STATE OF RHODE ISLAND
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**

GREEN DEVELOPMENT'S REPLY BRIEF

Green Development ("Green") submits this reply brief in support of its reimbursement for costs to build out Rhode Island Energy's ("RIE") electric distribution system for the benefit of RIE's other customers. The parties are aligned on the right of reimbursement, except for the Division. The Division persists in its assertion that the developers are not entitled to reimbursement despite that the law prohibits charging developers for upgrades that are to benefit other customers, which the Division's own witness conceded. The Division's brief hardheadedly beats around the bush while sidestepping the controlling law that interconnecting customers cannot be charged for upgrades that do not relate to their interconnection.[1] The Division's continued obstinance despite the concessions from its witness are so far off-base as to be prescribed by both the Equal Access to Justice Act (a small business must be reimbursed

[1] The Division brief cites *Iselin v. Retirement Bd of the Employees Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) for the proposition that the Commission must give the words of the statute their plain and ordinary meanings (p. 6) and *Matter of Falstaff Brewing Corp.,* 637 A.2d 1047, 1050 (R.I. 1994) for the principle that a statute may not be construed in a way that would result in absurdities or that would defeat the underlying purpose (p. 17). Yet, it fails to take its own direction.

litigation expenses when it prevails in contesting agency action without substantial justification) and the Act on Climate (agencies shall exercise authority in accordance with purposes of Act).[2]

The Division first argues that the law does not allow retroactive reimbursement of system improvements. That claim overlooks the prohibition against charging interconnecting renewable energy customers for the cost of such upgrades that benefit other customers.[3] There is good reason that the law does not address retroactive reimbursement of a renewable energy customer's investment in system improvements: because those customers are not to be charged for system improvements in the first place. The record is clear that the only reason Green and Revity incurred the charges at issue in these dockets is because they self-built. The Company stated that if it had constructed these upgrades the interconnecting customer would not have been charged their cost.[4] The Division joined RIE in acknowledging that self-build should not be treated any differently than company build in this context.[5] The law prohibits any such discrimination.[6] Yet, the Division maintains its legal position that customers that self-built the upgrades benefitting other customers should not be reimbursed.

The Division disputes RIE's process of requiring developers to make upgrades to benefit other customers before getting such upgrades approved by the Commission. The Division then takes that critique out on interconnecting customers that were given no choice but to build the

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[2] R.I. Gen. Laws §§ 42-92-1(b); 42-6.2-8.
[3] R.I. Gen. Laws § 39-26.3-4.1(a).
[4] *See* 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.")
[5] *See* Constable, 6/3/24 TR, p. 201; Booth 6/5/24 TR., pp. 144, 165. (There is no basis to treat self-built upgrades any differently from Company-constructed upgrades.)
[6] *See* R.I. Gen. Laws § 39-1-27.6 (c)(5) (electric distribution company must apply all tariff provisions in a fair and impartial, nondiscriminatory manner); *See also* Main Realty Co. v. Blackstone Valley Gas & Elec. Co., 193 A.2d 879, 888 (R.I. 1937) (unreasonable discrimination in denying same service granted others).

upgrades to interconnect their renewable energy projects. Mr. Booth acknowledged that RIE commonly makes system improvements that are not preapproved by the Commission at its own risk.[7] Yet, the Division still seeks to shift that risk onto the interconnecting customer, where it does not belong.[8] Whether or not RIE followed the right process to get cost recovery for its system upgrades is between RIE and the Commission; but the interconnecting customer cannot be charged for them.

The Division maintains that under R.I. Gen. Laws § 39-26.3-4, only the Commission can approve acceleration of upgrades benefitting other customers to interconnect renewable energy customers, and that RIE does not have such authority. That law reads:

> (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.

Under this provision, the Commission can allow RIE to charge for system improvements implemented in association with an interconnection subject to the Commission's determination of proper reimbursement with depreciation. There is only one way to read that section consistently with the rest of § 39-26.3-4.1.[9] RIE cannot even charge interconnecting customers

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[7] Booth, 6/5/24 TR, p. 91 (system need has never been determined solely by the infrastructure safety and reliability (ISR) filings).

[8] The Division has never once complained about acceleration of system upgrades implemented in association with interconnecting a load customer. Booth, 6/5/24 TR, p/ 141, 143; Constable, 6/4/24 TR, p. 169. That inconsistency not only disregards clear state law, it is also discriminatory.

[9] § 39-26.3-4.1. (a) "The electric distribution company may only charge an interconnecting, renewable energy customer for any system modifications to its electric power system specifically

for upgrades that both benefit the interconnection and other customers unless it gets Commission approval of both the charge and the proper amount of depreciation.

The hearings made clear that there is one reason these issues are before the Commission; because RIE did not present its planned upgrades to the developer and the Commission in association with these interconnections. If the upgrades had been identified in the interconnection process and to the Commission, as required by section 5.4(c) of the tariff, RIE might have received the Commission's advance authorization to advance fund the upgrades benefitting other customers, and would not have needed to charge them to the interconnecting developers. Prior Commission proceedings have both identified the need for and mandated proactive and transparent planning of system upgrades to better accommodate the interconnection of renewable energy. In Docket 5205, commentors clearly pointed out that it is only when RIE appeals to the Commission for a determination that its already identified need to improve the electric system is being accelerated by the work required to interconnect a customer that RIE may then first charge the renewable energy customer for the upgrade and then reimburse the value subject to depreciation based on when the upgrade would have otherwise been required for other customers.[10] The PUC's Order 22174 issued in response to the Company's ISR filing for 2016, observed that "National Grid has admitted that, partially due to the nature of the distributed generation application process, there is little integration of the

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necessary for and directly related to the interconnection," (b) . . ."Any system modifications benefiting other customers shall be included in rates as determined by the public utilities commission."

[10] *Handy Law, LLC's Comments (8/11/22)* in PUC Docket 5205, fn. 2 (also noting that RIE had never used that provision and that lack of transparency on the electrical system and RIE's control of all the information about the system makes it virtually impossible for a renewable energy developer to distinguish what are rightfully "system modifications" from what should be considered "system improvements.")

distributed generation program into the overall planning process."[11] The Commission then ruled that

> long range plans should consider how designing for growth in load and distributed generation can be mutually beneficial; for example, investigating how new infrastructure necessary to serve load in one area can be designed to also serve generation at a lower cost than designing for load alone, or at a lower cost than designing to serve load in one area, while designing to serve generation in another.[12]

The Division's continued protest against reimbursing these developers misdiagnoses the malady and confuses the remedy. The Commission decides whether RIE properly brought its planned upgrades before the Commission for approval of proper depreciation, but a renewable energy customer cannot be denied its reimbursement.

The Division wrongly invokes Docket 4600 in support of its opposition to the Petition. The contention is that RIE did not do a proper cost benefit analysis before ordering the upgrades. That argument once again misdiagnoses the problem and its remedy; the Commission will decide whether RIE should have convinced the Commission of the cost effectiveness of its upgrades intended to benefit its other customers before charging them to the interconnecting renewable energy customers. Regardless, the interconnecting renewable energy customers remain entitled to reimbursement for the cost of any upgrades that did not directly benefit their interconnections.[13] The Division asks the Commission to ignore a bedrock rate design principle of Docket 4600; that rate design is reasonable if it "[e]nsures that all parties should provide fair

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[11] *In re: National Grid Proposed Fy 16 2016 Electric Infrastructure, Safety and Reliability Plan Pursuant to R.I. Gen. Laws § 17 39-1-27.7.1* (Oct. 21, 2015), p. 25.
[12] *Id*. at p. 26.
[13] The Commission's authority to decide the developers' right to reimbursement is not at all contingent on cost recovery; the Commission has broad "jurisdiction, powers, and duties to … hold investigations and hearings involving the rates, tariffs, tolls, and charges, and the sufficiency and reasonableness of facilities and accommodations of … electric distribution." R.I. Gen. Laws § 39-1-3.

compensation for value and services received and should receive fair compensation for value and benefits delivered." *Public Utilities Commission's Guidance on Goals, Principles and Values for Matters Involving the Narragansett Electric Company d/b/a National Grid,* Docket 4600, p. 5 (Oct. 27, 2017). It is not only illegal, but it would be foundationally inequitable and contrary to the fundamental ratemaking principles of Docket 4600 to charge interconnecting renewable energy customers for costs of upgrading the distribution system to benefit other customers.

Lastly, the Division still grasps that the developers should not be reimbursed because the upgrades were not needed within five years of the project impact studies. However, the statute does not limit the developer's right to reimbursement to upgrades occurring within five years of the project impact study and a tariff cannot be read to be more restrictive than the authorizing statute.[14] Mr. Booth acknowledged that the Division does not decide the need for or the timing of the need for system upgrades; that is between RIE and the Commission.[15] The Commission decides whether and when the upgrades RIE ordered these renewable energy customers to perform were needed. The law does not allow the Commission to force interconnecting renewable energy customers to bear the cost of upgrades that RIE required to benefit other customers.

The Division's brief doubles down on arguments that contradict the law, its own witness, and the state's requirements for the execution of its authority over small businesses and in support of the purposes of the Act on Climate. For these reasons, and for all the reasons stated in its principal brief, Green respectfully asks the Commission to reimburse its costs of upgrading the electric distribution system to benefit other customers and to grant any other relief the

[14] Olamuyiwa v. Zebra Atlantek, Inc., 45 A.3d 527, 536 (R.I. 2012) (No rule of statutory construction allows the reading of an unexpressed exclusion into a rule of general applicability).
[15] Booth, 6/5/24 TR, p.91.

Commission deems warranted.

GREEN DEVELOPMENT

By its attorneys,

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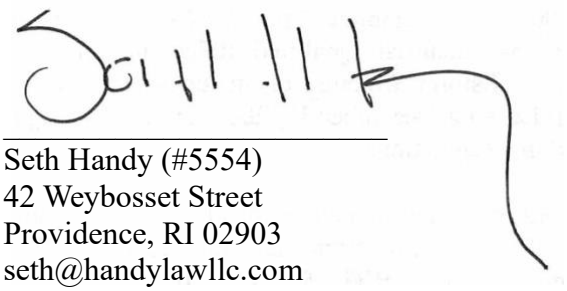

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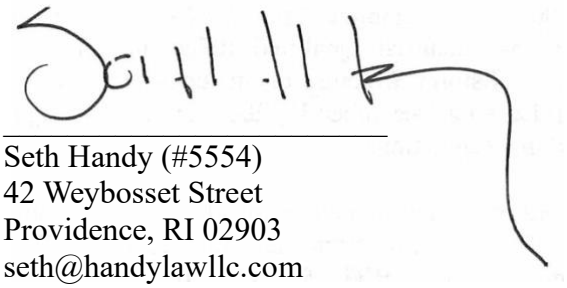
CERTIFICATE OF SERVICE

I hereby certify that on August 16, 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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