

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION**

**IN RE: REVITY ENERGY LLC’S REQUEST FOR A  
DECLARATION REGARDING THE PROPER  
INTERPRETATION OF R.I. GEN. LAWS § 39-26.4-  
3(a)(1)(vi) AND SECTION II(2)(vii) OF R.I.P.U.C. NO.  
2274**

Docket No. \_\_\_\_\_

**PETITION FOR DECLARATORY RELIEF OF REVITY ENERGY LLC**

Petitioner, Revity Energy LLC (“Revity”), by and through undersigned counsel, hereby petitions the Rhode Island Public Utilities Commission (the “Commission”), pursuant to R.I. Gen. Laws § 42-35-8 and Section 1.11(C) of the Commission’s Rules of Practice and Procedure, for declaratory relief regarding the proper application of R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) and Section II(2)(vii) of the R.I.P.U.C. No. 2274 (the “Net Metering Tariff”). R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) provides as follows:

The maximum aggregate capacity of remote net metering allowable for ground-mounted eligible net-metering systems, as defined by § 39-26.4-2(6), with the exception of systems that have, as of April 15, 2023, submitted a complete application to the appropriate municipality for any required permits and/or zoning changes or have requested an interconnection study for which payment has been received by the distribution company, or if an interconnection study is not required, a completed and paid interconnection application by the distribution company as of June 24, 2023, shall be two hundred seventy-five megawatts, alternating current (275 MWac), excluding off-shore wind. None of the systems to which this cap applies shall be in core forests unless on a preferred site located within the core forest. A project counts against this maximum if it is in operation or under construction by July 1, 2030, as determined by the local distribution company. All eligible ground-mounted net-metering systems must be under construction or in operation by July 1, 2030. \* \* \*

Section II(2)(vii) of the Net Metering Tariff effectively mirrors that statutory provision:

The maximum aggregate capacity of remote net metering allowable for ground-mounted Eligible Net Metering Systems, as defined by § 39-26.4-2(6), with the exception of systems that have, as of April 15, 2023, submitted a complete application to the appropriate municipality for any required permits and/or zoning changes or have requested an interconnection study for which payment has been received by the distribution company, or if an interconnection study is not required, a completed and paid interconnection application by the distribution company as of

June 24, 2023, shall be two hundred seventy-five megawatts, alternating current (275 MWAC), excluding off- shore wind. None of the systems to which this cap applies shall be in Core Forests unless on a Preferred Site located within the Core Forest. A project counts against this maximum if it is in operation or under construction by July 1, 2030, as determined by the local distribution company. All eligible ground-mounted net-metering systems must be under construction or in operation by July 1, 2030. \* \* \*

This Petition seeks the following two declarations regarding the proper interpretation of these provisions:

- A. With respect to the provision capping the 275 MWAC maximum aggregate capacity for ground-mounted eligible net-metering systems, the utility company must publicly report, on a monthly basis, the remaining capacity and the projects currently counting against that capacity (including the project owner, interconnection application date and application number and size (MWAC)).
- B. With respect to the provision stating that “[a]ll eligible ground-mounted net-metering systems must be under construction or in operation by July 1, 2030,” the phrase “under construction” shall mean the project owner having begun the process of building, altering, repairing, improving, or demolishing its structures, improvements and/or real property as necessary for the development of the renewable energy system.

### **PARTIES AND JURISDICTION**

1. Revity is a duly registered limited liability company organized under the laws of the State of Delaware with its principal place of business located at 349 Centerville Road in Warwick, Rhode Island.

2. The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company”) is an electric distribution company as defined by R.I. Gen. Laws § 39-26.6-3(9).

3. The Commission has jurisdiction over this matter pursuant to its authority “to hold investigations and hearings involving rates, tariffs, tolls, and charges” as stated in R.I. Gen. Laws § 39-1-3(a) and its authority to issue declaratory rulings “interpret[ing] or appl[y]ing a statute administered by the agency or state whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner” under R.I. Gen. Laws § 42-35-8(a). This Petition seeks a declaratory judgment interpreting the proper application of the aforementioned provisions of R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) and Section II(2)(vii) of the R.I.P.U.C. No. 2274.

### **FACTS**

4. In June of 2023, the Rhode Island General Assembly enacted H-5853 and S-0684 which, among other things, amended R.I. Gen. Laws § 39-26.4-3 to establish the cap of future remote net metering ground-mounted renewable energy systems.

5. On March 1, 2024, the Company filed its Tariff Advice to Amend the Net Metering Provision Proposal to Incorporate 2023 Legislative Changes (Docket No. 24-10-EL) to terminate R.I.P.U.C. No. 2268 and replace it with R.I.P.U.C. No. 2274.

6. In Docket No. 24-10-EL, the Commission issued its First Set of Data Requests on November 5, 2024, which included the following request (PUC 1-5(b)):

Is there a definition of “in operation or under construction” in the proposed Tariff? If so, what is it and how was it developed? If not, how does RIE propose to determine if a project is “in operation or under construction by July 1, 2030,” in accordance with the proposed Tariff Sheet 11, Section II(2)(viii)?

7. On November 26, 2024, the Company responded to PUC 1-5(b) as follows:

No, there is no definition of “in operation or under construction” within the proposed Net Metering Tariff. The Company proposes to determine if a project is “in operation or under construction by July 1, 2030” by looking at the project status in the interconnection process. Specifically, the Company will use the Conditional Approval – Install Generator status and step as the milestone in which a project will

be considered “under construction”; this milestone represents when the Interconnection Service Agreement (“ISA”) has been executed by both parties and, when applicable, required construction or CIAC payments have been received. The Company will use Authority to Interconnect (“ATI”) as the milestone for “in operation.”

8. On May 29, 2025, the Company gave a presentation to the Rhode Island Senate Renewable Energy Program Commission during which the Company stated that, as of April 30, 2025, fourteen (14) applications constituting 66.343 MWAC were in the queue counting against the 275 MWAC cap.

9. The Company has begun maintaining on its website a monthly report of available net metering capacity: <https://portalconnect.rienergy.com/RI/s/article/Net-Metering-in-Rhode-Island>. This website reports that, as of September 1, 2025, twenty-seven (27) applications constituting 175.343 MWAC are in the queue counting against the 275 MWAC cap.

10. Every Revity project in the Company’s interconnection queue is grandfathered under the 2023 legislation and it is entirely unclear to Revity how there are 175.343 MWAC of non-grandfathered projects unless the Company is including Revity’s grandfathered projects. However, the Company’s current reporting practice provides no insight as to which projects are being considered as non-grandfathered and, thus, cap-applicable. These issues should be studied and resolved before the cap is exceeded and projects are delayed.

### **LEGAL ARGUMENT**

11. There are two legal questions regarding the proper application of the 2023 legislation for which this Petition seeks resolution: (a) What is the correct definition of “under construction” as that phrase is used in R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) and Section II(2)(vii) of the Net Metering Tariff and (b) Is the Company properly administering the 275 MWAC

maximum aggregate capacity as set forth in R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) and Section II(2)(vii) of the Net Metering Tariff?

***A. Defining “under construction.”***

12. In response to PUC 1-5(b) in Docket No. 24-10-EL, the Company defined “under construction” by “looking at the project status in the interconnection project” and, more specifically, “the Company will use the Conditional Approval – Install Generator Status and step as the milestone in which a project will be considered ‘under construction’” which “milestone represents when the Interconnection Service Agreement (‘ISA’) has been executed by both parties and, when applicable, required construction or CIAC payments have been received.”

13. The Company did not provide an explanation as to why the definition of “under construction” should be coterminous with the developer’s status in the interconnection process (as opposed to the actual construction status of the project). Pursuant to Table 1 of R.I.P.U.C. No. 2258 (the “Interconnection Tariff”), the estimated timeframe from the interconnection application to the executed ISA is 175/200 calendar days. There is no avenue in the Interconnection Tariff to expedite the interconnection process and no penalty for delaying interconnection beyond the timelines in the Interconnection Tariff.

14. Whether a project is “under construction” by July 1, 2030 (thereby qualifying for the virtual net-metering program) cannot be based on how efficiently the project owner can navigate the Company’s interconnection process. Financial and investment predictability requires that the developer have complete control over the actions necessary to qualify for the program.

15. Rhode Island law generally defines “construction” as “the process of building, altering, repairing, improving, or demolishing” structures, improvements and/or real property.<sup>1</sup>

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<sup>1</sup> See e.g., R.I. GEN. LAWS § 45-55-4(3) (“‘Construction’ means the process of building, altering, repairing, improving, or demolishing any public structures or building, or other public improvements of any kind to

This definition should be applied to the term “under construction” as used in R.I. Gen. Laws § 39-26.4-3(a)(1)(vi) and Section II(2)(vii) of the Net Metering Tariff.

***B. Tracking of the 275 MWAC statutory capacity.***

16. With regards to reporting on the statutory capacity limit, the Company gave a presentation to the Rhode Island Senate Special Legislative Commission to Study Renewable Energy Programs on May 29, 2025 during which the Company reported that there were fourteen (14) applications in queue totaling 66.343 MWAC with 208.657 MWAC remaining under the net-metering capacity limit.<sup>2</sup>

17. As of September 1, 2025, the Company reports that there are twenty-seven (27) applications in queue totaling 175.343 MWAC with 99.657 MWAC remaining under the net metering capacity limit.

18. In June of 2025, Revity filed seven (7) applications totaling 60 MWAC for a project in Hopkinton. In July, Revity filed three (3) applications totaling 24 MWAC for a project in West Greenwich. In August, Revity filed three (3) applications totaling 25 MWAC for a project in Exeter.

19. Between May 30, 2025 and September 1, the Company received thirteen (13) interconnection applications for 109 MWAC and between those same dates, Revity filed thirteen

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any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the municipality in the usual course of their job.”); R.I. GEN. LAWS § 37-2-7 (“‘Construction’ means the process of building, altering, repairing, improving, or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the state of Rhode Island in the usual course of their jobs.”); R.I. GEN. LAWS § 37-24-3(1) (“‘Construction’ means the process of building, altering, repairing, improving, or demolishing forty percent (40%) or more of any public structures, public buildings, public real property or other public improvements of any kind to any public structures, public buildings or public real property.”); R.I. GEN. LAWS § 28-14-1(1) (“‘Construction industry’ means the business of constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating, or demolition of any building, structure, or improvement to the excavation of or other development or improvement to land, highways, or other real property.”).

<sup>2</sup> <https://www.rilegislature.gov/commissions/REPC/SitePages/members.aspx>.

(13) interconnection applications for 109 MWAC. Importantly, all three (3) of these projects are grandfathered under state law and, therefore, not subject to the statutory cap.

20. Pursuant to the 2023 legislation, projects which had, as of April 15, 2023, “submitted a complete application to the appropriate municipality for any required permits and/or zoning changes or have requested an interconnection study for which payment has been received by the distribution company, or if an interconnection study is not required, a completed and paid interconnection application by the distribution company as of June 24, 2023” do not count against the cap. R.I. Gen. Laws § 39-26.4-3(a)(1)(vi).

21. Revity is finding it difficult to understand how there could already be 175 MWAC of non-grandfathered capacity in the queue but Revity strongly suspects that its grandfathered projects are being counted against the cap. Without the Company’s basic reporting of the project owner, interconnection application date and application number and size (MWAC) of the projects being tracked, there is no way to determine if the Company is counting non-grandfathered projects against the cap.

22. Correctly characterizing grandfathered projects is important because, non-grandfathered projects, subject to the cap, are also subject to the twenty percent (20%) reduction in the value of the net metering credits pursuant to R.I. Gen. Laws § 39-26.4-2(22).

23. Properly characterizing grandfathered projects is also important because, non-grandfathered projects may not be located within “core forests” pursuant to R.I. Gen. Laws § 39-26.4-3(a)(1)(vi), unless those projects are located on “preferred sites.”<sup>3</sup>

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<sup>3</sup> R.I. Gen. Laws § 39-26.4-2(2) defines a “core forest” as “unfragmented forest blocks of single or multiple parcels totaling two hundred fifty (250) acres or greater unbroken by development and at least twenty-five (25) yards from mapped roads, with eligibility questions to be resolved by the director of the department of environmental management.” R.I. Gen. Laws § 39-26.4-2(18) defines a “preferred site” as “a location for renewable energy system that has had prior development, including, but not limited to: landfills, gravel pits and quarries, highway and major road median strips, brownfields, superfund sites, parking lots or sites that

24. Timely and detailed reporting on the capacity cap is critical because, with respect to projects above and beyond the interconnection capacity cap, the Company has stated (in response to PUC 1-6 in Docket No. 24-10-EL) as follows:

RIE will screen and identify projects as they enter the interconnection queue and count them toward the 275 MW AC cap as applicable. An initial review already identified in-flight projects that fall within the cap. The queue date (which is the date the project's application is accepted in the expedited and standard process, or when a simple application is given conditional approval) will be the determining factor of a project's position within the "in queue" projects.<sup>[4]</sup> Once the cap has been fulfilled with in-queue projects, proceeding applications will be notified of the cap fulfillment and placed on a waitlist. Customers will have the option to keep the application on hold on the waitlist, withdraw, or change to another eligible incentive program. Applications on the waitlist will remain on hold and will not progress until capacity is available. Once the 275MW CAP has been filled with connected projects, waitlist projects will then be notified to either withdraw or apply to another eligible program.

25. In response to PUC 1-7 in Docket No. 24-10-EL, the Company responded as follows:

Request:

How will RIE treat a project if some of the project capacity falls under the 275 MW AC cap and some of the project capacity exceeds the cap? For example, how will a 10 MW AC facility be treated if it is in operation or under construction by July 1, 2030, and the cumulative capacity installed under the cap stands at 270 MW AC?

Response:

RIE at the time of the application will notify the customer of its applicability to the 275 MW cap and they will have the option to reduce the MW AC of the facility to the remaining capacity within the cap, withdraw, remain on the waitlist for a project in queue to withdraw, or apply to another eligible program.

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are designated appropriate for carports, and all rooftops including, but not limited to, residential, commercial, industrial, and municipal buildings.”

<sup>4</sup> This response suggests that the Company is not taking account of the fact that projects which had submitted a complete application to the appropriate municipality for any required permits and/or zoning changes are not subject to the statutory cap under R.I. Gen. Laws § 39-26.4-3(a)(1)(vi).



26. If the statutory cap applies to a project, there are various legal restrictions and consequences that result and, therefore, it is critically important that the Company provides transparency as to whether the Company is applying the cap to a particular project.

**WHEREFORE**, Revity Energy LLC respectfully requests the following two declarations regarding the proper interpretation of these provisions:

- A. With respect to the provision capping the 275 MWAC maximum aggregate capacity for ground-mounted eligible net-metering systems, the utility company must publicly report, on a monthly basis, the remaining capacity and the projects currently counting against that capacity (including the project owner, interconnection application date and application number and size (MWAC)).
- B. With respect to the provision stating that “[a]ll eligible ground-mounted net-metering systems must be under construction or in operation by July 1, 2030,” the phrase “under construction” shall mean the project owner having begun the process of building, altering, repairing, improving, or demolishing its structures, improvements and/or real property as necessary for the development of the renewable energy system.

**REVITY ENERGY LLC**

/s/ Nicholas L. Nybo  
Nicholas L. Nybo (#9038)  
*Senior Legal Counsel*  
REVITY ENERGY LLC AND AFFILIATES  
349 Centerville Road  
Warwick, RI 02886  
Tel: (508) 269-6433  
nick@revityenergy.com

Dated: September 17, 2025