STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: REVITY ENERGY, LLC PETITION :
FOR DECLARATORY JUDGEMENT : DOCKET NO. 5235

DECISION AND ORDER

I. Overview

On February 18, 2022, Revity Energy LLC (Revity or Petitioner) filed a Petition for Declaratory Ruling (Petition) with the Public Utilities Commission (Commission) pursuant to R.I. Gen. Laws § 42-35-8 for an interpretation of certain provisions of R.I. Gen. Laws § 39-26.3-4.1 and the related utility tariff RIPUC No. 2244. The requested declarations arise from a dispute over cost responsibility for certain system modifications required to connect several renewable energy projects being developed by three different developers located in or around West Greenwich, Rhode Island.[1]

In this case of first impression before the Commission, one developer is constructing the non-electric civil work on Rhode Island Energy's (RI Energy or Company) distribution system, a portion of which was sized to accommodate the other developers' known projects. RI Energy seeks to assess a portion of the cost incurred by the first developer for the construction of the civil work in proportion to the requirements of each project.[2] In its Petition, Revity sought two declarations from the Commission which would, if granted, prohibit "The Narragansett Electric Company[3] from requiring, as a condition to authorizing interconnection under the Interconnection Tariff, an interconnection customer to pay a portion of the costs incurred by an unrelated

[1] Pet. at 10, ¶¶ 20-21.
[2] *See* Agreed Facts at 2, ¶7.
[3] When the Petition was filed, The Narragansett Electricity was doing business as National Grid but, on May 25, 2022, PPL Rhode Island Holdings, LLC, an indirect wholly owned subsidiary of PPL Corporation, acquired 100 percent of the outstanding shares of common stock of The Narragansett Electric Company, now doing business under the name Rhode Island Energy (RI Energy).

interconnection customer for work that was self-performed by that unrelated developer."[4] Specifically, Revity sought the following declarations:

> (1) Pursuant to R.I. Gen. Laws § 39-26.3-4.1 and the Interconnection Tariff, as well as past practice, [RI Energy] is not authorized to participate in or otherwise enforce the allocation, collection or socialization of costs incurred by a private developer in the self-performance of the civil work for the interconnection required for newly installed photovoltaic energy system projects; and
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> (2) All civil interconnection work and related equipment (including all rights, title and interests in and to same) self-performed by a private developer, once completed, is presumed to be automatically donated, assigned, and conveyed by the developer (or its affiliate, as the case may be) to [RI Energy] and, thereafter, [RI Energy] has a legal obligation to interconnect any subsequent facility as necessary to accomplish the purchase and sale of electricity generated therefrom.[5]

In support of its requests, Revity made several claims: (1) RI Energy had changed its policy with respect to its involvement in assessing subsequent interconnecting customers with costs incurred by prior interconnecting customers for System Modifications; (2) RI Energy did not have a clearly articulated policy and instead, was operating on a case-by-case basis resulting in discrimination among customers; (3) Cost-sharing is only required where the utility incurs costs for System Modifications which does not occur when an interconnecting customer self-performs the civil work of the System Modifications.[6]

Following receipt of this Petition, Commission legal counsel provided direct notification of the filing and date of the procedural conference to Green Development, LLC (Green) and Energy Development Partners, LLC (EDP), two renewable energy developers whose rights and obligations will be directly affected by this decision. Green participated in the prehearing conference and subsequently intervened. EDP did not participate in this proceeding. The Division

[4] Pet, at 1.
[5] Pet. at 24-25.
[6] Pet. at 2-4.

of Public Utilities and Carriers (Division), serving in its capacity as a party before the Commission, participated.[7]

Following a review of the Petition, Agreed Facts filed by RI Energy, Revity, and Green, discovery responses and memoranda of law, and conducting an oral argument hearing, the Commission, at an Open Meeting held on July 14, 2022, denied Revity's first declaration as inconsistent with the applicable law and tariff and declined to rule on the second declaration because the requested declaration is incomplete in the context of the filing.[8]

II. Agreed Facts

Revity included a set of facts to support its Petition while RI Energy filed a Response to Revity's Petition on March 10, 2022, which set forth additional facts to those which were outlined in Revity's Petition.[9] At that time, Green had not yet had an opportunity to present its position. At the prehearing conference, the parties were directed to attempt to reach an agreed statement of facts upon which the Commission could rely for purposes of interpreting the law and tariff provisions. On May 23, 2022, Agreed Facts between Revity, RI Energy, and Green were filed.

[7] The Rhode Island Supreme Court has explained that "[i]t is the function of the division to serve the commission in bringing to it all relevant evidence, facts, and arguments that will lead the commission in its quasi-judicial capacity to reach a just result." Providence Gas Co. v. Burke, 419 A.2d 263 (R.I. 1980).

[8] The Commission also issued a Notice Soliciting Comment that appeared in the Providence Journal on June 11, 2022. No written comments were received nor were any public comments offered at the hearing.

[9] In its Petition, Revity set forth facts to support its request, but many of those facts, while relevant to other legal claims, were not all relevant to the question of whether, under the facts of this case, RI Energy's actions were prohibited by the R.I. Gen. Laws § 39-26.3-4.1 and Section 5.3 of tariff RIPUC No. 2244. In its Petition, Revity raised concerns that RI Energy did not have clear and reliable standards in place and was not applying its tariff and policies consistently. In support of its claim, Revity pointed to an earlier project it had developed for which it had not received a cost-sharing arrangement. RI Energy disputed any claim of discrimination, disputed how the reasonableness of the costs will be verified, and indicated it would be willing to work with Revity on its 2019 project concerns. Furthermore, RI Energy argued that the cost-sharing arrangement was permissive under the Interconnecting Tariff. (See Revity Pet. at ¶¶8-11; RI Energy Response at 13-14). While all important issues, Revity has other procedural mechanisms to raise these concerns, including through the filing of a Petition with the Commission, a complaint with the Division, or the interconnection dispute resolution process, depending on the nature and timing of the concern.

They are attached hereto and incorporated by reference.[10] It is upon those facts that the Commission has considered Revity's requested declarations.

Green, Revity, and EDP have submitted applications to RI Energy for the interconnection of several renewable energy projects with an aggregate nameplate capacity of 70.7 MW, with the following split: the Green projects constitute 20 MW (28.3%); the Revity projects constitute 40.7 MW (57.6%), and the EDP projects constitute 10 MW (14.1%).[11] The projects are all located in West Greenwich, Rhode Island on Nooseneck Hill Road and/or Weaver Road. A new underground duct bank is required on Hopkins Hill Road to connect the projects to the electric distribution system. It is this duct bank, being constructed by Green, that will be shared by the projects (Third Party Duct Bank). "The specification estimated the Third Party Duct Bank to be approximately 28,000 linear feet and contained design accommodations including conduit sections of 2-way, 4-way, and 9-way duct sizes for interconnection of the Green, Revity and EDP projects as well as future expansion of Narragansett's distribution system."[12] The Third Party Duct Bank will span a total length of 28,169 feet, of which 14,602 feet (51.8%) is common-path facilities that are required for the Green, Revity and EDP projects, 89 feet (0.3%) is required solely for the Revity projects, and 13,478 feet (47.9%) is required solely for the benefit of the Green projects.[13] Green relied on RI Energy's commitment to implement cost sharing when it agreed to build a duct bank larger than what was needed for only its projects.[14]

[10] Agreed Facts attached as Appendix A and incorporated herein by reference.
[11] Agreed Facts at 4, ¶19.
[12] Agreed Facts at 5, ¶22.
[13] Agreed Facts at 6, ¶28.
[14] "Green's projects are located furthest from the point of interconnection with Narragansett's distribution system and Green agreed to construct the entire length of the Third Party Duct Bank, including the common portion that would be utilized by the projects proposed by Green, EDP and Revity, on the condition of a commitment to implement cost sharing." Agreed Facts at 5, ¶23. "Narragansett and Green represent as follows: On July 16, 2021, Narragansett approved the civil design and construction package for the Third Party Duct Bank by Green and authorized construction. The final approved design included a total Third Party Duct Bank linear length of 29,843 feet and included 6 three-way manholes and 41 two-way manholes. The Third Party Duct Bank is designed and built

Revity sought to engage in discussions with Green about cost sharing in 2021 and also consistently objected to RI Energy facilitating the cost sharing,[15] asserting that "[n]either the Interconnection Tariff nor state law provides National Grid any authority to collect or distribute pro rata cost-sharing contributions where a private developer voluntarily elects to perform the civil interconnection work for its own benefit."[16] Throughout 2021, Green made payments to RI Energy for the interconnection and commenced work on the common duct bank.[17] In early 2022, RI Energy sent Revity revised ISAs for its projects which included a portion of the cost of the common duct bank.[18] The issue was unable to be resolved between the parties and the instant Petition was ultimately filed.

III. Applicable Law and Tariff Provisions

A. Distributed Generation Interconnection

R.I. Gen. Laws §§ 39-26.3-1 et seq. govern distributed generation interconnection which is the subject of the instant matter. R.I. Gen. Laws § 39-26.3-4.1(a) - (c) states:

> (a) The electric distribution company may only charge an interconnecting renewable energy customer for any system modifications to its electric power system specifically necessary for and directly related to the interconnection.
>
> (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.

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to accommodate runs of differing capacity including 9-way, 6-way, 4-way, and 2-way duct bank. The capacity of the piping drives the total linear feet and the real cost of construction (e.g., 9-way duct bank is more expensive than 4-way which is more expensive than 2-way). Green's project would only require a 2-way duct bank. The addition of the Revity and EDP projects require great (*sic*) capacity duct bank." Agreed Facts at 6, ¶30.

[15] Agreed Facts at 7, ¶¶ 31-32, 34.

[16] Agreed Facts at 7, ¶ 33.

[17] Agreed Facts at 7, ¶¶ 35, 37.

[18] Agreed Facts at 8, ¶ 39.

> (c) If an interconnecting, renewable energy customer is required to pay for system modifications and a subsequent renewable energy or commercial customer relies on those modifications to connect to the distribution system within ten (10) years of the earlier interconnecting, renewable energy customer's payment, the subsequent customer will make a prorated contribution toward the cost of the system modifications that will be credited to the earlier interconnecting, renewable energy customer as determined by the public utilities commission.[19]

R.I. Gen. Laws § 39-26.3-1 states, "[t]he general assembly hereby finds and declares that the expeditious completion of the application process for renewable distributed generation is in the public interest. For this reason, certain standards and other provisions for the processing of applications are hereby set forth to assure that the application process assists in the development of renewable generation resources in a timely manner."

R.I. Gen. Laws § 39-26.3-5 provides that, [t]his chapter shall be construed liberally in aid of its policy objective.

B. Standards for Connecting Distributed Generation (RIPUC No. 2244)

RI Energy's Standards for Connecting Distributed Generation, RIPUC No. 2244 (Interconnection Tariff) contains the "rules of the road" for interconnection, including the process for allocating costs. Section 5 of the Interconnection Tariff is entitled "Responsibility for Costs of Interconnecting a Facility. Section 5.3 related to system modification costs[20] states:

> The Interconnecting Customer shall only pay for that portion of the interconnection costs resulting solely from the System Modifications required to allow for safe, reliable parallel operation of the Facility with the Company EDS; provided, however, the Company may only charge an Interconnecting Customer for System Modifications specifically necessary for and directly related to the interconnection, excluding modifications required on the Transmission infrastructure. The Interconnecting Customer shall also be responsible for all costs reasonably incurred by the Company attributable to:

[19] R.I. Gen. Laws § 39-26.3-4.1(a)-(c).
[20] System Modification: Modifications or additions to Company facilities that are integrated with the Company EDS for the benefit of the Interconnecting Customer. (Interconnection Tariff at Sheet 9); https://www.rienergy.com/media/ri-energy/pdfs/billing-and-payments/tariffs/standards_for_connecting_dg.pdf (page last visited July 14, 2022).

a) The proposed interconnection project in designing, constructing, operating and maintaining the System Modifications required to allow for safe, reliable parallel operation of the Facility with the Company EDS, or
b) Resulting from the Facility operating in conjunction with any existing Facilities, or
c) Other proposed Facilities that precede the Facility in the interconnection queue.

At the time that the Company provides an Interconnecting Customer with any Impact Study or Detailed Study, the Company shall also provide, along with that Study, a statement of the Company's policies on collection of tax gross-ups.

As appropriate, to the extent that subsequent Interconnecting Customers benefit from System Modifications that were paid for by an earlier Interconnecting Customer, subsequent Interconnection Customers who benefit from those same System Modifications may retroactively contribute a portion of the initial costs, which may be refunded to the earlier customer. In this scenario, the Company may assess a portion of the costs to such subsequent Interconnecting Customers, which will be refunded to the earlier Interconnecting Customer if collected. Such assessments may occur for a period of up to five years from the Effective Date of the earlier Interconnecting Customer's Interconnection Service Agreement.[21]

Section 5.4 entitled to separation of costs states as follows:

a. The Company may combine the installation of System Modifications with System Improvements[22] to the Company's EDS to serve the Interconnecting Customer or other customers, but shall not include the costs of such System Improvements in the amounts billed to the Interconnecting Customer for the System Modifications required pursuant to this Interconnection Tariff. Interconnecting Customers shall be directly responsible to any Affected System operator for the costs of any System Modifications necessary to the Affected Systems.

b. Effective for Renewable Interconnecting Customer Applications filed on or after July 1, 2017, in the event that the Commission determines that a specific System Modification of the electric distribution system benefits other customers and has been accelerated due to an interconnection request and orders the Renewable Interconnecting Customer to fund the modification, the Renewable Interconnecting Customer will be entitled to repayment of the depreciated value of the modification as of the time the modification would have been necessary as determined by the Commission. Subsequent Renewable Interconnecting Customers will be responsible for prorated payments within ten (10) years of the earlier Renewable Interconnecting Customer's payment toward System Modifications.[23]

[21] Interconnection Tariff at Sheets 56-57.
[22] System Improvement: Economically 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. Interconnection Tariff at Sheet 9.
[23] Interconnection Tariff at Sheet 57.

System modifications are typically constructed by the utility with the costs assessed to the interconnecting customer/developer. However, at oral argument, RI Energy's counsel indicated that the Interconnection Tariff does not prohibit a "self-build" scenario such as the Third Party Duct Bank.[24]

IV. Pre-Hearing Memoranda

On March 10, 2022, RI Energy filed a Response to Revity's Petition and chose not to file an additional Pre-Hearing Memoranda.[25] RI Energy conceded that the Interconnection Tariff does not specifically address cost-sharing in the context of a self-build scenario, but indicated that it does address cost sharing by interconnecting customers who rely on or benefit from previously constructed facilities paid for by an earlier interconnecting customer.[26] While the language of the tariff is silent on cost sharing for self-constructed and donated civil facilities, RI Energy argued that Revity overlooked the broader context of the Interconnection Tariff, particularly Section 5.3 and the equity issues associated with Revity's position.[27]

In particular, RI Energy noted that Section 5.3 provides that costs are to be collected from the later interconnecting customer who benefits from shared System Modifications to be refunded to the first paying interconnecting customer. Thus, according to RI Energy, the focus should not be on whether RI Energy incurred the cost, but rather, whether the subsequent interconnecting customer, in this case, Revity, benefited from the System Modifications paid for by the prior

[24] Hr'g. Tr. at XX citing "The interconnection of the Facility with the Company EDS must be reviewed for potential impact on the Company EDS under the process described in Section 3.0 and meet the technical requirements in Section 4.0, and must be operated as described under Section 6.0. In order to meet these requirements, an upgrade or other modifications to the Company EDS may be necessary. Subject to the requirements contained in this Interconnection Tariff, the Company or its Affiliate shall modify the Company EDS accordingly. Unless otherwise specified, the Company will build and own, as part of the Company EDS, all facilities necessary to interconnect the Company EDS with the Facility up to and including terminations at the PCC. The Interconnecting Customer shall pay all System Modification costs as set forth in Section 5.0." (Interconnection Tariff at Sheet 11).
[25] Letter from Attorney Habib to Luly Massaro, Commission Clerk (June 17, 2022).
[26] RI Energy Response at 9.
[27] *Id*. at 10.

customer, in this case, Green. As a practical matter, RI Energy explained that this matter arose from three known projects in the interconnection queue, all of which would require a duct bank in a particular area. According to RI Energy, it was simply more efficient to have Green develop one duct bank large enough for all of the projects than to attempt to gain permitting allowances for multiple duct banks to serve each project, something RI Energy opined may not be feasible. Even if feasible, if Green only built the duct bank large enough for its projects, Revity still would have had to pay to either self-construct or to have RI Energy construct a second duct bank.

Responding to Revity's argument that it should not be required to pay for any of the Green-constructed duct bank RI Energy noted that such a read of the Tariff would allow a subsequent customer to avoid cost responsibility which, under the facts in this case, would produce an unjust result to Green by shifting costs to Green that did not cause while sending an artificially low price signal to Revity about the cost of interconnecting to the distribution system.[28]

On June 17, 2022, Revity and Green each filed Pre-Hearing Memoranda. While Revity argued that neither the Interconnection Tariff nor the law vests RI Energy with the authority to participate in or enforce cost-sharing between private developers where the private developer self-performs interconnection work, Green reached the opposite conclusion contending that the applicable statute requires cost sharing in this situation.

Revity characterized the question before the Commission as "whether the Interconnection Tariff or R.I. Gen. Laws § 39-26.3-4.1 vests [RI Energy] with the authority to impose cost-sharing on an interconnecting customer for projects self-performed by another interconnecting customer."[29] Revity urged the Commission to find that they do not. First, Revity relied on RI Energy's concession that the Interconnection Tariff did not explicitly address the issues raised in

[28] *Id*. at 12.
[29] Revity Pre-Hearing Mem. at 8.

this Petition as a basis that RI Energy was prohibited from charging Revity for its share of the System Modification costs being incurred by Green.[30] Specifically, Revity contended that the lack of specifically articulated policies inhibits the ability of Revity to challenge or the Commission to review the actions of the utility for reasonableness. Revity's primary arguments, however, centered around the fact that in a prior Revity project, the Company allegedly did not enforce the statutory or tariff as to a subsequent interconnecting customer to facilities paid for by Revity.[31]

Revity challenged RI Energy's allocation of costs to it for System Modifications being constructed by Green, arguing that the statute and Interconnection Tariff were meant to apply only to situations where the utility constructed the facilities.[32] In support of its interpretation, Revity relied on a partial phrase from Section 5.3 of the Interconnection Tariff which it contended only required cost-sharing for costs incurred by the Company, further arguing that the term "refund" could only apply to costs incurred by the utility and not by a third-party interconnecting customer self-performing work.[33] Revity argued that if an interconnecting customer pays to self-perform the system modification work and then donates the property to the utility, the utility has incurred no cost to refund.[34] Finally, Revity asserted that it was not attempting to be a free-rider on Green's constructed facilities, but, where Revity maintained RI Energy could not be involved in enforcing

[30] *Id*. at 10-12.
[31] *Id*. at 3-4, 10, 15, 18, 21-23.
[32] *Id*. at 13
[33] *Id*. at 13-14.
[34] *Id*. at 13-15.

> R.I. Gen. Laws § 39-26.3-4.1 and the Interconnection Tariff, when read together, allow Narragansett to collect from subsequent interconnecting customers "all costs reasonably incurred by the Company" (emphasis supplied) and to "credit" or "refund" earlier interconnecting customers according to their pro rata share. As articulated in Revity's Petition, to "incur" means "[t]o suffer or bring on oneself (a liability or expense)." In allowing self-performance, Narragansett incurs no costs—the self-performing developer incurs the costs. As articulated in Revity's Petition, a "refund" is a "return of money to a person who overpaid * * *." BLACK'S LAW DICTIONARY (11th ed. 2019). In self-performance, the performing developer pays Narragansett no money for which a refund could be applied (indeed, the self-performing developer is even required to pay for the taxes levied on the improvements despite those improvements being donated to the utility). *Id*. at 13-14.

cost sharing, Revity suggested the cost sharing arrangement should be left to the customers to negotiate.[35]

Green, relying on R.I. Gen. Laws § 39-26.3-4.1(c), asserted that the statute "clearly requires cost sharing when any interconnecting customer funds upgrades that are relied on by another customer," regardless of who performs the upgrades, whether it be RI Energy or an interconnecting customer.[36] According to Green, because Revity will interconnect to facilities within ten years of Green's payment for those system modifications, cost sharing is required. Thus, Green stated, "[a]s long as Green funded [system modifications] that are needed to interconnect Revity's project, Green is entitled to cost sharing from Revity." This, Green asserted, is simply a statutory requirement.[37] Green contended that it is irrelevant under the statute whether the upgrades were constructed by RI Energy or by the previous interconnecting customer.

In further support of its position, Green referred to the language in R.I. Gen. Laws § 39-26.3-4.1(a) which permits RI Energy to charge an interconnecting renewable energy customer for system modifications that are necessary for and directly related to the interconnection. Thus, read together, where Green is building facilities designed to accommodate Revity's interconnection, the costs of the project should be subject to cost sharing such that Green is not charged for costs it is not causing.[38]

Responding to Revity's contention that cost sharing only applies when RI Energy has been paid to perform the system modifications, Green responded that Revity has taken the phrase "credited to the earlier interconnecting customer" out of context, distorting the interpretation of

[35] *Id*. at 16-20
[36] Green Pre-Hearing Mem. at 2.
[37] *Id*.
[38] *Id*. at 4.

the plain language of R.I. Gen. Laws § 39-26.3-4.1(c) which makes no distinction of who performed the work or incurred the cost for purposes of cost sharing.[39]

Addressing Revity's claim that past practice by the utility in not requiring cost sharing on a prior Revity project as support for its statutory and tariff interpretation, Green asserted that whether RI Energy had previously followed the law was irrelevant to what the plain language of the law required.[40] Turning to Revity's concerns about proper cost allocation, Green noted that those concerns fall outside of Revity's requested findings and would more properly be addressed through other available regulatory mechanisms.[41]

Finally, with respect to Revity's second requested finding, Green suggested it was incomplete. While Green agreed that the system modifications are donated to RI Energy upon completion, and that RI Energy needs to allow interconnection, Green disputed that it donates away its statutory right to cost sharing by a subsequent interconnecting customer. Thus, where Revity argued that once the facilities had been donated to RI Energy, the Company had a legal obligation to interconnect any subsequent facility, Green noted that the legal obligation was still predicated on Revity satisfying the remaining conditions of the law and tariff such as payment for System Modifications and cost sharing.[42]

V. Commission Findings

On June 22, 2022, the Commission conducted a hearing for oral arguments. At an Open Meeting conducted on July 14, 2022, the Commission considered the record and denied Revity's first declaration as inconsistent with the applicable law and tariff under the facts presented. The

[39] *Id*. at 4.
[40] *Id*. at 5-7.
[41] *Id*. at 7-9.
[42] *Id*. at 9-11.

Commission declined to rule on the second declaration because the requested declaration was deemed incomplete in the context of the filing.

This matter requires the Commission to determine whether Revity's requested declaration is consistent with the applicable law and tariff. The first step is to determine what the law and tariff mean. The Commission must ensure its review of the law is consistent with the legislative intent.[43] When reviewing the law and tariff, the Commission first reviews whether there is an ambiguity or whether the language is clear. In this case, the plain language of both the statute and tariff support RI Energy's and Green's application of the law to the facts. This is true regardless of whether the utility or the interconnecting customer constructed the System Modifications.

A. The Cost Sharing Requirements of R.I. Gen. Laws § 39-26.3-4.1 and Section 5.3 of the Interconnection Tariff are not dependent on the utility incurring costs.

Nowhere in the law or tariff does the language require RI Energy to have incurred the cost of the system modifications in order for a previous paying customer to receive reimbursement of a portion of the costs they incurred for the System Modifications from the payments made by a subsequent benefitting interconnecting customer.

Revity's statutory and tariff interpretations are flawed because they extracted portions of phrases out of the Interconnection Tariff out of context. This led to its position that the requirement only applies when the utility performs the system modifications and not where an interconnecting

[43] The Rhode Island Supreme Court has held that:

> To ascertain a statute's meaning, "we are mindful that 'our ultimate goal is to give effect to the General Assembly's intent.' " State v. Graff, 17 A.3d 1005, 1010 (R.I.2011) (quoting Martone v. Johnston School Committee, 824 A.2d 426, 431 (R.I.2003)). If this Court determines that "the language of a statute is clear and unambiguous," we have our oft-relied-upon precedent for acquiring the intentions of the Legislature: "interpret the statute literally" and "give the words of the statute their plain and ordinary meanings." In re Narragansett Bay Commission General Rate Filing, 808 A.2d at 636 (quoting Cummings v. Shorey, 761 A.2d 680, 684 (R.I.2000)); McGuirl v. Anjou International Co., 713 A.2d 194, 197 (R.I.1998) (" 'When the language of a statute is unambiguous and expresses a clear and sensible meaning, there is no room for statutory construction or extension, and we must give the words of the statute their plain and obvious meaning. * * * Such meaning is presumed to be the one intended by the Legislature * * *.' ") (quoting Wayne Distributing Co. v. Rhode Island Commission For Human Rights, 673 A.2d 457, 460 (R.I.1996)).

In re: Review of Proposed Town of New Shoreham Project., 25 A.3d 482, 504-05 (R.I. 2011) (citations omitted).

customer performs the system modifications and donates the assets to the utility. In its filings, Revity represented that:

> R.I. Gen. Laws § 39-26.3-4.1 and the Interconnection Tariff, when read together, allow Narragansett to collect from subsequent interconnecting customers "all costs reasonably incurred by the Company" (emphasis supplied) and to "credit" or "refund" earlier interconnecting customers according to their pro rata share. As articulated in Revity's Petition, to "incur" means "[t]o suffer or bring on oneself (a liability or expense)." In allowing self-performance, Narragansett incurs no costs—the self-performing developer incurs the costs. As articulated in Revity's Petition, a "refund" is a "return of money to a person who overpaid * * *." BLACK'S LAW DICTIONARY (11th ed. 2019). In self-performance, the performing developer pays Narragansett no money for which a refund could be applied (indeed, the self-performing developer is even required to pay for the taxes levied on the improvements despite those improvements being donated to the utility).[44]

As articulated at the hearing, Revity represented that:

> What Rhode Island law says is that the interconnecting customer will be, "[r]esponsible for all costs reasonably incurred by the utility attributable," to the proposed interconnection project and that where the previous customer as paid the utility for such cost, the utility will collect costs from subsequent customers and refund or credit the earlier customer. That is what the tariff says. That is what Title 39 says.[45]

According to Revity, because RI Energy had incurred no cost for the system modifications performed by Green, the utility had received no payments that could be refunded.[46]

Unfortunately for Revity, the phrase "all costs reasonably incurred by the company" does not appear in R.I. Gen. Laws § 39-26.3-4.1.[47] Furthermore, Revity's reliance on this partial phrase from Section 5.3 of the Interconnection Tariff mischaracterizes the applicability of that section.[48] While the phrase does appear in Section 5.3 of the Interconnection Tariff, it appears after the language limiting the interconnecting customer's cost responsibility to System Modifications related to the interconnection. The full sentence following that language states, "[t]he

[44] Revity Pre-Hearing Mem. at 13-14.
[45] Hr'g. Tr. at 11 (June 22, 2023).
[46] *Id*.
[47] *See supra* note 18.
[48] *See supra* note 20.

Interconnecting Customer shall also be responsible for all costs reasonably incurred by the Company attributable to" certain additional costs associated with design and operation of the facility along with costs the utility may incur attributable to other proposed Facilities that precede the Facility in the interconnection queue.[49]

Separately in that section, the following language appears:

> As appropriate, to the extent that subsequent Interconnecting Customers benefit from System Modifications that were paid for by an earlier Interconnecting Customer, subsequent Interconnection Customers who benefit from those same System Modifications may retroactively contribute a portion of the initial costs, which may be refunded to the earlier customer. In this scenario, the Company may assess a portion of the costs to such subsequent Interconnecting Customers, which will be refunded to the earlier Interconnecting Customer if collected.

This language in Section 5.3 of the Interconnection Tariff can and does operate independently of the portion cited by Revity. It is consistent with the language from R.I. Gen. Laws § 39-26.3-4.1(c) which states:

> If an interconnecting, renewable energy customer is required to pay for system modifications and a subsequent renewable energy or commercial customer relies on those modifications to connect to the distribution system within ten (10) years of the earlier interconnecting, renewable energy customer's payment, the subsequent customer will make a prorated contribution toward the cost of the system modifications that will be credited to the earlier interconnecting, renewable energy customer as determined by the public utilities commission.

The statute sets forth the requirements for cost sharing and the tariff sets forth the mechanism by which the statutory requirement may be met. As noted above, Section 5.3 of the Interconnecting Tariff states, "the Company may assess a portion of the costs to such subsequent Interconnecting Customers, which will be refunded to the earlier Interconnecting Customer if

[49] While this last provision might appear to apply here, it is in addition to the System Modification costs and independent of the subsequent cost sharing provision.

collected." This language clarifies that the utility is the proper party to attempt enforcement of the statutory requirement.[50]

B. The Operation of the Interconnection Tariff renders Revity's reliance on the definition of "refund" inoperable.

While Revity's creative interpretation and application of the term "refund" might carry some weight in the abstract, in practice, it falls apart. Because the Interconnection Tariff requires all payments to be made prior to the start of (or at least completion of) system modifications, the utility theoretically should not incur expenses for the System Modifications regardless of whether it performs the work or not.[51] Thus, under Revity's interpretation of the law and tariff, there would never be costs available for refund to an earlier interconnecting customer, even if the utility did perform the System Modifications. Thus, Revity's interpretation of the statute must fail.

C. RI Energy's actions in this instance were consistent with the law and tariff and advanced Rhode Island state policy whereas Revity's interpretation would have hindered advancement of Rhode Island state policy.

This is an issue of first impression for the Commission and the facts at issue are somewhat different from what was likely contemplated when the statute was first enacted.[52] Regardless, the actions taken by RI Energy are consistent with the law, tariff, and state policy as articulated in R.I. Gen. Laws § 39-26.3-1.[53] In the instant matter, within nine months, RI Energy was presented with multiple projects submitted by three developers, exceeding 70 MW in close proximity to one

[50] The primary difference between the statute and the Interconnecting Tariff language is the use of "may" in the tariff compared to "will" in the statute. The practical purpose of the "may" is to ensure that the earlier interconnecting renewable energy customer is only reimbursed for a portion of its costs if the Company actually receives payment from the subsequent customer.
[51] Interconnection Tariff at Sections 3.5 and 5.5, Interconnection Service Agreement.
[52] It is likely that the legislature originally contemplated a developer investing in significant system modifications that would support future industry or future renewable energy projects and wished to ensure some fair cost allocation such as is available in traditional line extension and construction advance policies. This is consistent with how RI Energy typically studies projects on a first-come, first-studied basis.
[53] § 39-26.3-1. Policy objective. The general assembly hereby finds and declares that the expeditious completion of the application process for renewable distributed generation is in the public interest. For this reason, certain standards and other provisions for the processing of applications are hereby set forth to assure that the application process assists in the development of renewable generation resources in a timely manner.

another, that would likely require system modifications along the same roadways, at least in some spots.[54] Green was the first developer in the queue and Green desired to construct the civil work for the System Modifications.[55] As RI Energy explained in its Response, it would be unlikely that the towns would allow the road to be reopened multiple times within a short timeframe to accommodate each of the projects separately.[56] Therefore, RI Energy entered into an agreement with Green whereby Green voluntarily agreed to construct facilities larger than what it required, subject to cost sharing and/or reimbursement by the other developers/interconnecting customers when those projects were invoiced by RI Energy.[57]

This cooperative effort, while not directly addressed by the Interconnection Tariff, did not change the plain language of the law or tariff which requires cost sharing by a subsequent interconnecting customer for costs incurred by an earlier interconnecting customer. Green was first in the queue and incurred costs to construct the System Modifications.[58] Revity was third in the queue.[59] Green voluntarily incurred costs to construct facilities larger than what it needed.[60] Thus, the law requiring reimbursement for a portion of those costs from which Revity benefited applies to this fact-set. Waiving its legal right to only incur costs and construct what it alone required did not lead to Green giving up its right to reimbursement for the costs associated with the subsequent interconnecting customers' projects. Such a conclusion would lead to an absurd result, be contrary to the law and tariff, thwart Rhode Island state policy supporting renewable energy development, and violate the principles of cost causation. For all of these reasons, the Commission denied Revity's requested declaration.

[54] Agreed Facts at ¶¶ 10-12, 19.
[55] Agreed Facts at ¶11.
[56] RI Energy Response at 12, 14.
[57] Green Pre-Hearing Mem. at 6-7; Agreed Facts at ¶ 23.
[58] Agreed Facts at ¶11
[59] Agreed Facts at ¶12.
[60] Green Pre-Hearing Mem. at 10-11, 30, 38, 41, 43.

D. Revity's second requested declaration was incomplete in the context of these facts.

The reason for declining to rule on Revity's second requested declaration was because it was simply incomplete in the context of the case. While the requested declaration contained a statement that may be true, the legal obligation of RI Energy to interconnect Revity's facilities was still predicated on Revity satisfying the remaining conditions of the law and tariff such as payment for System Modifications and cost sharing, regardless of whether the self-performed System Modifications were ultimately donated to RI Energy.

E. The alleged policy change is not germane to the appropriate interpretation and application of the law to the facts of this case.

The Commission is not ignoring Revity's claims that the Company may have misapplied the tariff in the past.[61] However, such arguments are not germane to the interpretation of the law and tariff and application of the law to the facts upon which their ruling relies. Further, Revity's other claims are based upon assertions of facts that are in dispute. Revity likely has other procedural avenues (if not out of time) to seek resolution of its other claims if RI Energy's commitment to working with Revity to address its concerns are not successful.

Accordingly, it is hereby,

DECLARED (24820)

1. Revity's request that pursuant to R.I. Gen. Laws § 39-26.3-4.1 and the Interconnection Tariff, as well as past practice, [RI Energy] is not authorized to participate in or otherwise enforce the allocation, collection or socialization of costs incurred by a private developer in the self-performance of the civil work for the interconnection required for newly installed photovoltaic energy system projects is hereby denied.

2. Revity's request that the Commission declare that all civil interconnection work and related equipment (including all rights, title and interests in and to same) self-performed by a private developer, once completed, is presumed to be automatically donated, assigned, and conveyed by the developer (or its affiliate, as the case may be) to [RI Energy] and, thereafter, [RI Energy] has a legal obligation to interconnect any

[61] *See supra* note 9 and accompanying text.

subsequent facility as necessary to accomplish the purchase and sale of electricity generated therefrom is incomplete in the context of this case.

EFFECTIVE AT WARWICK, RHODE ISLAND ON SEPTEMBER 19, 2023 PURSUANT TO AN OPEN MEETING DECISION ON JULY 14, 2022. WRITTEN ORDER FILED WITH THE SECRETARY OF STATE'S OFFICE ON SEPTEMBER 19, 2023.

PUBLIC UTILITIES COMMISSION

Ronald T. Gerwatowski, Chairman

Abigail Anthony, Commissioner

John C. Revens, Jr., Commissioner

Notice of Right of Appeal: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within 7 days from the date of the Order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or Order.