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**

PROCEDURAL ORDER DENYING MOTION FOR RECUSAL

On May 24, 2021, Petitioner – the Episcopal Diocese of Rhode Island – filed a motion entitled: "Motion for Recusal, Withdrawal of Notice and Further Assurance Against Bias." The filed motion contained three requests, one of which is essentially a motion that requests the Chairman recuse himself from this proceeding because of alleged bias ("Motion for Recusal").[1] This order addresses the Motion for Recusal.

Procedural Background

The Motion for Recusal filed by Petitioner arises in a case that is now before the Commission on remand from the Supreme Court. The case itself relates to a number of complex legal issues pertaining to a solar project that is proposed by the Petitioner. The project needed to be interconnected to the electric grid. Disputes arose between the Petitioner and the utility, The Narragansett Electric Company, d/b/a National Grid, ("Narragansett Electric"). The dispute related to the terms, assessment, and allocation of costs of the interconnection. Among other details, the dispute related to whether Petitioner had responsibility for paying the costs of expected transmission system modifications. The outcome of this issue appeared to be dependent, in large part, upon the interpretation of certain statutes in Title 39 of Rhode Island

[1] The three requests were: (1) that the Chairman recuse himself, (2) that the Notice of May 19, 2021 be withdrawn, and (3) that the Commission provides some form of assurance against bias. While this written procedural order addresses the first request, the other two requests are addressed by the full Commission with a vote at oral argument.

General Laws, as well as an interpretation of the interplay between state and federal jurisdiction relating to generator interconnections to the electric distribution and transmission system.

The matter came to the Commission initially when the Petitioner filed a Petition for Dispute Resolution with the Commission in Docket No. 4973 on September 12, 2019, which included the parties voluntarily agreeing to the participation of a mediator from the Commission's staff.[2] Subsequently, on October 9, 2019 the Petitioner filed a second petition with the Commission, a Petition for Declaratory Judgment, seeking a declaratory ruling interpreting certain legal issues that the mediator in Docket No. 4973 indicated could not be resolved through mediation.[3] The Petition for Declaratory Judgment was then separately docketed as Docket No. 4981. The two dockets then proceeded in parallel, one that attempted to resolve certain disputes that were factual in nature in Docket No. 4973, while the other to resolve the apparent legal issues in Docket No. 4981 that could not be resolved through the mediation.

The two primary parties in Docket No. 4981, Narragansett Electric and the Petitioner, subsequently filed a stipulation of "Agreed Facts" with the Commission on October 25, 2019. At this point, the Division of Public Utilities and Carriers ("Division"), a separate and independent agency distinguishable from the Commission, appeared in its statutory role as a party representing all ratepayers (i.e., the ratepayer advocate), as it does in virtually all proceedings before the Commission.[4] After inviting two rounds of public comments, on February 25, 2020 the Commission held a hearing for oral argument from the parties, in which counsel for the Petitioner, counsel for Narragansett Electric, and counsel for the Division participated.

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[2] *See* Mediator's Report, filed on December 30, 2019 in Docket No. 4973, signed by counsel for both Petitioner and Narragansett Electric.
[3] *See* "The Episcopal Diocese of Rhode Island Reply Brief," November 27, 2019, at page 2, footnote 2.
[4] *See In Re: A&R Marine Corp.,* 199 A.3d 533, footnote 3; and *Narragansett Electric v. Harsch*, 368 A.2d 1194, 1200 (R.I. 1977).

After the oral argument was heard, the matter was decided by the three then-sitting Commissioners: Chairperson Margaret E. Curran, Commissioner Marion S. Gold, and Commissioner Abigail Anthony. On March 6, 2020, the Commission voted at Open Meeting, effectively denying most of the declarations sought by Petitioner.[5] The decision from the Open Meeting then was reflected in a written order which was issued on April 14, 2020, from which the appeal by Petitioner was taken. After the decision was issued, Chairperson Curran's term ended and the current Chairman was appointed to the Commission, confirmed in June of 2020.

On January 13, 2021, the Supreme Court issued an order remanding the case to the Commission pursuant to R.I. Gen. Laws § 39-5-5 to consider new evidence which had been filed by the Petitioner with the Supreme Court on December 18, 2020, before the Supreme Court heard the case. The new evidence consisted of an affidavit which attached a series of emails that had been obtained by Petitioner from the Division of Public Utilities and Carriers through an Access to Public Records Act ("APRA") request. The new evidence consisted of communications between counsel for Narragansett Electric and counsel for the Division, two of the parties in the case. The emails showed communications reflecting a sharing of legal analysis between counsel for both parties. The remand order asked the Commission to consider the new evidence and "confirm, alter, amend, rescind, or reverse the order being appealed."

On February 11, 2021 the Commission considered the matter. At that time, since the Chairman had not participated in the original decision – but two of the Commissioners who had ruled in the case were still on the Commission – the Chairman decided not to participate, leaving the matter to the two Commissioners fully familiar with the record to decide. This was not a

[5] Order at pp. 28-29. The Commission declined to make declarations on two issues of federal law that the Commission believed were not jurisdictional, and declined to make another declaration that the Commission found was not supported by the Agreed Facts.

recusal by the Chairman. Rather, it was a practical decision, avoiding the need for the Chairman to review the entire record to properly participate in the decision. The two Commissioners then voted to confirm the decision and the transcript of the decision was submitted to the Supreme Court with a letter on March 4, 2021. However, it later became apparent that the Commission misunderstood what it needed to do in order to properly respond to the Supreme Court's initial remand. On March 24, 2021, the Supreme Court issued a second remand order, stating that the letter was "not a proper exercise of jurisdiction by the Commission." The Supreme Court then directed 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."

By this time, the term of Commissioner Gold had expired and Commissioner John Revens was confirmed to replace Commissioner Gold, leaving only one of the three Commissioners who had originally decided the case on the Commission. Given the fact that the composition of the Commission had significantly changed, the Chairman commenced the process of reviewing the entire record of the case in order to be able to participate in the proceedings to respond appropriately to the Supreme Court's second remand. A briefing schedule was established and a hearing for oral argument was set for June 2, 2021, with two dates reserved on June 9 and 10, 2021 for further hearings, if necessary, depending upon the outcome from oral argument.

During the course of the Chairman's review, the Chairman noticed the record originally sent to the Supreme Court contained nothing about the parallel dispute resolution process in Docket No. 4973. The Chairman also took note of the fact that there were some factual representations made in the Petitioner's Initial Brief in this remand that did not appear to be supported by the record in the case. At the Chairman's request, counsel for the Commission sent

a memorandum to the parties on May 19, 2021, entitled "Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner's Brief," ("Notice"). The content of the Notice will be addressed below in greater detail. In summary, however, the first part of the Notice notified the parties that the Chairman intended to supplement the record of the travel of the case with certain publicly available filings that were made in the parallel Docket No. 4973, asking whether any party had an objection. The second part of the Notice asked for a clarification of information that had been represented by the Petitioner in Petitioner's Initial Brief on remand, but was not in the record of the case. This information appeared to relate to events occurring after the appeal was filed. As indicated in the Notice, the clarification might have revealed additional new evidence that may or may not be necessary to provide to the Supreme Court through an appropriate procedure, recognizing that the request was arguably outside the scope of the remand.[6]

Narragansett Electric responded to the request with an update of new information.[7] The Petitioner, however, responded with the referenced "Motion for Recusal, Withdrawal of Notice and Further Assurance Against Bias" which includes the Motion for Recusal which this order addresses. Since a decision to recuse is one that relates personally to the decision maker to whom the motion pertains, the Chairman is responding himself to the Motion for Recusal in the form of this single-Commissioner procedural order.

<u>The Petitioner's Motion for Recusal</u>

The Petitioner identifies two reasons to support the assertion that the Chairman should recuse himself from the proceedings: "1) because the Chair worked as a Senior Regulatory Advisor to the Division at the time Docket No. 4981 was decided and cannot be impartial

[6] Notice, at pages 2-4.
[7] Response of Narragansett Electric to "Informal Information Request," May 24, 2021.

regarding the propriety of the Division's consultation with National Grid in this proceeding; and 2) because the Notice contains advocacy against the Diocese position and, therefore, demonstrates bias."

For the reasons set forth below, the Petitioner's Motion for Recusal is denied by the Chairman.

Decision

(1) Applying the Standard for Recusal

There is no question that judges should recuse themselves if they are unable to render an impartial decision. *Kelly v. RIPTA*, 740 A.2d 1243, 1246 (R.I. 1999). It also is clear that the principles of impartiality applied to judges also apply to agency adjudicators. *Champlin Realty Associates v. Tikonian*, 989 A.2d 427, 443 (R.I. 2010). The Rhode Island Supreme Court has stated that "[t]he party seeking recusal bears the burden of establishing that the judicial officer possesses a personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his or her impartiality seriously and sway his or her judgement." *State v. Howard*, 23 A.3d 1133, 1136 (R.I. 2011). Further, the party making a motion for recusal bears a "substantial burden" to prove the existence of bias. *In Re Jermaine*, 9 A.3d 1227, 1230 (R.I. 2010). "Recusal is not in order by a mere accusation that is totally unsupported by substantial fact." *State v. Clark*, 423 A.2d 1151, 1158 (R.I. 1980). As stated by the Rhode Island Supreme Court in *Kelly*, however, "[i]t is an equally well-recognized principle that a trial justice has as great an obligation not to disqualify himself or herself when there is no sound reason to do so as he or she has to disqualify himself or herself when a proper occasion to do so does arise." *Kelly* at 1246 (citing *State v. Clark*, at 1158).

Applying the law to the allegations contained in the Motion for recusal, the Petitioner has failed to meet its burden. With respect to the Petitioner's first basis for alleging disqualifying bias, Petitioner has alleged nothing except to identify the fact that the Chairman worked for the Division of Public Utilities and Carriers at the time the proceedings were before the Commission.[8] Further, with respect to the second reason for alleged bias, the Petitioner asserts that the Chairman issued a notice which contained "advocacy." Yet, the Petitioner never explains how any of the content in the referenced notice constituted advocacy for or against any party. The Petitioner merely states in a conclusory way that the Notice contains "biased argument."[9] Thus, the Petitioner has failed to meet Petitioner's burden necessary to require the Chairman to recuse himself from this remand.

Simply put, Petitioner has made no showing that the Chairman would be unable to render a fair and impartial decision, and the Motion for Recusal is denied. However, in an effort to complete the record, the allegations will be more fully addressed below, to the extent the Petitioner's reasons are discernible from the Petitioner's Motion.

(2) <u>Working as a Consultant to the Division while Docket No. 4981 Was Pending</u>

While it is true that the Chairman worked for the Division as a consultant during the pendency of Docket No. 4981 before he was appointed to the Commission, the Chairman did not work on the case for the Division and did not advise the Division on Docket No. 4981.[10] There is no ambiguity about this lack of involvement. The Chairman had no involvement in the Division's decision-making, no involvement in the drafting of any filings or any other

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[8] Motion for Recusalat 3.
[9] *Id*. at 4.
[10] The Chairman disclosed this fact to the Petitioner in the letter of May 3, 2021 attached to the Petitioner's motion on page 1, footnote 1.

documents, no involvement in strategizing, no involvement in arranging meetings with National Grid, no participation in meetings with National Grid or the Division relating to the case, offered no recommendations or opinions to the Division in the way the case should be handled, and offered no advice or recommendations on how the legal issues should be researched or reasoned or what conclusions should be drawn. Plain and simple, the case was not within the scope of the consultancy engagement.

The allegation that the Chairman is biased because he worked with the Division is baseless. The Chairman remains completely confident that he can hear this case without bias. Cases come before the Commission all the time in which the Division states positions, and the Commission (including the Chairman) has fairly and impartially decided cases, including decisions adverse to the position taken by the Division when the evidence supported such a decision. Consideration of the issues in this case will be no different.[11]

(3) <u>The Notice of Inclusion of Certain Documents from Docket No. 4973 Into the Record and Request to Update Information Stated in Petitioner's Brief</u>

The second reason given by the Petitioner for the request for recusal appears to be an assertion that the "Notice" sent in the form of a memorandum dated May 19, 2021 (sent by counsel for the Commission on behalf of the Chairman) was advocacy that reflected disqualifying bias. The Petitioner's characterization of the Notice as advocacy, however, misrepresents the content. The Notice was issued after the Chairman completed his review of the entire record of the proceedings – a necessary task because the Chairman was not a member of the Commission when the initial decision was made. The Notice communicated two separate and

[11] The Petitioner also questioned why the Chairman did not participate in the first remand decision, misrepresenting that the Chairman recused himself from participation in that decision in footnote 6 of its Initial Brief at page 11. The Chairman stated the basic reasons in footnote 1 of his letter of May 3, 2021, which is attached as Exhibit A to the Petitioner's filing, which also are explained in the Procedural Background of this order.

unrelated issues to the parties, leaving ample time for any objections to be raised. It was sent with the intention to be as transparent and fair as possible to all parties, well in advance of the hearing in order to give the parties time to respond. The first part of the Notice related to notifying the parties that the Chairman intended to include certain public filings in the record of the travel of the case that is submitted to the Supreme Court. These were filings made in a proceeding in Docket No. 4973 that took place in parallel with Docket No. 4981 and had a direct relationship to it. Both parties cited to Docket No. 4973 in their briefs in the earlier proceedings.[12] Then the Petitioner cited Docket No. 4973 again in its Initial Brief on remand. Noticing the intention to complete the record of the travel of the case in this manner can hardly be described as "advocacy."[13]

The second matter in the Notice was different. It was intended to bring to the parties attention an issue relating to new evidence that the Chairman believed might be important to understand and consider for filing with the Supreme Court – not in the record of the remand, which has a very narrow scope – but either through an affidavit of new evidence filed by one of the parties under R.I. Gen. Laws § 39-5-5, or a joint filing if the parties were to agree. The issue arose when the Chairman read a statement made in the Petitioner's Initial Brief on remand asserting a fact that the Chairman did not find in the existing record.[14] In essence, the Chairman was simply following up on a factual representation made by the Petitioner on remand about the transmission modifications that were a central issue in the case. Since R.I. Gen. Laws § 39-5-5 has language that could be interpreted as mandatory regarding notification to the Supreme Court

[12] Each of the places where Docket No. 4973 was cited in Docket No. 4981 are listed in the Notice at page 1.
[13] Narragansett Electric indicated it had no objection to the filings in Docket No. 4973 be included in the record. Letter of May 24, 2021.
[14] The Episcopal Diocese of Rhode Island Brief at 19 (Apr. 30, 2021).

when relevant new evidence is discovered, clarifying the factual representation appeared important to address.[15]

In this instance, the Petitioner made a factual representation about the transmission modifications at issue in Docket No. 4981, stating on page 19 of Petitioner's Initial Brief in this remand proceeding: "The transmission system improvements at issue in Docket 4981 are far far removed from the customer's premises." Yet, the record in the proceedings leading up to issuance of the Commission's Order No. 23811, including the Agreed Facts upon which the parties requested a Commission decision, never identified any of the transmission modifications. In fact, paragraph 9 of the Agreed Facts indicated that the transmission study at issue which would define the extent of the modifications "could result in a need for further, longer transmission studies and an assessment of additional costs for transmission system upgrades and the ongoing costs of maintaining those upgrades before a final cost of interconnecting the project and project economics can be predicted." It was clear that the transmission study had not been completed and no one even knew the extent, if any, of transmission modifications that might be chargeable to the Petitioner and other interconnecting customers.[16] There was nothing in the Agreed Facts regarding who might own the transmission facilities needing modification, where the modifications might take place, or what the cost allocated to the Petitioner would be for the transmission upgrade. When reading the Petitioner's Initial Brief in the remand, however, the new assertion of fact made by the Petitioner about the distance of the modifications from Petitioners premises appeared to suggest that the transmission study must have been completed and the transmission modifications were now known by the Petitioner.

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[15] The question whether R.I. Gen. Laws § 39-5-5 is mandatory arises because that section contains the following language: "If after appeal has been taken to the supreme court, new evidence shall be discovered by any party, an affidavit setting forth the newly discovered evidence shall be filed in the supreme court . . . ." (*emphasis added*).
[16] Order No. 23811 at 16.

The Chairman also noticed that there were other statements not supported by the record in the case. On page 5 of the Reply Brief in the original proceedings, Petitioner stated: "It is clear from [Narragansett Electric's] comments that the transmission system is owned by NEP – not [Narragansett Electric]." When the Chairman considered these statements, it raised a significant question regarding the reliability of the evidence upon which the legal analysis was based. Specifically, from other recent proceedings evaluating transmission issues of the Company in 2020, it was clear that Narragansett Electric did, in fact, own transmission in Rhode Island.[17] When the Chairman considered these statements, along with the wording of one of the state statutes that had been interpreted in this case which referenced system modifications to the distribution company's "electric power system" (without reference to whether the electric power system was distribution or transmission, or both), the Chairman became concerned that the particular details of the modifications – *if they were known* – might have a material effect on the conclusions of law applied to the facts.[18] This appeared relevant, because transmission owned by the distribution company (as opposed to the affiliate New England Power Company) could be interpreted to be part of "its electric power system," within the meaning of the statute.[19]

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[17] See footnote 4 to the Notice which cited the referenced Dockets and information indicating that Narragansett Electric owned transmission facilities in Rhode Island.

[18] The statutory provision was R.I. Gen. Laws §39-26.3-4(a) which states: "The electric distribution company may only charge an interconnecting, renewable energy customer for any <u>system modifications to its electric power system</u> specifically necessary for and directly related to the interconnection." (*emphasis added*). The issue of interpretation of this provision was explained in the Notice to the parties at pages 2-3.

[19] This observation is not to be construed as pre-judging the interpretation. Rather, it is a recognition that in order to apply the provisions of an ambiguous provision such as this one (i.e., what constitutes the "electric power system" if the facilities are owned by the distribution company), the complexities of the system might need to be addressed on a solid evidentiary record in order to assure an informed interpretation. In the earlier proceedings, the Commission did not have the accurate facts of ownership in the record to inform its decision and was evidently not provided those facts by the parties. An assumption that the facilities were owned by the distribution company (rather than the affiliate) could have limited the decision at a different level of review that never would have reached the more complex issues of federal law.

The Chairman was aware that this issue arguably fell outside of the scope of the remand, but it nevertheless created concern that there was a critical question of fact not in the record that could materially affect the legal conclusions. While the Chairman was aware that the Commission was limited by the scope of the remand, he also was aware of the provisions of R.I. Gen. Laws § 39-5-5. Before drawing any definitive conclusions, however, the Chairman decided to notify the parties of the issue and request an update to determine if there was any information that would rise to the level of new evidence of which the Supreme Court should be informed through an appropriate procedure. For that reason, the Chairman explained the issue in the second part of the Notice and requested an update from the parties.[20]

While left unstated in the Notice, the Chairman also was concerned about the collateral effects that a decision based on mistaken or inaccurate facts might have on other parties not present in the case. Specifically, the Agreed Facts indicated that the costs of any transmission upgrades would be allocated to multiple parties.[21] But the case was being argued by the Petitioner on the basis of an assumption that Petitioner was not responsible for the transmission costs, because they related to transmission facilities owned by New England Power Company. If, however, the facilities were actually owned by Narragansett Electric and, therefore, were interpreted to be a part of the company's "electric power system" in a future case, it could result

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[20] In two places the Notice made clear that the Chairman questioned whether the information was within the scope of the remand. Specifically, the Notice began with the statement: "The second matter to which the Chairman wishes to draw the parties' attention is not necessarily within the scope of the remand . . . ." Later, near the end of the Notice, it stated:

> "Please note that this request for updated information should <u>not</u> be construed as a decision to place the responses into the record of the remand proceedings. The Chairman is aware of the legal question that has been raised regarding the scope of the remand which needs to be addressed at oral argument. Whether and how any new information should be treated or considered, if at all, will be determined after the responses are provided and the parties have an opportunity to address any issues regarding the content and relevancy of the responses – procedural or otherwise – at oral argument." (*emphasis in original*) (pp.3-4).

[21] Paragraph #8 of the Agreed Facts.

in other generators being allocated costs under state law, while the Petitioner was allocated none – all because of reliance on mistaken and inaccurate facts. It was the Chairman's intention to obtain clarity regarding the actual facts. However, the Chairman had no clear answer to this potential regulatory conundrum, other than considering the apparent obligation to report relevant new evidence under R.I. Gen. Laws § 39-5-5 to the Supreme Court.

This was not advocacy. It was the exercise of the Commission's regulatory function. The Chairman's intention was to assure that the result reached on the *de novo* appeal would be based on an accurate and complete factual record. It was not advocacy for or against any party. In that regard, the Petitioner's concerns also were missing another point which the Chairman thought was obvious. If the Petitioner was, indeed, being asked to pay for system modifications that were a great distance from its premises, having the actual facts might have enhanced the Petitioner's arguments, not diminished them, as it might have been relevant to whether the modifications were "directly" related to the interconnection. For that reason, the Petitioner's assumption that the Chairman was advocating a position for one side – rather than simply aiming to discern the truth from potentially relevant new facts that unfolded after the appeal was filed – is greatly mistaken.

(4) <u>The Implications of the Updated Information Provided by the Utility</u>

At this stage, it is important to point out the ramifications of the response that was actually provided by the utility. While the Petitioner chose not to answer the question posed by the Chairman, and instead decided to assert that the Chairman should recuse himself for asking the question that would clarify the record, the utility did provide an update.[22] According to the

[22] *See* Narragansett Electric's Response to the Commission's Informal Information Request, May 24, 2021.

utility, the transmission study identifying the modifications was completed over one year ago, on May 19, 2020. This occurred a little more than a month after the Commission issued its written Order 23811, and many months before the parties filed their respective 12A Statements with the Supreme Court.

There are two important take-aways from the response that updated the status of the study. First, the transmission upgrades apparently will not be on facilities owned by New England Power Company. Rather, according to the utility's response, they will be on facilities owned by Narragansett Electric within Rhode Island's borders.[23] The modifications are, indeed, distant from the Petitioner's premises, as the Petitioner represented in its Initial Brief on remand.[24] However, there is an even more important discovery that could become a significant issue on appeal. Even though there will be transmission upgrades on Narragansett Electric's system, the Petitioner is not being assessed any costs because the study indicated no impact caused by the Petitioner's project.[25]

Given this new information arising out of the update, the facts upon which the Supreme Court is being asked to apply the law – relating to the issue of cost responsibility for transmission modifications – appear to have become hypothetical. Specifically, it is (i) hypothetical that there are transmission system modifications caused by the Petitioner's project; (ii) hypothetical that the system modifications are on facilities owned by New England Power Company; and (iii) hypothetical that the Petitioner will be charged for transmission system modifications for which Petitioner is asking relief from the Supreme Court. Given the

[23] *See* the Response of Narragansett Electric to "Informal Information Request," May 24, 2021, response to questions (i) and (iii).
[24] *Id.*, response to question (i).
[25] *Id.*, response to question (v).

hypothetical state of this part of the case, Supreme Court precedent indicating the Court will not decide cases that involve "hypothetical questions" appear to be clearly implicated. *See H.V. Collins Co. v. Williams*, 990 A.2d 845, 847 (R.I. 2010).

Curiously, it also appears that none of the lawyers representing the parties on appeal who filed their respective 12A Statements with the Supreme Court were aware that Narragansett Electric owned the potentially affected transmission facilities in Rhode Island. Narragansett Electric's 12A Counterstatement on page 3, while not clear, leaves the impression that the transmission upgrades in this case related to "the electric transmission system owned and operated by National Grid's affiliate – New England Power Company ('NEP')." The Petitioner's 12A "Amended Statement of the Case" on page 7, on the other hand, stated quite unambiguously: "Narragansett does not own or operate the transmission system; it is owned and operated by New England Power Company." Finally, even the Division of Public Utilities and Carriers' 12A Counterstatement on page 3 made a statement relating to assumed ownership: "In this case, there was a question of whether the interconnection of the Diocese's project to the Narragansett distribution system could cause an adverse impact on the larger transmission system owned and operated by New England Power Company ('NEP')."

While the ownership issue may have been a misunderstanding arising out of a confusing and complex set of facts, the new information regarding the unambiguous fact that the Petitioner is not being charged for transmission upgrades presents a different issue. It gives rise to a question why neither the utility nor the Petitioner who were in a position to know it, did not report this important development to the Supreme Court when the 12A Statements were filed. It also raises questions about the obligation, if any, for all of the parties to now report this information pursuant to R.I. Gen. Laws § 39-5-5. In turn, this new evidence raises the question

whether the appeal is rendered moot, at least as it relates to the complex question of federal and state jurisdiction regarding cost responsibility for transmission upgrades. *See Campbell v. Tiverton Zoning Board*, 15 A.3d 1015 (2011); *see also In re New England Gas Company*, 842 A.2d 545, 553 (2004)(defining aggrieved party under §39-5-1).

Finally, all of this new information raises a question of whether the lawyers for the parties now each have an independent obligation pursuant to Rule 3.3 of the Rhode Island Disciplinary Rules of Professional Conduct to notify the Supreme Court of these new facts before a Supreme Court decision is made that could be based on false evidence, even if its falsity was an inadvertent mistake or oversight.[26]

(5) Conclusion

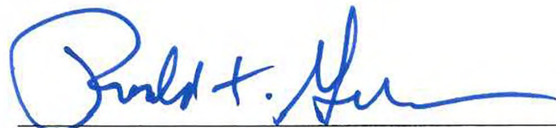
For all the reasons stated herein, the Petitioner's Motion for Recusal is denied by the Chairman.

Accordingly, it is hereby

(24061) ORDERED:

The Motion for Recusal is denied.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JUNE 2, 2021. WRITTEN ORDER ISSUED JUNE 3, 2021.



Ronald T. Gerwatowski, Chairman
Public Utilities Commission

[26] Rule 3.3(a) states in pertinent part: "A lawyer shall not knowingly: (1) . . . fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; . . . (3) . . . If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."