

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION**

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| <b>IN RE: RHODE ISLAND ENERGY PETITION FOR<br/>ACCELERATION DUE TO DISTRIBUTED<br/>GENERATION PROJECT – WEAVER HILL<br/>PROJECTS</b> | Docket No. 23-38-EL |
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**REVITY ENERGY LLC’S REPLY MEMORANDUM**

Revity Energy LLC (“Revity”), by and through its undersigned attorney, hereby files this Reply Memorandum in support of Rhode Island Energy’s (the “Company”) October 17, 2023 Petition for Acceleration Due to DG Project (Weaver Hill Projects).

The Division, through its August 7, 2024 Post-Hearing Brief (the “Division’s Brief”), focuses largely on the proper interpretation and administration of R.I. Gen. Laws § 39-26.3-1, *et seq.* (the “Interconnection Statute”) and The Narragansett Electric Company Standards for Connecting Distributed Generation (R.I.P.U.C. No. 2258) (the “Interconnection Tariff”). The Division insists that the Interconnection Statute “must be considered in the context of the entire statutory scheme.”<sup>1</sup> Revity agrees. The Statute provides that the interconnection standards “shall be construed liberally in aid of” the “expeditious completion of the application process for renewable distributed generation” which “is in the public interest.”<sup>2</sup> Yet, the Division’s Brief is chock-full of new requirements (foreign to both the Statute and the Tariff) that would make the interconnection process more onerous.

Despite asserting that the Commission is not free “redraft” the Statute<sup>3</sup> or “engage in equitable reformation of” the Tariff,<sup>4</sup> it is the Division asking that the Commission redraft these

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<sup>1</sup> Division’s Brief at p. 17.

<sup>2</sup> R.I. Gen. Laws §§ 39-26.3-1, 39-26.3-5.

<sup>3</sup> Division’s Brief at p. 8.

<sup>4</sup> *Id.* at pp. 9-10.

laws to strictly limit DG customer's reimbursement to cases where the Company "is able to show that the proposed System Improvements are investments in 'utility infrastructure,' are 'reasonably needed to maintain safe and reliable distribution service over the short and long term,' are 'used and useful' and survive Dkt. 4600 Analysis."<sup>5</sup> None of these requirements are stated in the Statute or the Tariff. This Commission, in opposing 2022 legislation aimed at clarifying the Interconnection Statute, advised the General Assembly that "[i]f the purpose of the bill is to ensure interconnecting customers pay only for modifications their projects require and ensure ratepayers contribute to improvements that benefit them, no changes need to be made to the current law."<sup>6</sup>

The Interconnection Tariff states that "the Company may only charge an Interconnecting Customer for System Modifications specifically necessary for and directly related to the interconnection"<sup>7</sup> and that the Company shall not charge the Interconnecting Customer for System Improvements.<sup>8</sup> The Tariff continues that a System Modification will be considered "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."<sup>9</sup> The Division's witness testified that "the tariff just doesn't have clear language as to how to deal with this"<sup>10</sup> but the Division's Brief insists that the Tariff's language is "plain and unambiguous."<sup>11</sup> If the law is clear, it must be administered as written. If the law is unclear, it must be interpreted in aid of its intent which (again) is to liberally expedite

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<sup>5</sup> Division's Brief at p. 5.

<sup>6</sup> Exhibit D (all alphabetical Exhibit citations are references to the Exhibits to Revity's August 7, 2024 Post-Hearing Brief).

<sup>7</sup> Interconnection Tariff at § 5.3.

<sup>8</sup> *Id.* at § 5.4(a).

<sup>9</sup> *Id.* at § 5.4(c).

<sup>10</sup> 6/5/2024 TR at 127:7-8 (attached hereto as Exhibit 1).

<sup>11</sup> Division's Brief at p. 10.

“completion of the application process for renewable distributed generation.”<sup>12</sup> In either event, Revity must be reimbursed.

***1. The Commission should not accept the Division’s invitation to rewrite the law to include the requirements that system upgrades be “used and useful” and be subject to a Docket 4600 analysis in order to qualify for reimbursement.***

The Division argues that the System Improvements which are the subject of the Company’s Petition are not properly reimbursable under the Interconnection Statute or the Tariff because they are not “used and useful.”<sup>13</sup> These terms were not substantively discussed during the multi-day hearings in this Docket. Nevertheless, the Division now contends that System Improvements “are only reimbursed at their undepreciated value when they become used and useful.”<sup>14</sup> The Division provides no citation for that proposition and for good reason: neither the Statute nor Tariff say that. The Tariff simply says that DG customers shall not be charged by the Company for System Improvements.<sup>15</sup> The only restriction on System Improvements imposed by the Tariff is the definition which defines a “System Improvement” as “[e]conomically justified upgrades determined by the Company in the Facility study phase for capital investments associated with improving the capacity or reliability of the EDS that may be used along with System Modifications to serve an Interconnection Customer.”<sup>16</sup> There is no requirement that the System Improvement be “used and useful” at the time of reimbursement.

With respect to the Division’s insistence that cost recovery under Section 5.4 be subject to a Docket 4600-A analysis, this requirement is also mentioned nowhere in the Statute or the Tariff even though Section 5.4 of the Tariff was amended 18 months after the issuance of the Docket

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<sup>12</sup> R.I. Gen. Laws §§ 39-26.3-1, 39-26.3-5.

<sup>13</sup> Division’s Brief at pp. 12-14.

<sup>14</sup> *Id.* at p. 11.

<sup>15</sup> Interconnection Tariff at § 5.3.

<sup>16</sup> *Id.* at § 1.2.

4600-A Guidance Document. In Docket 4763 reviewing the Company's proposed amendments to the Interconnection Tariff, there was no substantive discussion of including a Docket 4600-A analysis to the requirements for reimbursement and there was no mention of Docket 4600 in the Commission's January 4, 2019 Report and Order in Docket 4763 approving amendments to Section 5 of the Tariff.

Even still, the Company did perform a Docket 4600 analysis for the Weaver Hill substation<sup>17</sup> which was submitted in the 2024 ISR docket (Docket No. 22-53-EL). The Division responds that "[w]hile 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."<sup>18</sup> According to the Division, Revity must foot the bill for system upgrades which do not benefit Revity because the Company failed to update an analysis which it was not required to perform in the first place. Of course, the Division elides the fact that, through self-performance, the DG customers and the Company were able to save distribution customers \$13 million compared to the budget reflected in the Company's original Docket 4600 analysis.<sup>19</sup>

***2. The only relationship between cost recovery for System Improvements/Modifications and the ISR process is the requirement that the Company identify System Modifications in the work plan.***

The Division's Brief next argues that "the Interconnection Statute and Tariff contemplate the recovery of \* \* \* costs exclusively through the electric ISR process."<sup>20</sup> In its January 4, 2019 Report and Order in Docket 4763, the Commission stated that the Company "would use the Electric Infrastructure, Safety, and Reliability process for *including and adding* projects to the

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<sup>17</sup> 6/4/2024 TR at 140:3-24 (attached hereto as Exhibit 2).

<sup>18</sup> Division's Brief at p. 16 (emphasis in original).

<sup>19</sup> 7/9/2024 TR at 55:13-22 (attached hereto as Exhibit 3).

<sup>20</sup> Division's Brief at p. 5.

five-year capital plan.”<sup>21</sup> The only reference to the ISR process in either the Statute or the Tariff is in Section 5.4(c) of the Tariff which states that “[t]he Company will consider a system modification to be an accelerated modification if such modification is \* \* \* *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.”<sup>22</sup>

To qualify for acceleration and reimbursement, the modification must be identified in the Company’s work plan. Here, the Division has conceded that the Weaver Hill substation was repeatedly identified by the Company as a necessary capital investment in the FY 2023 ISR, the FY 2024 ISR, and the FY 2025 ISR work plans.<sup>23</sup> The Company testified that the Division “supported the inclusion of the Weaver Hill projects in the FY 2024 and FY 2025 ISR Plan filings.”<sup>24</sup> The Division responds that “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.”<sup>25</sup> However, it is the Division which sat on its hands for years while the Company was repeatedly identifying these upgrades in its ISR filings and its Area Study. “[T]he Division has had 4 opportunities over 3 years to comment on the details of the Central RI West Study and has failed to do so.”<sup>26</sup> The Division defends itself that, when it receives the area studies, it “doesn’t get into the details \* \* \*.”<sup>27</sup> Revity reiterates the argument from its Post-Hearing Brief: “It is

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<sup>21</sup> Exhibit I at 7 (emphasis supplied).

<sup>22</sup> Emphasis supplied.

<sup>23</sup> Exhibit C at 116:1-117:3.

<sup>24</sup> Exhibit F at 12:20-13:1; Exhibit B at 213:23-215:21; Exhibit C at 16:4-8 (“MR. WOLD: Mr. Constable, these documents don’t reflect the Division’s pushback to the company regarding the ISR plan positions that the company takes, right? MR. CONSTABLE: There is no pushback on the Tiverton or Weaver Hill [projects].”).

<sup>25</sup> Division’s Brief at p. 4.

<sup>26</sup> Exhibit F at 13:1-3.

<sup>27</sup> Exhibit C at 103:15-104:4.

patently inequitable for DG customers to be financially responsible for this internecine dispute between the Company and the Division regarding the propriety of the Company's ISR filings.”<sup>28</sup>

Moreover, the Division maintains that “[h]ad 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. But it did not.”<sup>29</sup> “[N]owhere 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.”<sup>30</sup> “[A]ccelerating System Improvements and issuing an order for DG developers to fund them in advance, subject to reimbursement only leads to absurd results.”<sup>31</sup> Nobody in this matter has requested an order requiring DG customers to fund System Improvements in advance—the Company already ordered DG customers to do that and the Division agrees that DG customers have no choice “but to build what the company told them to build.”<sup>32</sup> The only question is whether DG customers are required to absorb the cost of System Improvements. The Tariff says they are not.

***3. Revity's System Modifications were installed within five years of the Robin Hollow impact study.***

Lastly, the Division contends that 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.”<sup>33</sup> The Division cites the

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<sup>28</sup> Revity's August 7, 2024 Post-Hearing Brief at p. 18.

<sup>29</sup> Division's Brief at p. 9.

<sup>30</sup> *Id.* at p. 10.

<sup>31</sup> Division's Brief at p. 12.

<sup>32</sup> Exhibit C at 139:9-12.

<sup>33</sup> Division's Brief at p. 17.

Company's testimony that the Weaver Hill substation will not be completed until 2028 which, according to the Division, proves "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."<sup>34</sup> Per Section 5.4(c) of the Interconnection Tariff, the only upgrades that must be installed within five years are those upgrades identified in the impact study. The Division's witness agrees that "what needs to be completed within five years has to be identified in the impact study."<sup>35</sup> The DG customers do not have to complete all the upgrades identified in the work plan within five years. DG customers must only complete those system modifications identified in the impact study. All System Modifications identified in the Robin Hollow impact study were completed by December of 2023, well within five years of the beginning of the Robin Hollow impact study in January of 2020.<sup>36</sup>

The Division continues that interpreting Section 5.4(c) to permit reimbursement of Revity's System Modifications here would lead to absurd results because "[v]irtually every DG interconnection project then would require advancement over other ISR projects because the term 'installed' in Section 5.4(c) would encompass System Modifications no matter what their state of completion."<sup>37</sup> Revity does not contend that the completion status of the system modifications is irrelevant—the modifications identified in the impact study must be completed within five years of the beginning of the study. Rather, Revity contends that the only work that must be completed within five years is that work which was identified in the impact study. The Division's witness agrees with Revity.<sup>38</sup> The Weaver Hill substation was never identified in any of the impact studies

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<sup>34</sup> *Id.* at p. 18.

<sup>35</sup> Exhibit C at 131:13-132:20.

<sup>36</sup> Exhibit P; Exhibit O at 88:24-89:18.

<sup>37</sup> Division's Brief at pp. 19-20.

<sup>38</sup> Exhibit C at 131:13-132:20.

as part of the scope of work for which the DG customers were responsible. As has been well-established in this docket, DG customers have absolutely no control over what the Company identifies as the scope of work in the impact study.<sup>39</sup> The DG customers' obligation is to perform (or pay for) the work identified. If the Division is concerned that the Company is advancing the wrong investments through its ISR filings and the DG interconnection process, perhaps the Division should get more involved. Revity would welcome the Division's assistance in pushing back on the Company with respect to the scope of work identified by the Company in Revity's impact studies and the ISAs.

### **CONCLUSION**

Rhode Island's interconnection reconciliation process is a "black box"<sup>40</sup> in which the DG customers must build whatever the Company orders and the Company does not provide the DG customers the necessary information to discern "whether or not these costs are justified."<sup>41</sup> The Division, for its part, will not commit to participating in this process on the front end to stop the Company from building something that is not (in the Division's view) necessary.<sup>42</sup> On the back end, the financial risk of the Company's failure to comply with new requirements introduced into the Tariff by the Division (such as an updated Docket 4600-A analysis) falls on the DG customers. According to the Division, that is a process which will "liberally" aid in the "expeditious completion of the application process for renewable distributed generation."

The Division is wrong. "From a public policy standpoint, \* \* \* paying the developers sooner rather than later promotes the purposes of the Distributed Generation Interconnection Act" and "[f]rom an administrative standpoint, waiting to pay the developers may create challenges"

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<sup>39</sup> Exhibit A at 222:1-19; Exhibit B at 163:10-13 & 223:15-10; Exhibit C at 139:9-12.

<sup>40</sup> Exhibit O at 45:11-12.

<sup>41</sup> Exhibit O at 104:22-105:15.

<sup>42</sup> Exhibit C at 118:18-119:25.



because “[a]ny time payment is delayed, for potentially years, there is risk ownership is transferred or legal statuses change making payment more complicated.”<sup>43</sup>

For these reasons, and for the reasons articulated in Revity’s August 7, 2024 Post-Hearing Brief, Revity respectfully requests that the Commission approve the Company’s request to recover \$10,541,062 from the distribution customers for Accelerated System Modifications incurred by DG customers (subject to a 2-year depreciation pursuant to Section 5.4 of the Tariff) and recover \$4,016,349 for System Improvements incurred by the DG customers.

**REVITY ENERGY LLC**

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<sup>43</sup> August 7, 2024 Memorandum of Law of The Narragansett Electric Company d/b/a Rhode Island Energy at p. 19.

**Docket No. 23-38-EL Rhode Island Energy – Petition for Acceleration Due to DG Project – Weaver Hill Projects Service List updated 8/5/2024**

| <b>Parties' Name/Address</b>                                                                                                                                             | <b>E-mail</b>                                                                           | <b>Phone</b> |
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## **EXHIBIT 1**

**In the Matter Of:**  
**RI PUBLIC UTILITIES COMMISSION**

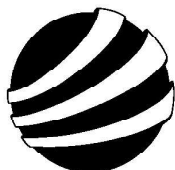
D 23-37-EL & D 23-38-EL

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**HEARING**

*June 05, 2024*

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1 would the Division's position have been different, or  
2 your point is we may not have been required to build  
3 the extra system?

4 A. My point is that I think that the  
5 deficiencies that the companies articulated and that  
6 I'm articulating, and substantial agreement with the  
7 company about the tariff just doesn't have clear  
8 language as to how to deal with this, the company  
9 should have brought that problem forward, either with  
10 or without the developers, to the Commission and said  
11 we need to clarify the tariff language, make changes,  
12 so that we don't have this problem, you know, three or  
13 five years from now. We see this coming about, so  
14 let's fix the tariff early.

15 Now the Commission has taken the tariff language  
16 problems and is going to have to make some decisions.  
17 That's -- the good news is you have a great Commission  
18 to do that.

19 Q. Let me nail down a few last remarks, and  
20 that's all I have. So you had testified that you've  
21 been listening to all of these docket hearings?

22 A. Yes.

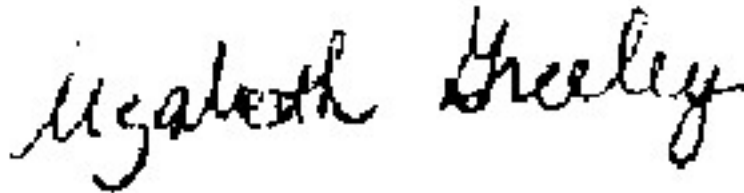
23 Q. Do you dispute that the system upgrades for  
24 the Weaver Hill interconnection that have been  
25 discussed throughout this docket have actually been

C-E-R-T-I-F-I-C-A-T-E

I, ELIZABETH GREELEY, a Notary Public, do hereby  
certify that I am expressly approved as a person  
qualified and authorized to take depositions pursuant  
to Rules of Civil Procedure of the Superior Court;  
especially, but without restriction thereto, under  
Rule 28 of said Rules; that the witness was sworn by  
me; that the transcript contains a true record of the  
proceedings.

Reading and signing of the transcript was not  
requested by any parties involved upon completion of  
the hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this  
17th day of June , 2024.



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ELIZABETH GREELEY, NOTARY PUBLIC  
CERTIFIED COURT REPORTER  
MY COMMISSION EXPIRES: 04/07/2026

## **EXHIBIT 2**



**In the Matter Of:**  
**RHODE ISLAND PUBLIC UTILITIES COMMISSION**

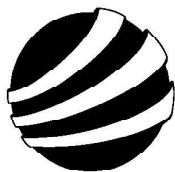
Docket No. 23-38-EL

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**HEARING**

*June 04, 2024*

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1 in the additional ducts that are represented by  
2 K.

3 MR. WOLD: Okay. Because you  
4 heard yesterday the company witness testified  
5 that for row I -- column I for Tiverton there  
6 was no 4600 analysis; correct?

7 MR. CONSTABLE. Right. Yeah.  
8 And I mistakenly said that earlier in the day.  
9 We did not complete a Docket 4600 analysis for  
10 Tiverton.

11 MR. WOLD: But you definitely  
12 are sure that you have a 4600 analysis for  
13 column J.

14 MR. CONSTABLE: Yup. And we  
15 can provide it.

16 MR. WOLD: You can provide  
17 that? It was a record request yesterday, so I  
18 take it it would be a record request today.

19 CHAIRMAN GERWATOWSKI: Yes.

20 MR. WOLD: But K, there is no  
21 4600 analysis; correct?

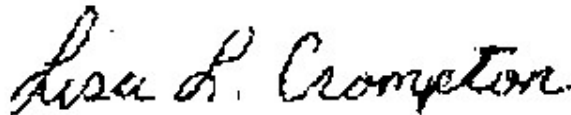
22 MR. CONSTABLE: There's no  
23 4600 analysis. Although, that would be in the  
24 costs for column J.

25 MR. WOLD: Okay. If you could

C E R T I F I C A T E

I, LISA L. CROMPTON, Registered  
Professional Reporter, hereby certify that the  
foregoing is a true and accurate transcription of  
my stenographic notes of the proceedings in this  
matter on the date and time specified in the  
caption hereof.

IN WITNESS WHEREOF I have hereunto set  
my hand this 12th day of June, 2024.



LISA L. CROMPTON

REGISTERED PROFESSIONAL REPORTER

MY COMMISSION EXPIRES 1/22/2028

## **EXHIBIT 3**

**In the Matter Of:**  
**RI PUBLIC UTILITIES COMMISSION**

23-37-EL

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**HEARING**

*July 09, 2024*

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1 DOT involved for state roads. And ultimately,  
2 the company would have needed, I assume, the  
3 municipality to approve the substation itself on  
4 that piece of land. So the town does have a say  
5 during that process.

6 So if the town didn't act -- I  
7 mean, if the company didn't act in this manner,  
8 and accelerate their improvements within our  
9 scope of work, Green's scope of work, Studley's  
10 scope of work, you know, they could have been  
11 left with not having this option in the future  
12 at all.

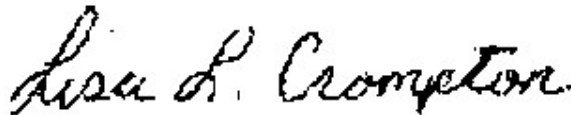
13 And I think we saw in the, you  
14 know, 4600 analysis they submitted, this  
15 option A was around 14,000,000 and change and  
16 option B was \$26,000,000 and change. So that  
17 could have been a \$12,000,000 swing to the  
18 ratepayer if they didn't actually -- never mind  
19 the fact that you have DG developers, you know,  
20 and/or construction companies that were able to  
21 self-perform and save another \$13,000,000  
22 through this process.

23 So I think, for all those  
24 reasons mentioned, the company made a prudent  
25 decision to accelerate this.

C E R T I F I C A T E

I, LISA L. CROMPTON, Registered  
Professional Reporter, hereby certify that the  
foregoing is a true and accurate transcription of  
my stenographic notes of the proceedings in this  
matter on the date and time specified in the  
caption hereof.

IN WITNESS WHEREOF I have hereunto set  
my hand this 12th day of July, 2024.



LISA L. CROMPTON

REGISTERED PROFESSIONAL REPORTER

MY COMMISSION EXPIRES 1/22/2028