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February 1, 2018

**Via Electronic Mail and Hand Delivery**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

**Re: Docket 4770 – Application of The Narragansett Electric Company d/b/a National Grid for Approval of a Change in Electric and Gas Base Distribution Rates**

Dear Ms. Massaro:

Enclosed for filing in the above-referenced matter are ten (10) copies of The Company's Objection to Motion to Intervene by New Energy Rhode Island.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Adam M. Ramos".

Adam M. Ramos

AMR:cw  
Enclosures

cc: Docket No. 4770 Service List (electronically only)

57450278 (57972.174791)

**Docket No. 4770 - National Grid – Rate Application**  
**Service list updated 1/11/2018**

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE PUBLIC UTILITIES COMMISSION**

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IN RE: THE NARRAGANSETT ELECTRIC COMPANY )	Docket No. 4770
d/b/a NATIONAL GRID – ELECTRIC AND GAS )	
DISTRIBUTION RATE FILING )	
_____ )	

**NATIONAL GRID’S OBJECTION TO NEW ENERGY RHODE ISLAND’S  
MOTION TO INTERVENE**

**I. INTRODUCTION**

The Company<sup>1</sup> hereby objects to New Energy Rhode Island’s (NERI) Motion to Intervene (the Motion). NERI does not meet the criteria prescribed by Rule 1.13 of the Rhode Island Public Utilities Commission (PUC) Rules of Practice and Procedure to intervene in this matter for at least three reasons. First, NERI lacks organizational standing as a matter of law, and, as such, cannot participate in this proceeding on behalf of its members. Second, NERI does not have an interest in this matter that is not adequately represented by existing parties. Third, NERI cannot demonstrate that its participation would otherwise be in the public interest. Moreover, the Motion demonstrates that NERI seeks to expand the scope of this proceeding beyond its intended bounds. Thus, alternatively, and at a minimum, any level of participation the PUC affords NERI in this matter should be subject to prescribed limitations to avoid needless expenditure of resources by the PUC and other parties.

**II. RELEVANT FACTS**

The PUC opened separated this Docket 4770 from the Company’s Power Sector Transformation Plan (creating Docket 4780) because it concluded that the important and complex questions to be determined in each case warranted separate proceedings. The purpose

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid (the Company).

of this docket is for the PUC to evaluate and adjudicate the Company's request to increase its base distribution rates for its regulated gas and electric distribution businesses to meet its revenue requirements and provide a fair and reasonable rate of return. The Company's proposals are designed to comply with the existing regulatory framework. This proceeding is not a far-reaching stakeholder process intended for multiple parties to make alternate proposals as to how rates should be designed, how the regulatory framework should be reimagined, or how the power sector should be transformed.

NERI filed the Motion on January 22, 2018. In the Motion, NERI does not describe what it is as an organization or any of its organizational purposes. Rather, NERI merely indicates that it is comprised of the following "member participants":

- Partnership for Rhode Island Streetlight Management
- The Washington County Regional Planning Council
- Green Energy Development
- Heartwood Group, Inc.
- Newport Solar
- Clean Economy Development, LLC
- ISM Solar Development, LLC; and
- The Rhode Island League of Cities and Towns.

NERI has included attached letters of representation authorizing Attorney Seth Handy to represent each of the member participants, stating in vague terms what each constituent member is. These letters do not, however: (1) state that any of them are members of NERI; (2) provide any detail on what the particular entity's interest is regarding the issues in this docket or (3) explain how any particular entity's interest is aligned with any of the other identified NERI

members. Additionally, each of these letters includes a statement that the respective entities “appreciate the opportunity to participate in this very important stakeholder process.” The Motion describes NERI’s members as either developers, owners, or entities with financial interests in Rhode Island energy projects. Further, NERI makes the vague statement that additional members may join later in the proceeding, without identifying these potential additional members in any detail. NERI is not organized with the Rhode Island Secretary of State’s office as any type of entity. There is no evidence of NERI’s purpose.

NERI has sought to intervene in other proceedings, with mixed results. Recently, in Docket 4763, NERI sought to intervene, and the PUC denied that motion. In connection with that motion, NERI asserted that its members were Newport Solar, Heartwood Group, Inc., and Providence Energy, LLC. Thus, NERI’s membership apparently has changed since that proceeding. In Docket 4600, in which NERI participated as a stakeholder pursuant to an invitation for stakeholder participation, NERI asserted that it consisted of Clean Economy Development, Green Development, Heartwood Group, ISM Solar, NPTRE – Newport Renewables, and Newport Solar. Thus, the profile of NERI has changed since that proceeding as well.<sup>2</sup> The Company is not aware of any previous docket in which NERI asserted that its members included the Rhode Island League of Cities and Towns, the Washington County Regional Planning Council, or the Partnership for Rhode Island Streetlight Management.

In the Motion, NERI notes that it “actively participated in Docket 4600 and the Power Sector Transformation stakeholder process.” Through the Motion, NERI asserts reasons that it

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<sup>2</sup> NERI also moved to intervene in Docket No. 4774. In that docket, NERI identified its members as Newport Solar, Heartwood Group, Inc., Providence Energy, LLC and Green Development, LLC – a different constituent mix than in any of the other dockets in which NERI has sought intervention. Although the Company did not oppose NERI’s intervention in Docket No. 4774, that docket is distinguishable from the present docket, in that in Docket No. 4774, the identified members all were distributed generation developers and that docket was for consideration of the renewable energy growth program, which specifically is geared toward that industry. The fact that the Company did not oppose intervention in a particular docket does not impact its right to oppose intervention by the same entity in subsequent dockets.

believes the Company's rate proposal is flawed, but at no point does NERI explain what particular interest it has in the docket.<sup>3</sup> Nor does NERI explain why any interest it may have is not adequately represented by the existing parties. Rather, NERI suggests that it seeks to expand the scope of this proceeding to include alternate proposals from NERI. Further, it positions itself, not as representing its own interests, but rather as a purported authority that will add value by providing some as-yet-undescribed different proposals for power sector transformation.

### **III. LEGAL STANDARD**

Rule 1.13 of the PUC Rules of Practice and Procedure establishes the standards for a person to intervene as a party in a proceeding before the PUC. There are three means by which a person can establish intervener status: (1) a statutory right; (2) an affected interest not adequately represented by existing parties; and (3) furtherance of the public interest.

Additionally, Rule 1.13 provides guidance as to the types of persons who may have an interest – consumers served by the filing party and holders of securities of the filing party.

Further, for any party to participate in a proceeding before the PUC, that party must have standing. For a membership organization to have standing, it must satisfy three criteria: “(1) . . . the association's members . . . otherwise have standing to sue in their own right, (2) . . . the interest[s] the association seeks to protect are germane to the organization's purpose, and (3) . . . neither the claim asserted nor the relief requested requires the participation of individual

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<sup>3</sup> NERI baldly asserts that “[t]he proposed electric gas and base distribution rates threaten and impede NERI's specific interests in its members' existing and planned energy projects.” NERI then claims that “the electric revenue requirement fails to account for actual and anticipated load reductions from municipal streetlight purchases and LED conversions and . . . appears to exaggerate costs associated with staffing interconnection.” First, these arguments demonstrate the disparate interests of NERI's purported members. Issues related to reduced demand from streetlights is wholly unrelated to alleged exaggerated interconnection costs. Thus, to the extent any of NERI's individual members (such as the Rhode Island League of Cities and Towns) has an actual interest in these particular issues, it is not unified and aligned with with the interests of a purported member who is asserting harm from alleged exaggerated distributed generation interconnection costs. Moreover, NERI provides no explanation in the Motion why such interests are not adequately represented by existing parties, such as the Rhode Island Division of Public Utilities and Carriers (Division), which is charged to represent consumer and customer interests.

members in the lawsuit.” In Re: Petition Filing by New England Cable Television Ass'n for A Show Cause Order & Declaratory Ruling, D-01-14, 2001 WL 37114698, at \*1 (Dec. 12, 2001) (citing Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977)).

The PUC has reiterated that it will be cautious in granting intervener status and will work to ensure that a movant actually meets one of the three criteria established in PUC Rule 1.13(b). See Narragansett Electric Company, Docket No. 3739, Order No. 18794, at 17 (December 27, 2006) (citing, In Re: Hi-Speed Ferry, LLC, 746 A.2d 1240, 1245-1246 (R.I. 2000)). Moreover, if a person is permitted to intervene, that intervener ordinarily shall not be permitted to broaden the issues in the docket absent a showing that such broadening is both in the public interest and will not result in undue hardship. Rule 1.13(f) (addressing late interveners).

#### **IV. ARGUMENT**

##### **A. NERI Lacks Organizational Standing to Intervene in this Docket**

The PUC has applied and adopted the three-part test set forth in Hunt to determine whether a membership organization like NERI has standing to participate in matters before it. See In Re: Petition Filing by New England Cable Television Ass'n for A Show Cause Order & Declaratory Ruling, D-01-14, 2001 WL 37114698, at \*1. In Docket No. 3739, the PUC (although not applying this standard directly) denied the petition of a membership group to intervene, in part, because its membership was not made up of persons with unique and unified interests that were not otherwise represented by other groups that advocate for specific interests unique to those groups. See PUC Order No. 18794 at 14-16.

Here, NERI has not, and cannot, meet the criteria to establish organizational standing. As demonstrated by the Motion, NERI is not established around any unifying principle that demonstrates a united interest for which it seeks to advocate in this proceeding.

First, there is no basis in the Motion to establish that any one of NERI's individual members would have standing independently. The limited descriptions of each member in the representation letters, which are attached to the Motion, do not state an interest in this docket. Further, the Motion states only the conclusion that NERI has "advocacy interests." It does not identify the interests of any of its members or how they are impacted by this docket. Instead, the Motion merely states what NERI plans to present in the docket, makes broad statements about failures in the Company's revenue requirement, and claims the Company's proposal impedes in some undefined way its interests in its members' unidentified energy projects. The motion provides not information about how any single member of NERI (or all of them collectively) has any interest that is unique and warrants separate representation in this docket. For any person to have an interest that warrants intervention, that person must show either: (1) a unique interest that is not adequately represented by the existing parties, (2) a statutory right, or (3) a compelling public interest. The Motion simply contains no information that satisfies that standard for any of the constituent members of NERI.

Second, NERI has not established and cannot establish that its representation in this proceeding is "germane to the organization's purposes." Importantly, NERI has no specific articulated organizational purpose. Based on the Motion, one is left to guess as to what the unifying principles are for NERI and the reasons for which it exists. NERI is made up of a disparate group of purported members that seem to move in and out of membership without warning. It is difficult to imagine how the interests of the members identified in the Motion are aligned and unified. For example, the Rhode Island League of Cities and Towns is an organization of municipalities, whereas some of the other entities are developers of renewable energy projects. There is no foundation from which to conclude that NERI's members share a

unified interest. The Motion itself demonstrates that the interests are disparate, as it raises on the one hand, concerns about accounting for the impact of streetlight conversions, and, on the other hand, concerns about exaggerated staffing costs for interconnection – two completely unrelated issues. As such, there is no basis to identify an organizational purpose that NERI would be pursuing if it intervened in this matter.

Third, the Motion does not provide sufficient information to determine whether there is a need to have individual NERI members participate in this proceeding. Without any knowledge as to the interests that NERI seeks to protect through intervention, it is not possible to know whether any one of the members is needed to participate. However, the apparent diverging interests of members like the Rhode Island League of Cities and Towns and the energy development members strongly indicate that it would have been more appropriate and proper for each such member to seek to participate in this docket individually, as opposed to collectively, and, as such, NERI also fails to meet this third criterion for organizational standing.

Thus, although NERI and its constituent members may have a sincere interest in the outcome of this proceeding, NERI's failure to satisfy the elements of organizational standing defeats the Motion. See Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 225 (1974) (“We have no doubt about the sincerity of respondents’ stated objectives and the depth of their commitment to them. But the essence of standing is not a question of motivation but of possession of the requisite . . . interest that is, or is threatened to be, injured by the unconstitutional conduct.”). See also Charleston v. United States, 696 F. Supp. 800, 813 (D.R.I. 1988) (“The Supreme Court has repeatedly ‘refrained from adjudicating abstract questions of wide public significance which amount to generalized grievances, pervasively shared and most

appropriately addressed in the representative branches.”) (quoting Valley Forge Christian College v. Americans United For Separation of Church and States, Inc., 454 U.S. 464 (1982)).

**B. NERI’s Motion Does Not Satisfy Rule 1.13**

Assuming, *arguendo*, that NERI could have standing to advocate on behalf of its members in this proceeding, NERI’s motion nevertheless falls short of establishing a right to do so under Rule 1.13. Simply put, NERI has no: (a) statutory right to intervene; (b) articulated interest that needs to be represented in this docket; nor (c) public interest reason for intervening.

**1. NERI has no statutory right to intervene**

NERI does not even contend that it has a statutory right to intervene. There is no statute that would provide such a right. Thus, Rule 1.13(a) cannot be the basis for NERI’s attempted intervention.

**2. NERI has not articulated any interest that is affected by this proceeding**

The Motion states only conclusorily that “NERI has advocacy interests that will not be adequately represented by other parties.” There is little explanation of what those interests are, or why any such interests will not adequately be represented by other parties. The bulk of NERI’s Motion articulates what NERI intends to do as an intervener – not the interests that it is seeking to protect by doing any of those things. For example, NERI states that it will “ensure follow through on its specific advocacy from” Docket 4600 and the Power Sector Transformation stakeholder process. This proceeding is about the Company’s base rates. The time for that advocacy was in those previous proceedings. To the extent that the Company has obligations that arose from those proceedings that apply to this docket, it is for the PUC to determine whether the Company complied with those obligations. It is not for NERI or any other party to attempt to further its advocacy from those proceedings.

Further, NERI asserts that “National Grid’s alleged revenue risk from the implementation of power sector transformation initiatives despite decoupling demonstrates that real power sector transformation will require displacing return on equity (and decoupling) with strong, well-crafted performance based incentives.” This sends the clear signal that NERI intends to advocate in this docket for a fundamental transformation of the regulatory framework around ratemaking. That intention is entirely inappropriate for this docket, and it certainly does not represent any particularized interest of NERI’s members that requires special representation in this docket.

Further, to the extent that NERI’s concerns about the failure to account for load reductions from streetlight conversions and purported unnecessary staffing costs related to interconnection are interests of some of its members, NERI fails either to: (1) identify how these issues impact its members’ interests, or (2) demonstrate why these interests are not adequately represented by other parties already. Simply put, the Company is well-positioned to protect the interests of customers, and the issues that NERI has raised (essentially, allegedly unnecessary expenses in the revenue requirement and excessive cost forecasts) are precisely the types of issues that the Division historically has evaluated on behalf of customers and consumers, and indeed already has been vetting in this docket. NERI has provided no basis to conclude that its membership constitutes a unique subset of customers with interests that diverge from customers generally. See PUC Order No. 18794 at 14-16

Moreover, NERI’s previous participation in Docket 4600 is irrelevant. First, that proceeding was a stakeholder process, not a contested proceeding that will result in the PUC’s adjudication of a proposal from the Company. There is a fundamental difference between a docket in which varied stakeholders are invited to participate to ensure maximum public input, and a contested docket, such as this one. Second, NERI’s membership has changed since Docket

4600, and there is now an apparent disparity of interests within the membership that did not necessarily exist when NERI participated in Docket 4600. Third, NERI's participation in Docket 4600 was not as an intervener, but as an invited stakeholder. Not everyone who has a stakeholder interest in a proceeding has an interest that warrants intervention in a contested proceeding. Denying NERI party status here does not preclude its participation altogether. NERI still will be able to provide public comment, and the Company remains committed to working with stakeholders informally on all matters, including matters related to distributed generation interconnection and streetlight conversion.

### **3. The Public Interest does not require NERI's intervention**

Although NERI states that it will advocate for positions that are "consistent with the public interest as put forth in many Rhode Island statutes and public policies," NERI offers no specific support for the specific public interest that its participation will serve, or the specific Rhode Island statutes to which it refers. Instead, NERI cites to interests such as electric supply diversification, energy security and resilience, stable and reduced energy costs, job creation, and environmental benefit." Even if these are in the public interest, the Division, as the consumer advocate, can adequately represent the public interests in this proceeding. Further, NERI's Motion makes it clear that it is seeking to expand this proceeding beyond its appropriate bounds by suggesting that it will advocate for a change to the regulatory framework around utility ratemaking. Adding NERI as a party, thus, is likely to undermine the administrative efficiency of the proceeding.

#### **C. At a Minimum, NERI's Participation Should be Limited**

As discussed herein, NERI's Motion demonstrates that it intends to introduce additional issues in this proceeding beyond its intended scope. NERI proposes, among other things, to ask

the PUC to advocate for a complete overhaul of existing ratemaking mechanisms. Such actions would impose an administrative burden and increase the costs associated with this matter without justification. Rule 1.13(f) specifically prohibits a movant from broadening the issues in a docket where it would cause undue prejudice and hardship. NERI's participation in this docket would do just that. Thus, at a minimum, any order allowing NERI to intervene should place appropriate boundary lines around the scope of its participation to avoid expansion of the docket and limit NERI to advocating on behalf of any specific interest the PUC finds that NERI's constituent members collectively have.

**V. CONCLUSION**

For the reasons set forth herein, the Company respectfully requests that the PUC deny NERI's motion to intervene, or, alternatively, impose limitations on the scope of NERI's participation as a party.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC COMPANY**

By its attorneys,



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