STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs and Related "Affected System Operator" Studies	**Docket No. 4981**

THE EPISCOPAL DIOCESE OF RHODE ISLAND OBJECTION

The Episcopal Diocese of Rhode Island objects to the Commission's email of April 15, 2021, ostensibly setting a procedural schedule in response to the Supreme Court's remand for a hearing in this matter. The ordered schedule was not developed in consultation with the parties, a departure from standard scheduling procedure, and it does not provide for a "hearing" as defined by the Commission Rules of Practice and Procedure (Rules) or as intended by the Supreme Court. The April 15 email from Commission counsel is provided as **Exhibit A**. The email states: "This communication relates to the Supreme Court's recent remand of Docket No. 4981 to the Commission. The Commission is requesting briefs from the parties addressing specific questions described below, which will be followed by a hearing for oral arguments." It then states five questions, all of which clearly seek to redeem the Commission's position that the Burton affidavit produces no new evidence relevant to reconsideration of its decision, as the Commission summarily concluded on the Supreme Court's first remand.

The procedural schedule is inconsistent with Commission policy and procedure. The Commission's standard practice is to consult with the parties to establish the scope of proceeding, to identify issues of fact and law and to then schedule an appropriate process to address them. There is nothing in the Rules that requires such a collaborative scheduling

conference, but the failure to do so here exposes deep and serious problems with the Commission's proposed scheduling order.

The proposed order is inconsistent with the provision of the Rules regarding hearings. Rule 1.21(D) states: "General. Parties shall have the rights to present evidence, cross-examine witnesses, object, file motions and briefs, and present arguments. The Commission and its staff may examine witnesses and require additional testimony." The Supreme Court remanded this matter for a "hearing." The proposed procedural schedule does not contemplate the parties' right to present evidence. It is not up to the Commission's discretion to dictate whether there are issues of fact that warrant such a hearing. The Supreme Court's order and the Rules leave that determination up to the parties.

If there had been any consultation with the parties to identify the issues to be addressed in this hearing, the Diocese could have responded to the questions the Commission proposes for legal briefing. In its reply filed with the Attorney General in response to the Diocese's Access to Public Records Act appeal related to this docket, the Division of Public Utilities and Carriers wrote:

> There is absolutely no prohibition that precludes parties from discussing issues and related matters in dockets proceeding at the Commission, or, for that matter, in cases before the Courts. Therefore, to suggest that the Division committed some breach of regulatory procedures or ethics by discussing a docket matter with National Grid is baseless and ridiculous on its face. . .confirming that a Division attorney discussed the legal merits of the Complainant's petition with National Grid's counsel, and even knowing the contents of that discussion, could never deliver proof of "undue influence." Undue influence exists in the realm of will contests, contracts, deeds and fiduciary fraud cases. It has no place in regulatory matters. For undue influence to exist there must be a dominant party and a subservient party. To suggest that National Grid has dominance over the Division is patently absurd.

That was before the Attorney General rejected the Division's claims of "common interest" with National Grid that gave rise to an alleged attorney work product privilege and required

production of the documents the Division sought to protect. The produced documents show plainly that the Division received an email from National Grid's counsel that set out what the Division adopted as its legal position in docket 4981. The Diocese has served data requests seeking an explanation of the Division's claim of common interest, attorney work product privilege and its apparently subservient role in adopting National Grid's argument in docket 4981. Undue influence certainly appears to have a place in regulatory matters. It is astonishing and deeply sad that the Commission still has to ask what new facts might change its position in this docket. Like the Division's assertion of common interest, the Commission's slant on this issue plainly demonstrates the extent of the problem. It inappropriately and unaffordably shifts the burden to the Diocese to prove the public interest that is meant to be advocated by the Division and upheld by the Commission. The imbalance creates a culture that tends toward utility deference just when we most need to scrutinize where our utility's economic interests conflict with our public policy.

The Diocese's Supreme Court appeal raises this issue of undue influence. Narragansett is prohibited from subjecting its customer to undue or unreasonable prejudice. R.I. Gen. Laws §39-1-35. The Commission and the Division have a common enabling act charging them to regulate the way electric utilities carry on their operations to assure an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment. R.I. Gen. Laws §39-1-1(a). Rhode Island General Laws § 39-1-1 states that it is the policy of Rhode Island "to provide fair regulation of public utilities and carriers in the interest of the public, to promote availability of adequate, efficient and economical energy, communication, and transportation services and water supplies to the inhabitants of the state, to provide just and reasonable rates and charges for such services and supplies, without

unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, and to co-operate with other states and agencies of the federal government in promoting and coordinating efforts to achieve realization of this policy."

Here National Grid's undue influence, and the Commission and Divisions' failure of their regulatory roles resulted in illegal, undue and unreasonable prejudice against the public interest. The Diocese intends to convince the Court that undue influence rendered the Commission's Order unlawful and unreasonable pursuant to R.I. Gen. Laws §39-5-1. If granted a hearing, the Diocese would present the evidence that would demonstrate the pernicious nature of the undue influence the utility exerted over this regulatory process. It will produce evidence of how that unequaled influence lead the Division to adopt advocacy that undermined its role to assure an abundance of energy supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment. The testimony would explore the Division's biased process for researching its legal position, how it consulted with the Commission on its decision, who prepared for the Commission and the Commissioners for oral argument, what transpired at the hearing and how the decision was drafted and considered by the Commissioners before it entered. Expert testimony might add content regarding a plague of utility influence on regulatory officials that is impacting regulatory and adjudicatory results and impeding state energy policies across the United States. Finally, the Diocese would present its evidence on how this adjudicatory process felt to them; as if preordained to adopt the utility position.

It was this unbalanced and unduly influenced process that led the Commission to conclude that local clean energy projects should be required to pay the utility for upgrading the and operating and maintaining a transmission system those projects do not use and are not

required to fund under the governing federal law. One might think that a distribution service company might proactively advocate for its customers, making sure they are not subjected to unwarranted assessments of costs. However, here Narragansett Electric Company extracts fees from its customers to pay to its transmission system affiliate New England Power Company with nary a blink. Maybe that is because approximately 65% of our energy bill comes from the cost of National Grid's management of our transmission and distribution system through its affiliates New England Power Company and Narragansett Electric Co. respectively. National Grid's U.S. affiliate owns gas transmission and distribution facilities in New York, Massachusetts and Rhode Island; owns and operates electric transmission facilities in upstate New York, Massachusetts, Rhode Island, New Hampshire and Vermont; and is an electric distribution system operator in upstate New York, Massachusetts and Rhode Island. National Grid UK (the parent) spent a total of £3.5 billion on energy infrastructure over the year (Annual Report 2018/2019, hereafter "AR," p. 30), generating a net revenue increase of 3 percent and increased rate base of 9.2 percent (AR p. 36). U.S. National Grid reported an annual operational profit of £1.724 billion (AR p. 26), spending £2.6 billion on energy infrastructure in its United States regulated markets (AR p. 36). Sixty percent of UK National Grid's total revenue and seventy four percent of its total infrastructure investment came from upstate New York and part of New England. It is well established that local renewable energy projects and other non-wires alternatives can and do reduce the demands on and the costs of our transmission and distribution systems and bring down the need for National Grid's huge infrastructure investments.

The Commission is well aware of the long history of disputes between renewable energy interests and the utility regarding the inappropriate charging of costs of interconnecting these local projects to the distribution system. That advocacy came to a head in Commission docket

4568 where the utility claimed the need to assess an access fee on renewable energy projects. When energy stakeholders shot that filing down for its presumptions about costs and benefits that were not evidenced by any proper cost benefit analysis, the utility ultimately withdrew its proposal. The Commission then opened docket 4600 to establish a cost benefit methodology and standard for Rhode Island. Docket 4600 engaged experts and stakeholders in developing that standard, which resulted in three categories of costs and benefits, to the electrical system, to customers, and to society. Now, the utility has influenced the Division and the Commission to allow a whole new class of costs to be hoisted on local clean energy projects, the costs of improving and maintaining a transmission system designed to move electricity long distances. The premise of that newly implemented seismic shift in responsibility for costs is based on a faulty and unevidenced utility presumption that local projects cost the transmission system, a presumption that openly disregard the great system benefits and avoided costs that result from local distributed energy resources.

The language of Order 23811 (Order) demonstrates the bias that betrayed the regulatory charge and left a bad result for Rhode Island. While refusing to entertain the Diocese's argument that there is no federal authorization for the charges, the Order cites section 24.6 of ISO's Open Access Transmission Tariff (OATT) and Attachment DAF of OATT schedule 21E-NEP in passing as the authority. Order pp 6-7, 14. Clearly neither of those sections of the OATT authorize these charges. It then cites Commission Order 15382 for the proposition that transmission costs assessed under FERC-approved tariffs are collected from Rhode Island customers through base transmission charge and transmission service cost adjustment provisions approved by the Commission. Under the quoted language of Order 15382, it is an anathema to assess FERC-regulated transmission system costs directly to customers building locally distributed clean energy.

The view of cost causation enunciated in the Order is utility myth. It properly recites that FERC rules provide for allocation of interconnection costs on a nondiscriminatory basis and define those costs as directly related to the interconnection and maintenance of the facilities, and only allowed to the extent they exceed costs electric utility would have incurred in the absence of the project (18 CFR 292.101(b)(7)). Order at 9. The Commission's Order from the Pascoag Utility District Rate Filing in Dockets 3546 and 3580 held that the Rhode Island cost allocation principle is to "match the cost of the service to the user of service." Pascoag Utility District General Rate Filing, Docket Nos. 3546 and 3580, Report and Order at 21 (2004). That Pascoag order states that "allocating costs for services, meters and installations on customer's premises on a customer basis is consistent with the principle of cost causality." Pascoag Order at p. 10. The transmission system improvements at issue in Docket 4981 are very far removed from the customer's premises. If the Commission had actually applied the cost/benefit analysis it mandated from docket 4600, it would have concluded that distributed generation projects greatly reduce load and demands on the transmission system and thereby produce great net system benefit.

Instead, the Order seeks to justify the allocation of transmission charges to local renewable energy projects by drawing an inapt analogy to the line extension policy for customers seeking service. Order at p. 19. The Commission pedals a great utility myth in assimilating renewable energy generators to customers seeking line extensions to receive new electrical service. Rhode Island's law and policy does not expressly recognize the benefit customers that extend lines to receive electrical service produce to our electrical system. Therefore, those customers receiving electrical service are nothing like customers generating local renewable energy. The Order elaborates that the goal is to send proper cost signals to customers and posits that allowing renewable energy customers to escape the cost of transmission system improvements by passing them along to other customers does not align w cost causation. Order, p. 19 (fn 41). Customers receiving new electrical service may indeed cause costs on the electrical system; but the Commission is presumably aware that Rhode Island law and policy is clear that those producing local electricity do not.

The Order plainly ignores Rhode Island policy for the benefit of the utility worldview. Rhode Island's Energy Plan promotes renewable energy to enhance energy security, improve cost-effectiveness and reduce greenhouse gas emissions. Energy 2035: Rhode Island State Energy Plan (2015). The Diocese camp project is a net metered solar farm designed to produce lower cost, more secure clean electricity to Diocese affiliated entities. The purpose of Rhode Island's net metering law is to "facilitate and promote installation of customer-sited, grid-connected generation of renewable energy [and] to support and encourage customer development of renewable energy generation systems; to reduce environmental impacts; to reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; to diversify the state's energy generation sources; to stimulate economic development; to improve distribution system resilience and reliability; and to reduce distribution system costs." R.I. Gen. Laws §39-26.4-1. In docket 4981 the Division and the Commission completely lost site of the legislative declaration of the beneficial impacts of net metering.

The Commission's own guidance document issued in Docket 4600-A1 directs the consideration of goals by proponents and opponents in matters involving the Company. PUC Guidance Document, Docket No. 4600-A (Sep. 6, 2017). Those goals include:

- providing reliable, safe, clean, and affordable energy to Rhode Island customers over the long term (this applies to all energy use, not just regulated fuels);
- prioritizing and facilitating increasing customer investment in their facilities (efficiency, distributed generation, storage, responsive demand, and the electrification of vehicles and heating) where that investment provides recognizable net benefits;
- address the challenge of climate change and other forms of pollution; and
- align distribution utility, customer, and policy objectives and interests through the regulatory framework, including rate design, cost recovery, and incentives.

State policy and law clearly does not endorse the utility's long and commonly propagated myth that local clean energy projects put costs on the electrical system that ought to be presumed assessable to those projects. In fact, it uniformly says the opposite. The Commission's abuse of

discretion in failing to follow state policy and presuming cost causation without weighing its own cost benefit factors was not rooted in any evidence filed into this docket – it was simply indicative of harmful, undue utility influence.

The proposed schedule is also prejudicial to the Diocese. It issued on April 15, the day after the Diocese issued data requests to the Division. The Rules allow twenty-one days to respond to data requests. The scheduling order required the Diocese to file its brief by April 30 at 4 pm, before it is entitled to receive responses to its data requests. Then the Company and the Division are given two weeks to reply to the Diocese position. The schedule by itself further demonstrates a biased process.

THE EPISCOPAL DIOCESE OF RHODE ISLAND

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2021, I delivered a true copy of the foregoing document to the service list by electronic mail.

Seth H. Handy

EXHIBIT A

Commission Scheduling Order

Lucarelli, Patricia (PUC)
Docket No. 4981
April 15, 2021 at 1:18 PM

, Hagopian, Jon (DPUC)
, George, Linda (DPUC)
Hetherington, Christy (DPUC) , Hogan, Margaret (DPUC)
Massaro, Luly (PUC) , Lucarelli, Patricia (PUC) , Bianco, Todd (PUC)
, Nault, Alan (PUC) , Majcher, Daniel (DOA)
Russolino, Nancy (DOA) , Kearns, Christopher (DOA)
Beland, Shauna (DOA) , Ucci, Nicholas (DOA) , Gill, Carrie (DOA)

Good afternoon all:

This communication relates to the Supreme Court's recent remand of Docket No. 4981 to the Commission.
The Commission is requesting briefs from the parties addressing specific questions described below, which will be followed by a hearing for oral arguments.

Below is the procedural schedule;

1. Petitioner's Initial Brief is due April 30, 2021 by 4:00pm.
2. The Division's and National Grid's Response Briefs are due May 14, 2021 by 4:00pm.
3. Petitioner's Reply Brief is due May 26, 2021 by 4:00pm.

Petitioner's Initial Brief must address the following issues, to which the Division and National Grid shall respond:

1. Among the information contained in the "affidavit of new evidence" referenced by the Supreme Court in its order of January 12, 2021, please identify what the Petitioner believes constitutes new evidence (i.e., evidence that was not before the Commission when it made its decision).

2. Of the new evidence identified, please explain the relevancy of that evidence to the Commission's decision.

3. Of the new evidence identified, please indicate with specificity the extent to which there are any facts (within the new evidence) which the Petitioner believes are now in dispute.

4. Referencing the "Agreed Facts" signed by the Petitioner and National Grid that was used by the Commission in its original decision, please indicate whether the Petitioner believes the facts upon which the Commission based its decision now need to be amended to include facts from the new evidence. If so, please indicate how the Petitioner recommends the new facts would be written in a stipulation.

5. Describe in detail if and why the Petitioner believes the new evidence should either affect or change the Commission's original decision, including any inferences the Petitioner maintains should be drawn from the new evidence, if any.

The Commission is considering having the hearing for oral argument in person, as opposed to remotely. Attorneys will be notified if the hearing is remote or in person prior to the hearing date which will likely be scheduled for the first or second week in June.

Also attached is an updated exhibit list. Please use this going forward to ensure receipt of anything you file. Should you have an questions, please do not hesitate to email me.

Best,
Patti

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