pp. 37-38; Constable, 7/9/24 TR, pp. 121-22. Yet, after cross examination, part way through these proceedings, RIE proposed a new allocation methodology that did not account for the cost impact of deeper ducts. As a consequence of that changed allocation methodology, RIE proposed to deduct substantial amounts from the reimbursements proposed in each docket. Constable, 7/9/24 TR, p. 121 (incremental method of allocation does not account for increased cost due to depth of construction).[6]

Green understands that RIE proposed these modifications to its allocation methodology in response to questions and concerns raised during the hearings. Yet, the alteration indicates just

[6] As a result of the change from the duct count to the incremental methodology, the Weaver Hill reimbursement was reduced by $505,121. *See* PUC 2-4 to RR-3, as discussed by Mr. Palumbo, 7/9/24 TR, p. 40. The Tiverton reimbursement was reduced by $692,216. *See* 23-27-EL PUC 2-3 and RR-2, Schedule 8, Updated PUC 2-3 (6/20/2024).

how much RIE's discretion can impact the equities of interconnection accounting. Typically, there is no transparency regarding such administrative acts of discretion. When RIE builds the interconnection and there is no Commission review proceeding, the interconnecting customer has no transparency and can expect little accountability for RIE's allocations.

In response to Dr. Bianco's questioning, RIE assured the Commission that it would properly allocate the costs of new telephone poles that are needed both to interconnect and for system benefit. *See* 6/3/24 TR, p. 241 - 242. However, Green disputed this very issue in Commission docket 4547 related to Green's Coventry wind turbine projects. Narragansett Electric initially denied Green any financial consideration for the cost of replacing telephone poles that had been fully depreciated and were clearly in need of replacement. Docket 4547 Arbitrator's Decision (April 2, 2015), pp. 12-13. Only upon dispute did the Company concede that it would conduct a construction review and that any poles that had already been condemned would not be charged to Green. Id. at p. 35, fn 147 (if poles replaced during the interconnection process are found to be those which have been condemned, interconnecting customer will be credited those costs).

It is not clear how many renewable energy projects have been assessed costs of system improvements for which they should not have been held accountable.[7] There is no way to know. If these developers had not discovered RIE's planned system improvement it is not clear whether the approximately $21 million at issue in this petition would have been disclosed or refunded. When System Improvements go undisclosed, interconnecting renewable energy customers can be held accountable for system upgrades that are unrelated to the interconnection but that also avoid

[7] RIE testified that this is the first case where the interconnection of a renewable energy project has resulted in acceleration of upgrades needed to benefit other customers (Constable, 6/4/24 TR, p. 172). The law had required such accounting and allocation as of amendments made in 2017.

all regulatory review and approval. Constable, 6/3/24 TR, p. 238 ("So specifically for the distributed generation, right, that's capital investments. But because it's reimbursed, it's not in the ISR.") That is fundamentally inconsistent with Rhode Island's interconnection law. Projects that are overcharged for interconnection are forced to overbuild and overpay and, as a consequence, suffer unanticipated cost and can fail.[8]

CONCLUSION

Green appreciates the Commission's efforts to fully understand, diagnose and cure a flawed cost accounting and allocation process and system for the interconnection of renewable energy. Summary disposition is warranted on the Division's legal argument because it is utterly unfounded and is contradicted by its own witness. Green appreciates the Commission's good work to ensure proper methodology for allocation of upgrades between those columns listed as "System Modification," "Accelerated Modification," and "System Improvement," and the proper valuation of those upgrades and any depreciation.

Green respectfully asks that the Commission order reimbursement of the system upgrades Green funded and RIE required them to build for the benefit of other customers.

Green also asks the Commission to order and provide the mechanics to enforce more transparency and accountability in interconnection that will enable renewable energy developers to clearly see which upgrades are their obligation and which are not. Proper and equitable

[8] These issues of compliance, transparency and accountability were addressed extensively in PUC Dockets 5205/5206, which opened in 2021. *See e.g.*, *Green Development's Comments (3/1/22)* in PUC Docket 5206 (Review of Administrative Issues Related to the Interconnection Process (National Grid), (12/6.21)); *Handy Law, LLC's Comments (8/11/22)* in PUC Docket 5205 (Review of the Cost Allocation and Recovery of Ongoing Operation and Maintenance Expenses Related to the Interconnection of Distributed Generation Projects (12/6/21)).

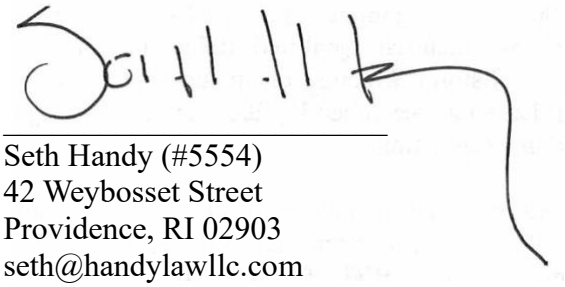
accounting and allocation of costs for interconnection upgrades will also serve Rhode Island's extremely important policy goals.[9]

Green also asks for any other relief the Commission deems equitable and warranted.

GREEN DEVELOPMENT

By its attorneys,

HANDY LAW, LLC



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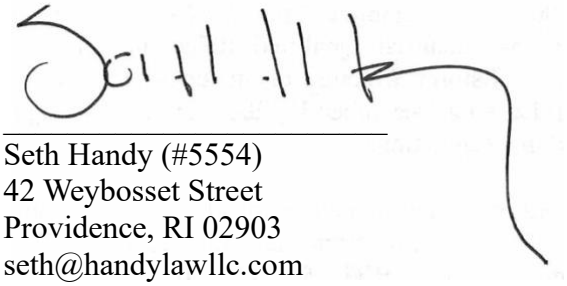
[9] Rather than repeating Green's advocacy on all the ways that state law and public policy support its position, as set out in section 4 of Green's motions for summary disposition, Green asks the Commission to incorporate that advocacy by reference here.

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2024, I sent a true copy of the document by electronic mail to the Commission and the service list and mailed the original pleading and 9 photocopies to the Commission.

HANDY LAW, LLC



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