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October 18, 2024

VIA E-MAIL AND HAND DELIVERY

Stephanie De La Rosa, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket No. 23-37-EL – Petition for Acceleration Due to DG Project – Tiverton Projects

Dear Ms. De La Rosa:

On behalf of The Narragansett Electric Company d/b/a Rhode Island Energy, enclosed please find an original plus nine copies of its Memorandum Addressing Whether Interest Should Be Applied To Any Reimbursements Paid to Distributed Generation Customers, which is to be filed in the above-entitled docket.

Thank you for your attention to this matter.

Very truly yours,

Adam M. Ramos, Esq.

AMR:amg
Enclosures

cc: Docket No. 23-37-EL Service List

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

Petition for Acceleration Due to DG Project – Tiverton Projects	)	Docket No. 23-37-EL
Petition for Acceleration Due to DG Project – Weaver Hill Projects	)	Docket No. 23-38-EL

THE NARRAGANSETT ELECTRIC COMPANY D/B/A RHODE ISLAND ENERGY'S MEMORANDUM ADDRESSING WHETHER INTEREST SHOULD BE APPLIED TO ANY REIMBURSEMENTS PAID TO DISTRIBUTED GENERATION CUSTOMERS

On October 15, 2024, the Chairman of the Rhode Island Public Utilities Commission (the "Commission") issued a Procedural Order Regarding Motions to Stay, through which the Chairman:

(i) "temporarily and partially granted" The Narragansett Electric Company d/b/a Rhode Island Energy's (the "Company") Motions for Stay in the above-captioned dockets, suspending the Company's obligations to meet the deadlines in the Motions the Commission adopted at its September 19, 2024 Open Meeting (the "Open Meeting Determinations") "until the full Commission holds its next Open Meeting to formally rule on the request[;]"

(ii) directed any party opposing the Company's Motions for Stay to file any written objections no later than October 18, 2024 at 12:00 p.m.; and

(iii) requested all parties to these dockets to file memoranda "addressing whether the Commission should require the assessment of interest on any amounts refunded by the Company . . . , should the Company not meet a Commission-specified deadline to make payments owed to these distributed generation parties"

including "whether interest should apply, the applicable rate of interest, and, if interest applies, when the calculation of interest should commence."

This memorandum is the Company's submission regarding the interest issue. For the reasons set forth in this memorandum, the Commission should not assess interest on any amount the Company reimburses to Green Development, LLC and Revity Energy, LLC (collectively, the "DG Developers") for work performed in connection with interconnecting their distributed generation ("DG") projects at issue in these dockets at this time.

I. No Interest is Appropriate at this Time.

There is no basis to assess interest on any reimbursements to the DG Developers at this time because there is no current legal obligation for the Company to make any reimbursement payments to the DG Developers of any particular amounts at any particular time. This is the case because: (1) the Interconnection Service Agreements ("ISAs") the DG Developers signed with the Company provide no requirement for any reimbursement; (2) the statute governing potential reimbursement of the costs at issue in these dockets and the applicable tariff do not establish any timeframe for when reimbursement payments must be made; and (3) the Open Meeting Determinations do not establish an obligation to pay any particular amount at any particular time. Accordingly, the Company is not holding a specified amount of money that otherwise would have been due to the DG Developers at a time certain such that the Company should be obligated to compensate the DG Developers for the time value of that money. *See Nationwide Life Ins. Co. v. Steiner*, 757 F. Supp. 2d 114, 117 (D.R.I. 2010) (finding that interest "begins to accrue when the prevailing party 'was entitled to his money, and did not receive it[]'") *quoting Gupta v. Customerlinx Corp.*, 385 F.Supp.2d 157, 167 (D.R.I.2005).

A. <u>The ISAs do not Provide a Basis for Assessing Interest</u>.

These matters arose after the DG Developers entered into ISAs with the Company pursuant to which the DG Developers agreed, without condition, to pay all the interconnection-related costs for their DG projects, including the costs at issue in these dockets. There is no provision in any of the ISAs that indicated that the DG Developers had any right to receive, or expectation that they would receive, reimbursement for any of the costs they voluntarily incurred to achieve interconnection of their DG projects on the timeframe they sought. Before executing the ISAs, the Company made no representations about the potential for reimbursement of any of those costs. The DG Developers agreed to perform the interconnection work and pay for it because they wanted to interconnect their projects. And, the DG Developers have benefitted from that decision, earning significant additional revenue from the DG projects that now have been interconnected. *See, e.g.*, Transcript, June 6, 2024 at 103-105 (discussing value of interconnecting earlier).

Accordingly, the DG Developers willingly entered into contractual agreements pursuant to which they agreed to pay all the costs at issue, with no language even suggesting that they had an expectation of receiving reimbursement payments for those amounts from the Company.[1] Rather, it was not until after the DG Developers entered into those ISAs that they approached the Company and suggested there should be some reimbursement under R.I. Gen. Laws § 39-26.3-4.1 and § 5.4(b) of the The Narragansett Electric Company Standards for Connecting Distributed Generation, R.I.P.U.C. No. 2258 (the "DG Interconnection Tariff"). Accordingly, the Company

[1] The costs at issue were not paid **<u>to the Company</u>**. Rather, they were costs incurred by the DG Developers to perform the interconnection work at issue. The DG Developers self-performed the work, thus they either incurred these costs for work they performed themselves or they paid the amounts at issue to contractors and parts and equipment suppliers. This is not a circumstance where the Company is holding money paid to it by the DG Developers. Further, although under the terms of the DG interconnection statute and the governing tariff, the assets the DG Developers built become the property of the Company, the Company is not yet realizing the financial benefit of owning those assets.

and the DG Developers agreed that they would file the petitions that gave rise to these dockets to determine what, if any, reimbursement the DG Developers would receive. As such, the DG Developers tacitly acknowledge that the ISAs they signed did not give rise to any right to reimbursement. Moreover, § 5.4(d) of the DG Interconnection Tariff expressly establishes that the DG Developers are responsible for all costs they agreed to pay under the ISAs unless and until the Commission determines that some of those costs should be reimbursed.

B. The Statute and the DG Interconnection Tariff do not Establish When any Reimbursement Payment to the DG Developers Would be Due.

Although R.I. Gen. Laws § 39-26.3-4.1 and § 5.4 of the DG Interconnection Tariff provide a mechanism by which the DG Developers could be entitled to reimbursement of some of the interconnection costs they incurred, there is nothing in the statute or the DG Interconnection Tariff that definitively establishes a timeframe for when any such reimbursement payments would be due. In fact, if anything, the statute suggests that the DG Developers would not be entitled to reimbursement until such time as the Company would have been authorized to perform the work in question in the absence of the interconnection. R.I. Gen. Laws § 39-26.3-4.1(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**.") (emphasis added).

Although it is unclear whether this statutory language refers only to the calculation of the depreciated value of the work or to the timing of when the reimbursement would occur, it is reasonable to conclude that it refers to the timing of the payment – particularly in light of the other statutory language that mandates that such reimbursements "shall be included in rates[.]"

That additional language supports the notion that DG Developers would not receive payment until such time as the work would have been necessary to serve other customers, and therefore would justify those other customers paying for the work performed on the electric system through rates. This same language appears in § 5.4(b) of the DG Interconnection Tariff. Accordingly, there is nothing in the statute or the DG Interconnection Tariff that would establish that the DG Developers had any right to or expectation of reimbursement of the costs at issue at any particular time, or that there would be any right to any interest accruing on any such amounts while the determination of whether they receive any reimbursement was made.

C. <u>The Open Meeting Determinations do not Establish a Defined Obligation to make Payment of any Particular Amount at any Particular Time</u>.

The Open Meeting Determinations have not established a particular payment obligation on the Company that would justify accruing interest for any amounts that the Company may later pay to the DG Developers. Although the Open Meeting Determinations do impose obligations on the Company that are meaningful and significant, as described and set forth in the Company's Motions for Stay, they do not establish a specific obligation to pay a particular amount of money to the DG Developers by a specific time – such that they create an entitlement for DG Developers to receive money from the Company that is being delayed.

Ordinarily, in civil litigation, interest accrues on damages from the date that the harm occurred, which, in terms of damages for failure to pay an amount owed, is defined as the date on which the harmed party was entitled to receive the money in question. Here, there is no sum certain to which the DG Developers are entitled from the Company, nor is there a date certain on which the DG Developers are entitled to any amounts that the Company may reimburse in the future. Accordingly, there is no basis, either under the ISAs, the statute and DG Interconnection

Tariff, or in the Open Meeting Determinations, to trigger an interest accrual obligation on any amounts that might later be determined the Company should pay to the DG Developers.[2]

II. Conclusion

For the reasons set forth in this memorandum, it would be inappropriate for the Commission to assess interest on reimbursement payments that the Company may make to DG Developers in the future at this time.

[2] The only circumstance in which it would be appropriate to assess interest is if the following conditions occur: (1) the Company is ordered to (or agrees to) pay the DG Developers a specific amount by a specific date, (2) the Company fails to make the required payment by the required time, and (3) any challenge to that order or agreement, including appeals, is resolved by affirming the Company's payment obligation. None of those conditions is present currently. In the event that those conditions occur in the future, the calculation of interest would commence from the specific date of the Company's payment obligation, and the appropriate interest rate should be equal to the cost of capital for the DG Developers, for which the burden should be on the DG Developers to demonstrate.

Dated: October 18, 2024

Respectfully submitted,

The Narragansett Electric Company
d/b/a Rhode Island Energy

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was forwarded by e-mail to the Service List in the above docket on the 18th day of October, 2024.

/s/ Angela Giron

Docket No. 23-37-EL Rhode Island Energy – Petition for Acceleration Due to DG Project – Tiverton Projects - Service List updated 10/16/2024

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