

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

**In Re: Petition of the Episcopal Diocese of Rhode  
Island for Declaratory Judgment on Transmission  
System Costs and Related “Affected System  
Operator” Studies**

**Docket No. 4981**

**OBJECTION AND MOTION TO QUASH PETITIONER’S PROPOSED SUBMISSION  
OF ADDITIONAL EVIDENCE**

The Rhode Island Division of Public Utilities and Carriers (“Division”) hereby objects to and seeks to quash the Episcopal Diocese of Rhode Island’s (“Diocese” or “Petitioner”) proposed submission of new pre-filed testimony of six (6) witnesses,<sup>1</sup> as it is far beyond the scope of the Rhode Island Supreme Court’s March 24, 2021 remand Order (the “Order”). Even if new evidence was permitted, the proffered testimony is irrelevant and immaterial to the issues currently before the Commission and is submitted for an improper purpose.

**I. The Petitioner’s Submission of Pre-filed Testimony is Far Beyond the Scope of the Rhode Island Supreme Court’s Order**

The Supreme Court’s March 24, 2021 remand Order (the “Order”) is clear and unambiguous. It directs the Commission “to hold a hearing *to consider the new evidence* and to provide findings of fact and citations to the rules upon which the Commission may rest its conclusion.” (Emphasis added). As is clear in the Order, the “*new evidence*” means the documents attached to the Affidavit of Dennis Burton filed in the Rhode Island Supreme Court review of this Docket.

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<sup>1</sup> Although six (6) sets of pre-filed testimony have attempted to be submitted, one set purports to contain testimony from two witnesses.

The remand Order is very narrow in scope and Rhode Island Supreme Court case law mandates that the scope cannot be exceeded. In *Sansone v. Morton Mach. Works, Inc.*, 957 A.2d 386 (R.I.2008) the Supreme Court held that an inferior tribunal may not exceed the scope of the remand or re-open the proceeding to legal issues beyond the remand. *Id.* at 398 (citing *Willis v. Wall*, 941 A.2d 163, 166 (R.I.2008); *RICO Corp. v. Town of Exeter*, 836 A.2d 212, 218 (R.I.2003); *Lemek v. Washington Oaks, Inc.*, 524 A.2d 597, 598 (R.I.1987); *Valley Gas Co. v. Burke*, 415 A.2d 165, 165 (R.I.1980). Known as the “mandate rule,” this doctrine “provides that a lower court on remand must implement both the *letter and spirit* of the [appellate court's] mandate, and may not disregard the explicit directives of that court.” *Id.* (internal citations omitted).

Nowhere in its remand Order did the Supreme Court authorize or otherwise direct the Diocese to submit additional evidence in the remand proceeding.

## **II. Although the Commission Cannot Review the Pre-Filed Testimony, It is Nonetheless Inadmissible as Irrelevant and Immaterial**

Even if submission of new evidence was permissible at this stage of the proceeding, the proffered testimony is inadmissible as irrelevant and immaterial to any of the original or newly alleged issues in Docket 4981. Instead, this proposed testimony consists of generalized statements about the current system of utility regulation in Rhode Island and the United States and attempts to rehash arguments in previous Commission dockets.<sup>2</sup>

“In all proceedings wherein evidence is taken, *irrelevant, immaterial* or unduly repetitious

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<sup>2</sup> The examples of this irrelevant and unfounded testimony are too numerous to fully list here, but *see e.g.*, Testimony of Dr. Kenneth Payne at 2-3 (discussing the Division and Commission’s alleged failure to “employ ecological thought”); Testimony of Fred Unger at 3-14 (discussing generalized concerns with renewable energy project interconnection costs and delays); Testimony of Scott Milnes at 2-5 (discussing other unrelated renewable energy projects); Testimony of Matt Ursillo at 5-12 (discussing unrelated Docket 4483) and 12-13 (unrelated Docket 4539).

evidence shall be excluded.” Rule 1.23(A) of the Commission Rules of Evidence. 810-RICR-00-00-1.23(A).

The Diocese’s proposed pre-filed testimony is irrelevant and immaterial to any of the Diocese’s original claims or newly alleged claims of “prejudicial administrative process” (*see* Diocese’s Brief response to Question 2 at 3-13); violation of R.I. Gen. Laws § 39-1-35<sup>3</sup> (*see* Diocese’s Brief at 7); or violation of R.I. Gen. Laws § 42-35-13 (*Ex Parte* Communications). *Id.* at 12-13.<sup>4</sup>

Regardless of the remand Order’s limit on submission of new evidence, the proposed pre-filed testimony is irrelevant and immaterial to the issues in Docket 4981 and must be excluded.

### **III. The Pre-Filed Testimony is Submitted for an Improper Purpose**

Instead of properly advancing its legal arguments on appeal, the Diocese recklessly seeks to undermine Commission Order 23811 at the expense of time, legal process, and reputation. The Diocese’s proposed pre-hearing testimony is not meant to support its claims in Docket 4981 but instead to generally discredit and defame the Division, the Commission, and this administrative process through irrelevant and unfounded testimony. (*See* footnote 2 for examples of this improper

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<sup>3</sup> Rhode Island Gen. Laws § 39-1-35 provides as follows: “Conflict of interest. – A person or his or her or dependent child, spouse, of any person, who is, or has been in the past one year, in the employ of or holding any official relation to any company subject to the supervision of the commission, or engaged in the management of the company, or owning stock, bonds, or other securities thereof, or who is, or has been in the past one year, in any manner, connected with the operation of the company in this state, shall not be a commissioner or clerk of the commission; nor shall any commissioner or clerk of the commission, personally or in connection with a partner or agent, render professional service for or against or make or perform any business contract with any company subject to the supervision, relating to the business of the company, except contracts made with them as common carriers, or in regular course of public service.”

<sup>4</sup> The Division does not concede to the appropriateness of any of the Diocese’s newly claimed issues in the Supreme Court remand of Docket 4981. *See* Division’s Brief at 5-8 for the Division’s full argument as to why these new claims are wholly unfounded, not supported by any relevant evidence and should be dismissed.

proposed testimony). Advancing claims without proper foundation is a violation of Rule 1.6(D) of the Commission' Rules of Practice and Procedure. 810-RICR-00-00-1.6(D). It is sanctionable pursuant to Rhode Island Superior Court Rules of Civil Procedures Rule 11 and Article V, Rule 3.1 of the Rules of Professional Conduct based on the notion that representations lacking in good faith cause tangible harm. *See generally, Huntley v. State of Rhode Island et al.*, 109 A.3d 869, 874-5 (R.I. 2015); *Pleasant Management, LLC v. Carrasco et al.*, 918 A.2d 213 (R.I.2007).

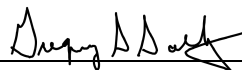
The Diocese should not be allowed to advance its baseless and reckless claims in this matter through the submission of irrelevant and immaterial evidence.

**WHEREFORE**, the Division requests that the Commission limit the remand proceeding as directed by the Rhode Island Supreme Court's March 24, 2021 remand Order and quash the Petitioner's attempts to submit additional evidence, including the proposed pre-hearing testimony.

Respectfully submitted,

RHODE ISLAND DIVISION OF PUBLIC  
UTILITIES AND CARRIERS,  
By its Attorney,

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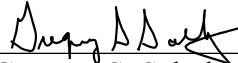
**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of June, 2021, that I transmitted an electronic copy of the within Response of the Division of Public Utilities and Carriers to the attached service list and to Luly Massaro, Commission Clerk, via email.

  
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## CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2021, I delivered a true copy of the foregoing document to counsel for all parties as identified on the service list below by mail and electronic mail unless otherwise agreed.

  
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