STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

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

DIVISION'S POST-HEARING REPLY BRIEF

A common theme contained in the Post-Hearing Briefs of the Company and DG Intervenors is to lump "System Improvements" and "System Modifications" into a single investment category,[1] ignoring the plain language of the Interconnection Statute and Tariff and regulatory framework and foisting the entire cost responsibility for both investment asset categories onto ratepayers. This, the Company and DG Intervenors opine, reflects an application of the Interconnection Statute and Tariff that accords with "equity and good conscience." [2]

The Rhode Island Supreme Court and other courts, however, have developed universally accepted principles of "equity and good conscience" that provide equity does not afford relief where there is an remedy at law,[3] and that one who seeks equity must do equity.[4] How the Company and DG Intervenors can arrive at their conclusion in view of this decision-making on the subject is baffling to the Division.

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[1] *See* Dkts. 23-37 & 38-EL, *RIE Legal Brief* at 21 (referring to both System Modifications and System Improvements as "Tiverton and Nooseneck Investments"); Dkts. 23-37 & 38-EL*, Green Closing Brief* at 20 (referring to both System Modifications and System Improvements as "system upgrades"); Dkts. 23-37 & 38-EL, *RIE Petitions* at 12 (lumping System Modification and System Improvements as "System Improvements").

[2] Dkts. 23-37 & 38-EL, *RIE Legal Brief* at 21; Dkts. 23-37 & 38-EL*, Green Closing Brief* at 14.

[3] *See e.g., Marran v West Warwick School Committee*, 317 A.2d 455, 456, n.3 (R.I. 1974).

[4] *E.g., Gaynor v Wax,* 146 A. 814 (R.I. 1929*). See also Allstate Co. v. Lombardi*, 773 A.2d 864, 872 (R.I. 2001) (equitable relief is limited to situations in which the party seeking this remedy presents itself to the court with "clean hands").

The Interconnection Statute and Interconnection Tariff *represent the exception not the rule*, affording DG Developers, within specific parameters such as the 5-year rule, even more expedited cost recovery than is available under the ISR process (itself an exception to the prospective methodology for cost recovery mandated under general ratemaking principles) for used and useful capital investments that physically connect DG developer projects to the EDS (System Modifications). By contrast, cost recovery for System Improvements is not available on an accelerated basis because at the time of their installation they are neither used nor useful, have not yet run the gauntlet of Dkt. 4600 scrutiny and they have not been determined as contributing to capacity and reliability of the EDS.[5] As none of these *legal* prerequisites are met in the pending dockets, "equity and good conscience" cannot compel a different result.[6]

The Company and Green rely on *Narragansett Electric Co. v Public Utilities Com'n*, 773 A.2d 237 (R.I. 2001) in support of their efforts at supplanting the terms and application of R.I.P.U.C. 2258 through equitable reformation.[7] However, their citation to *Narragansett* regarding the application of "equity and good conscience" is taken completely out of context and inapplicable here. *Narragansett* relied on legal precedent that involved tariff provisions that actually provide for an "'equitable adjustment' to rates when a refund was due…" The same equitable principles applied to the Utility Restructuring Act ("URA") in *Narragansett* to support payment of a $1.65 Million refund to ratepayers, rather than to shareholders as the Company was able to earn a com-

[5] *See Division Post-Hearing Brief* at 6-16.

[6] *See Verizon Virginia LLC v. XO Communications*, LLC 144 F. Supp.3d 850, 858 (E.D. Va 2015) (courts do not have the power to equitably reform a tariff upon a finding of ambiguity or mistake); *Providence Gas Co. v. Burke,* 380 A.2d 1334, 1339-40 (R.I. 1977) (when a tariff does not provide for a stay, the Commission is powerless to grant one).

[7] Dkts. 23-37 & 38-EL, *RIE Legal Brief* at 21; Dkts. 23-37 & 38-EL*, Green Closing Brief* at 14.

pensatory rate of return under the URA.[8] Nowhere in these cases did the Rhode Island Supreme Court contradict its holding in *Providence Gas Co. v. Burke* that if the tariff does not sanction a remedy, then one may not be supplied,[9] or decline to follow accepted jurisprudence that holds equity may not change the plain and unambiguous language of a public utility tariff.[10]

Following similar reasoning, Title 39, Ch. 2 directs that every "rate, toll and charge . . . shall be just and reasonable."[11] Rhode Island has some of the highest average electric rates per customer (in cents per kilowatt hour) in the country. A select comparison of these rates for May of 2024 appears in the following chart:[12]

	Residential	Commercial	Industrial	Transportation
Rhode Island	**28.09**	**19.85**	**19.83**	**20.63**
New England	26.40	19.06	15.76	12.30
New York	23.60	17.72	8.72	13.77
Pennsylvania	18.10	11.31	7.75	9.90
Kentucky	12.94	11.65	6.22	-
Texas	14.74	8.73	6.28	4.22
Colorado	14.74	11.71	8.83	9.22

Adding to Rhode Island electric customers' burden by approving the wholesale transfer of premature, unauthorized and unproven System Modification and System Improvement

[8] *Narragansett Electric Co. v. Public Utilities Com'n*, 773 A.2d 237, 242 (R.I. 2001).

[9] *Providence Gas,* 380 A.2d at 1439-40.

[10] *Western Transportation Co. v. Wilson and Company, Inc.,* 682 F.2d 1227, 1231 (7th Cir. 1982) (Posner, J.) ("We will not allow the loose word of 'ambiguity' to bring in such reformation [for a tariff] by the back door").

[11] R.I. Gen. Laws § 39-2-1(a).

[12] https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a

interconnection costs (~$25 Million in the pending matter and potentially $100 M+ if other complex interconnections are treated similarly) from DG developers to ratepayers hardly is in keeping with Title 39, Ch. 2's proscription. "Equity and good conscience" may not operate to supplant the statutory mandate of "just and reasonable" rates.

The five-year rule in R.I.P.U.C. 2258, Section 5.4(c) also seems to have caught the Company and DG Intervenors flat-footed. The Company and DG Intervenors argue that "equity and good conscience" require the Commission to simply ignore the provision in the Interconnection Tariff.[13] Again, the Division is perplexed by the argument.

The 5-year rule is a safeguard of the Company's own devising, intended to protect its customers from the hardship of bearing System Modification interconnection costs associated with the many DG projects that may be proposed but will not be installed within the period of the rule. As far back as 2021, the Company and DG Intervenors could have sought to amend the 5-year rule through a tariff advice or other filing but did not do so.[14] As far back as 2021, the Company and/or DG Intervenors could have (and should have) filed their ISAs with the Commission identifying the Accelerated System Modifications for which they were seeking cost recovery. They did not do so.[15] Had these ISAs been filed as required, DG Intervenors' investment capital for the Weaver Hill and Tiverton DG Projects would have been calibrated to the regulatory risk. Rather than simply sanctioning *post hoc ipso facto* approval—a result Petitioners contend is required by the projects now having been largely constructed[16]—"equity and good conscience" require the

[13] Dkts. 23-37 & 38-EL, *RIE Legal Brief* at 21; Dkts. 23-37 & 38-EL*, Green Closing Brief* at 14.

[14] *See Division Post-Hearing Brief* at 3-4.

[15] *Id.*

[16] *See e.g., Revity Post-Hearing Memorandum* at 1 n.2.

Company and/or DG Intervenors to bear the costs associated with the risks that they ignored. That is, the Company and DG Intervenors may not now receive the equitable treatment that they proposed because they have not done equity.[17]

The Company's and DG Intervenors' claims to "equitable treatment" reside against a backdrop that when examined is likely to impose extraordinary economic hardship on ratepayers. The Company's 2023 3rd Quarter Interconnection PowerPoint presentation[18] provides the following statistics relating to complex interconnection applications *connected by year*:

Year	Complex Applications Connected
2018	**79**
2019	**129**
2020	**113**
2021	**176**
2022	**74**
2023 (through 3rd Q only)	**71**

Based on this information, over the last six years, the Company has connected an average of 107 complex interconnection projects per year.[19] The Company asserts that "…the scope, scale and timelines for interconnections have become more complex both at the state and federal levels."[20] Given this admission, no doubt the vast bulk of connected complex projects resemble the Tiverton and Weaver Hill Projects. But even if System Modification and System Improvement costs per complex connected interconnection project amount to *only* 10% of the roughly $13 Million or so of the similar costs per project associated with the Tiverton Project or the Weaver Hill Project (*i.e.*, $1.3 Million), then ratepayers would be required to assume responsibility for an

[17] *See Gaynor,* 146 A. at 814; *Allstate,* 773 A.2d at 872.

[18] *RI Agency-Interconnection Quarterly Meeting* (February 15, 2024) at 21.

[19] (79+129+113+176+74+71)/6 = 107 Complex Applications connected.

[20] Dkts. 23-37 & 38-EL, RIE *Post-Hearing Brief* at 22.

additional $139 Million per year in costs that they would not otherwise have to bear.[21] If System Modification and System Improvement costs for complex projects in queue are slightly higher (say 20%, 30% or 40% of similar costs associated with the Tiverton or Weaver Hill projects) then ratepayers would be required to assume even greater cost responsibility (*i.e.,* $278,000,000 at 20%, $417,000,000 at 30%, or $556,000,000 at 40%, *etc.*)[22]

One would have expected the Company (and even DG Developers) to have disclosed to the Commission the magnitude of the potentially catastrophic financial burden that is about to be imposed on ratepayers if the requests for relief of RIE and/or DG Intervenors are granted. The Company under its PPL Management (and of course DG Intervenors) do not seem particularly concerned about this ratepayer concern. As stated, one who seeks equity must do equity. "Equity and good conscience" can hardly operate given the magnitude of this incremental ratepayer burden and its non-disclosure. The Commission should deny the pending petitions in their entirety.

Respectfully submitted,

DIVISION OF PUBLIC UTILITIES AND CARRIERS

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[21] $1.3 Million x 107 = $139,000,000.

[22] 20% x $13 Million = $2.6 Million x 107 complex projects connected = $278 Million.
30% x $13 Million = $3.9 Million x 107 complex projects connected = $417 Million.
40% x $13 Million = $5.2 Million x 107 complex projects connected = $556 Million.

CERTIFICATE OF SERVICE

I certify that a copy of the within Reply Brief was forwarded to the Service Lists in Dkts. 23-37-EL & 23-38-EL on the 16th day of August, 2024.

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