



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Rhode Island Division of  
Public Utilities and Carriers  
89 Jefferson Blvd.  
Warwick RI 02888  
(401) 941-4500

September 6, 2017

Luly Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Blvd.  
Warwick, RI 02888

**In Re: Docket No. 4600A**– Notice to Accept Comments on Draft Guidance Document

Dear Luly,

Please find the State of Rhode Island Division of Public Utilities and Carriers, (the "Division") Comments in Response to Notice to Accept Comments on Draft Guidance Document for consideration and filing with the Public Utilities Commission in the above captioned docket.

I appreciate your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jon G. Hagopian".

Jon G. Hagopian  
Deputy Chief of Legal  
Services



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**Re: Docket 4600A-Notice to Accept Comments on Draft Guidance Document**

**THE DIVISION OF PUBLIC UTILITIES & CARRIERS COMMENTS IN RESPONSE**  
**TO NOTICE TO ACCEPT COMMENTS ON**  
**DRAFT GUIDANCE DOCUMENT**

In its *Report and Order Docket 4600: Investigation into the Changing Electric Distribution System and the Modernization of Rates in Light of the Changing Distribution System*<sup>1</sup>, the Public Utilities Commission adopted the *Stakeholder Report*, including a Benefit-Cost Framework as a tool to guide future regulatory decisions. The Division strongly supports the use of the Framework as a foundation for a full accounting of the costs and benefits of investments made by the utility and others in the electric grid, offering a new tool to enhance long-term value for Rhode Island's ratepayers.

The *Draft Guidance Document*, which is now the subject of stakeholder comment, defines the way the Public Utilities Commission will implement the Framework. The Division of Public Utilities participated in designing the Framework with other stakeholders throughout the Docket 4600 process as the statutory intervenor on behalf of all Rhode Island ratepayers and appreciates the opportunity to continue to advocate in the best interests of all Rhode Island ratepayers in the current proceeding. The Division offers the following considerations:

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<sup>1</sup> Order No. 22851

## Using the Benefit-Cost Framework to Evaluate Rate Design Proposals

The *Guidance Document* states that any rate design proposal should be justified using the Rhode Island Benefit-Cost Framework. It also states that the Framework will not be the exclusive measure of whether a specific proposal should be approved; and that additional factors, such as statutory mandates or qualitative considerations should also be accounted for.<sup>2</sup> The Division is concerned that the *Guidance Document* places too much weight on the Benefit-Cost Framework for making decisions regarding rate design proposals. The *Guidance Document* suggests that the Framework should be the primary factor in approving rate design proposals, and provides little guidance on the role of the rate design principles in approving rate design proposals. The Division's concern stem from several bases.

First, to the knowledge of the Division, in other jurisdictions benefit-cost analyses are rarely, if ever, used to make decisions regarding rate design proposals. Instead, rate design proposals are evaluated based on how well they adhere to the rate design principles established in that jurisdiction. As the use of a benefit-cost analysis for making rate design decisions is so unconventional, the Commission should proceed with this approach with caution.

Second, there are many rate design principles and goals that cannot be measured by a benefit-cost analysis—no matter how comprehensive the analysis may be. For example, a benefit-cost analysis will provide no information regarding whether a rate design “enables a fair opportunity for utility recovery of prudently incurred costs,” which is one of the key rate design principles adopted by the Commission. Similarly, a benefit-cost analysis will provide no information regarding whether all parties provide fair compensation for services received, or all parties receive fair compensation for services delivered. A benefit-cost analysis will provide little information regarding whether a rate design is transparent and understandable to customers, adheres to the principle of gradualism, or reduces customers' energy burden.

Third, the relative role that the Benefit-Cost Framework and the rate design principles will play in making decisions regarding rate design proposals merits reconsideration. In describing the rate design principles, the *Guidance Document* states that the rate design principles should be applied in determining whether a rate design may be found reasonable. Simultaneously, in describing the Benefit-Cost Framework, the *Guidance Document* requires that the Framework will be used to determine whether a specific rate design proposal should be approved. However, the *Guidance Document* does not discuss the relative roles of the Benefit-Cost Framework and the rate design principles in reviewing and approving rate design proposals.

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<sup>2</sup> *Guidance Document*, pages 7-8.

The Division recommends that the Guidance Document clarify that the rate design principles, not the Framework, will be the *primary* consideration in reviewing rate design proposals, and that the Benefit-Cost Framework will be a *secondary* consideration. The amount of weight to be given to one versus the other can be decided by the Commission on a case-by-case basis. Providing such guidance at this time will help proponents of new rate designs (a) design new rate designs that meet all of the Commission's goals, and (b) properly justify those new rate designs for Commission review and approval.

The Framework should play a primary role in the process of assessing the costs and benefits of investments in the electric grid. However, in the process of rate design the Framework can best play a secondary role in deference to clearly articulated rate design principles.

### **Quantification of the Framework**

In order to be effective, the Framework must be readily accessible and easy for the utility, regulators, third parties and ratepayers to understand. There remains significant opportunity to improve upon the existing complexity of the Framework. The Division is currently at work on the project requested by the Commission in its *Order* to provide additional quantification to the Framework and looks forward to submitting this work to the Commission in November. However, the Docket 4600 stakeholder process developed a lengthy and comprehensive list of potential values for inclusion in the Framework without regard to the difficulty of quantification for each or the relative significance on system benefits and costs. There are some Framework components that are more straightforward to quantify with a larger impact on benefits and costs, while other components are more difficult to quantify with minimal impact on benefits and costs. The Division recommends that the Commission and stakeholders not wait for final completion of the Framework, but rather take a pragmatic approach to quantification, completing the most straightforward and significant components first. At the same time, we anticipate further simplification and clarification of the Framework will make it a more effective tool.

### **Procedural Concerns Raised by the Guidance Document**

The Division is concerned that some language within the Draft Guidance Document may be cited to create new rights and obligations not supported in statute which could result in an unwieldy rate case process.

The *Draft Guidance Document* states that “[i]t is always incumbent upon the proponent of any proposal to meet its burden of proof. To this end, the proposing party must provide accompanying evidence that addresses how the proposal advances, detracts from, or is neutral to each of the stated goals of the electric system.”<sup>3</sup> Later, the Draft Guidance Document

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<sup>3</sup> See Order No. 22851 at 4 and 23.

proposes a similar procedure: “Because the proponent of a rate design proposal always has the burden of proving that the proposal is just, reasonable, and appropriately balances the interests of ratepayers and the utility, when a party proposes a specific rate design the accompanying evidence that addresses how the proposal advances, detracts from, or is neutral to each of the stated rate design principles, listed above.”<sup>4</sup> &<sup>5</sup> Again on Page 7, the *Draft Guidance Document* suggests “[i]n proposing any new rate design, the proponent should discuss how each of the Categories and Drivers was considered and how the rate design will affect each. Where the costs and benefits can be quantified, the proponent should provide such information and the basis for the conclusion reached.”

First, the quoted language of the Guidance Document may be argued by some parties to vest all intervenors with the legal right to advance rate design proposals and impose a concomitant burden of proof upon them where no such right or obligation exists. R.I. Gen. Laws § 39-3-10 requires that “*every public utility*” shall file with the Administrator schedules to be open to public inspection showing “all rates, tolls, and charges which it has established ...” R.I. Gen. Laws § 39-3-10 (emphasis added). R.I. Gen. Laws § 39-3-11(a) delineates a detailed process for effecting changes “in the rates, tolls, and charges which have been filed and published by *any public utility*” under § 39-3-10. R.I. Gen. Laws § 39-3-11(a) (emphasis added). R.I. Gen. Laws § 39-3-12 provides that “[a]t any hearing involving any proposed rate increase in any rate, toll or charge, the burden of proof to show that the increase is necessary in order to obtain a reasonable compensation of the service rendered shall be upon the *public utility*...”<sup>6</sup> By the explicit language of these statutes, the obligation to file tariffs, the right to obtain rate relief, the burden of proof, *etc.* falls upon public utilities. Intervenors, by contrast, do not file tariffs with the Administrator, do not have a right to file rate changes for agency review and approval without Commission approval.).<sup>7</sup>

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<sup>4</sup> This is not a complete sentence. The missing word seems to be “should;” the word “that” should be deleted and the verb should be “address” not “addresses”.

<sup>5</sup> See also Order No. 22851 at 23.

<sup>6</sup> R.I. Gen. Laws § 39-3-12 (emphasis added). See also *Interstate Navigation Co. v Burke*, 465 A.2d 750, 758 (R.I. 1983) (that the burden of proof is on the utility governs each aspect of the rate setting process before the Commission).

<sup>7</sup> See Rules of Practice and Procedure, Rule 1.13(d) (“[I]ntervention other than as a matter of right may be granted with such limitations and/or upon such conditions as the Commission shall determine” and R.I. Gen. Laws § 39-3-11, -12. See e.g. *In Re: Island Hi-Speed Ferry, LLC*, 746 A.2d 1240, 1246 (R.I. 2000) (questioning the wisdom of permitting intervention or permitting intervenor from introducing self-serving evidence to undermine applicant's case-in-chief).

Should such a right be established for all intervenors, the Division is concerned that the Draft Guidance Document may be argued by some to limit the discretion of the Commission to narrow the scope of its own proceeding. R.I. Gen. Laws § 39-26.6-24 establishes the broad discretion afforded to the Commission to render fair and reasonable determinations given the evidence presented by the utility.<sup>8</sup> To this end, the Commission's Rules of Practice and Procedure provide that the Commission is not bound by technical evidentiary rules. Irrelevant, immaterial or unduly repetitious evidence may be excluded.<sup>9</sup> Rather than possessing broad discretion to focus the hearing upon the Company's proposed design while allowing an intervenor leeway to show how the Company's proposed rates are unreasonable in their design vis-à-vis the intervenor's rate class, Order No. 22851 and the Draft Guidance Document may require the Commission to hear and consider evidence for and against all proposed alternative rate designs. Limiting the discretion of the Commission in the manner proposed may compel the Commission to consider irrelevant or redundant evidence.

The legal complications explained above may cause a practical problem: an unwieldy proceeding consisting of multiple mini-case in-chiefs and rebuttals regarding the merits of all intervenors' alternative rate design proposals without reasonable limitations imposed by the Commission. By permitting all intervenors to advance and prove their own design proposals within a rate case, the Commission may, albeit unintentionally, expand intervenors' rights and obligations of presentation and proof within a rate case beyond that which the current rate case structure can support.

In conclusion, the Division believes the Framework can be an important tool with additional refinement and simplification. We encourage the Commission to consider the procedural consequences of language within the Guidance Document.

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<sup>8</sup> See e.g., In Re: Kent County Water Authority Change Rate Schedules, 996 A.2d 123, 131 (R.I. 2010).

<sup>9</sup> Rules of Practice and Procedure, Rule 1.22(a).