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 REPLY ON REMAND

The Episcopal Diocese of Rhode Island agrees with the Division on one thing; docket 4981 addresses questions of law, not fact. The Diocese has objected to the Commission's procedural schedule dictating the subjects for briefing on remand, most of which focus on questions of fact. The Commission can discard the pages our opposition spent undermining the Supreme Court's intent by arguing that there are no new facts at issue here. The problem addressed on remand, and as one element of the Diocese's appeal, is that our state agencies allowed prejudicial influence in their administration of the law.

i. National Grid and the Division Fail to Rebut the Evident Fact that their Collaborating Contacts and Perceived "Common Interest" were Improper and Caused a Biased Decision.

The Diocese is not surprised that National Grid's brief neglected to address the incongruity of what happened here with the Division's enabling act, but it was surprising that the attorney general does so as well. So, we repeat. The enabling act provides that "[s]upervision and reasonable regulation by the state of the manner in which the businesses construct their systems and carry on their operations within the state are necessary to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people, and are a proper exercise of the police power of the state." R.I. Gen. Laws § 39-1-1(a)(2). It vests in

> the public utilities commission and the division of public utilities and carriers the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy, communication, and transportation services and water supplies for the purpose of increasing and maintaining the efficiency of the companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls, and charges by providing full, fair, and adequate administrative procedures and remedies. Id., § 39-1-1(c).

In docket 4981, the Diocese contests that its utility is imposing unauthorized new transmission system charges on its renewable energy project. The question posed with the Supreme Court's second remand is whether the Division could have done its job properly in this dispute where it consulted exclusively with National Grid in the development of its legal position and then claimed a common interest with the utility that made their communications attorney work product. There can be no question that the Division did not do its job of supervising the conduct of companies for the purpose of increasing and maintaining the efficiency of the companies and protecting the public against improper and unreasonable charges by providing full, fair, and adequate administrative procedures and remedies. After an order issued in docket 4981, the attorney general had to remind the Division that "the record indicates that National Grid was an advocate for its own interests." The Division's obfuscation of its responsibility to the people of Rhode Island cannot be considered "[s]upervision and reasonable regulation by the state of the manner in which the businesses construct their systems and carry on their operations within the state to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people." Id.

The opposition fails to rebut that the Division's interactions with National Grid were prohibited *ex parte* consultations. The Division's arguments on this are perplexing. While saying that the Diocese is misguided and uninformed on the point, the Division confuses the nature of the proceeding and its role in it. On page 8 of its brief, it states "the Division is to serve the Commission by bringing forth evidence in order to assist the Commission in coming to a

decision." Then in footnote 8, it quotes Providence Gas v. Burke, 419 A.2d 263, 270 (R.I.1980), "[I]t is the function of the [D]ivision to serve the [C]ommission in bringing to it all relevant evidence, facts, and arguments that will lead the [C]ommission in its quasi-judicial capacity to reach a just result." As it argues in section 2(d) of its brief, "[t]his matter pertains solely to questions of law involving the application of the complex and inextricable interplay between the local electric generation and distribution system, which is subject to state law and Commission regulation, with the regional, broader transmission system, subject to federal law and Federal Energy Regulatory Commission ("FERC") or ISO-NE, the regional transmission operator's regulations." In such a proceeding focused on questions of law, the Division's role is not to "bring forth evidence;" it is to provide legal "arguments that will lead the [C]ommission in its quasi-judicial capacity to reach a just result." Providence Gas, 419 A.2d at 270. The Division's own brief makes clear that in this contested case over legal issues, its agency was tasked to reach legal conclusions.[1] It was, therefore, subject to the Rhode Island Administrative Procedures Act restrictions against *ex parte* contacts, R.I. Gen. Laws §42-35-13 (the "APA"). The APA reads, "members or employees of an agency assigned to render an order *or to make findings of fact and conclusions of a law* in a contested case shall not, directly or indirectly . . . communicate with any person or party . . . except upon notice and opportunity for all parties to participate." §42-35-13 (emphasis added). The Division, despite arguing it is an interested party to the contested case, is still charged with assisting the Commission in making conclusions of law. Therefore, the Division must be held to a higher standard of independence than that of any other party in interest and refrain from *ex parte* contacts.

[1] Division's Response Brief (May 14, 2021) (This Matter Pertains Solely to Questions of Law Involving the Application of State and Federal Statutes, Regulations, and Applicable Tariffs to Undisputed Facts).

National Grid and the Division ignore and attempt to circumvent the APA by arguing that neither the Commission's nor the Division's rules prohibit communications between parties. However, state law governs such agency communications whether or not an agency's adopted rules are consistent with it. Moreover, even if the Division's collaboration with the utility in what it alleged to be a "common interest" had not been *ex parte* communication, it was clear administrative indiscretion that violated the law and the spirit of the Division's essential role as a public interest advocate in such proceedings.[2]

A. The Impact of Bias on the Commission's Decision is Clear.

The Division's exclusive consultation and collaboration had clear and substantial impact on the Commission's decision. The Commission, as "an administrative agency carries out a quasi-judicial function, it has an obligation of impartiality on par with that of judges." Champlin's Realty Assoc. v. Tikoian et al., 989 A.2d 427, 443 (R.I. 2010) (citing Town of Richmond v. Wawaloam Reservation, Inc., 850 A.2d 924, 933 (R.I.2004). "Under the Fourteenth Amendment, administrative tribunals must not be 'biased or otherwise indisposed from rendering a fair and impartial decision.'" Id., citing Davis v. Wood, 444 A.2d 190, 192 (R.I.1982); see also Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal . . . "). The Division's failure to maintain independence in reaching its conclusion of law led directly to the Commission's one-sided decision. As one concrete example of bias dealt here, the Diocese petitioned for a declaratory judgment that the Narragansett Electric Company may not impose

[2] The Division's footnote 8 calls the Diocese arguments on improper utility consultation and influence "reckless, misguided and uninformed" and then goes further with calls for sanctions on Diocese counsel. This continued bullying hardly warrants recognition; it suffices to say that a citizen's right to question its government's exercise of its authority is well rooted in America's civil society. "There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. . . Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it." Henry David Thoreau, *Resistance to Civil Government* (1849). The Episcopal Diocese of Rhode Island's concerns about untoward influence on its government are part of a time honored tradition that has earned and deserves not sanctions but respect.

the cost of any required upgrades to New England Power's transmission system per R.I. Gen. Laws §39-26.3-4.1(a) - it may only charge for "system modifications to its electric power system specifically necessary for and directly related to the interconnection." In response, National Grid argued "this section prohibits a distribution company from charging a customer for system modifications that are not 'specifically necessary for and directly related to' the customer's proposed interconnection. Section 39-26.3-4.1(a) is completely silent regarding system modifications to transmission facilities or other affected systems."[3] The Division's response said, "Further, the R.I. Gen. Laws §39-26.3-4.1(a) is silent as to whether costs may be passed through to the Diocese for such things as the pass through of study costs of Affected System operators and system modification costs from NEP."[4] Then the Commission's resulting Order 23811 also held that "as discussed in the Division's Comments, the statute 'is silent as to whether costs may be passed through to the Diocese for such things as the pass through of study costs of Affected System operators and system modification costs from [New England Power].'"[5] The chain of influence and impact is clear and direct.

This concern about illicit influence on the expectedly independent legal function of the Division and the Commission is as much about what the Division did not consider as it is about what it did consider. It is now evident that the Division considered the merits of National Grid's position. It did not consult with the Diocese regarding the merits of its position. It did not address the divergent economic interests: National Grid's economic interest in both Narragansett Electric Company and New England Power and its profit motive for and from such system upgrades, versus the Diocese's economic interest in the generation of lower cost, more secure

[3] Narragansett Electric Co. d/b/a National Grid's Motion to Intervene, Protest and Memorandum of Law (Nov. 22, 2019), p. 23.
[4] Division of Public Utilities and Carriers' Comments (Nov. 22,2019), p. 6.
[5] Order 23811, p. 23, citing Div. Comments at 6 (Nov. 22, 2019).

and cleaner electricity. It took National Grid's arguments on federal authorization seriously, and adopted them, but neglected the Diocese arguments that such authorization did not exist. It bought National Grid's argument that local renewable energy projects cause impacts that present net costs to the transmission system they do not use while disregarding the general assembly's repeated findings that such local projects improve distribution system resilience and reliability and reduce system costs. R.I. Gen. Laws §§39-26.4; 39-26.6-1. It believed National Grid's picture of local renewable energy projects as cost causers despite the findings of our well researched and developed state energy plan.

> How cost-effective is Rhode Island's current resource portfolio for providing energy services? Under business-as-usual conditions, Rhode Island will spend over $83 billion on energy between today and 2035. This is equivalent to over $3.6 billion in average annual energy costs. In comparison, Navigant's scenario modeling results showed multiple viable pathways to cheaper alternative energy futures. Even with significant changes to Rhode Island's energy economy, the state could realize substantial energy savings for consumers, businesses, and institutions. In fact, business-as-usual represents the most expensive path of each of the three distinct scenarios modeled by Navigant. Over the life of the Energy 2035 planning horizon, business-as-usual could cost Rhode Island between $6.6 billion and $15.4 billion (8 percent to 19 percent) more in fuel costs, compared to alternative energy futures (Figure 29). Depending on the scenario modeled, the average Rhode Island household could save between $290 and $670 in annual energy costs compared to the business-as-usual condition. This suggests that pursuing aggressive fuel diversity and / or greenhouse gas (GHG) reduction performance measure targets is likely to present more cost-effective courses of action for the state than business-as-usual policies, and would actually bolster Rhode Island's long-term economic health. *Energy 2035 Rhode Island State Energy Plan* (Oct. 8, 2015), pp. 46-47.

The Division similarly disregarded the Energy 2035's conclusion that:

> Renewable energy will diversify the state's energy supply portfolio, help mitigate long-term energy price volatility, stimulate the state's economy through industry growth and job creation, and set Rhode Island on pace to meet ambitious greenhouse gas emission reduction targets. Furthermore, as electricity use grows in the thermal and transportation sectors—through the proliferation of highly efficient cold-climate heat pumps and electric vehicles, for example—increasing amounts of renewable energy will assist in diversifying and decarbonizing these other sectors as well. Id. p. 62.

These findings from Energy 2035 informed the general assembly's resolution to amend its interconnection statute in 2017 to make it clear that the electric distribution company may only charge interconnecting renewable energy customers for the costs of upgrades to its own electrical distribution system. H5483, S637 (January session A.D. 2017). The Division evidently did not

consider such public policy when it elected to consult with National Grid and adopt the utility position.

B. The Division has an Ongoing Track Record of Not Fulfilling its Duty to Independently Represent the Public's Interest on These Matters That Causes Severe Systemic Imbalance That Harms all Ratepayers.

The stubborn unwillingness to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people, as so clearly dictated by state policy, is nothing new. Another legal issue before the Supreme Court on appeal is which National Grid distribution system interconnection tariff governed the Diocese application for interconnection, the tariff effective when the Diocese applied to interconnect or a subsequent tariff that redefined affected system operator to include the transmission system. Whether the Commission erred in concluding that those amendments were inconsequential, and that Narragansett Electric Company always had the authority to pass its affiliate's (i.e., New England Power Company's) transmission system charges through to its customers interconnecting to the distribution system is on appeal to the Supreme Court. The development community contested National Grid's efforts to amend the Tariff to impose more of its system costs on local customers generating renewable energy in PUC docket 4483. The Division's expert, Gregory Booth, had the credentials of having "been actively involved in all aspects of electric utility planning, design and construction, including generation and transmission systems, and North American Electric Reliability Corporation ("NERC") compliance."[6] Not surprisingly, Mr. Booth opined:

> I do not concur with the Petitioner's recommended changes or with their overall position that National Grid's DG Tariff obstructs timely and affordable project development. Generator interconnection is inherently complex, and electric utilities must evaluate multiple components to ensure that system integrity and grid stability are not impacted. I also concur with the Company's current policy, which is consistent with industry practice, of ascribing all costs necessary to interconnect a generator to the generator customer including those costs for system upgrades.

[6]Division of Public Utilities and Carrier's' Direct Testimony of Gregory L. Booth (6/5/15), p. 2. http://www.ripuc.ri.gov/eventsactions/docket/4483-DPU-Booth_6-5-15.pdf

Then when the utility proposed to make the amendments at issue on appeal in PUC docket 4763, those amending the term "affected system operator" to include the transmission system, a group of renewable energy development interests acting as New Energy Rhode Island, moved to intervene to contest the impact of the amendments in putting unauthorized system improvement costs on local renewable energy projects. The Commission refused them the right to intervene. In its comments on the amendments to the provisions related to "Affected Systems," NERI commented that

> It is unnecessary for National Grid's tariff to raise concerns about affected systems it does not control. That is a sly effort to complicate and intimidate by incorporating indirect expenses and excused delays that are not contemplated in the new statutory language of R.I. Gen. Laws §39-26.3-4.1(d). More specifically, the statute only allows National Grid to charge interconnecting customers for "system modifications to its electric power system specifically necessary for and directly related to the interconnection [to its electric power system]" and would only allow third party interconnection delays that cannot be resolved through commercially reasonable efforts.

The Division commented,

> In the body of the tariff on Sheet 18, Section 3.4c as well as in several exhibits, that the Company observes that it may include Affected System costs within its study and collects said costs from the Interconnecting Customer. In prior practice, the Company may have identified other Affected Systems, which could include that of the transmission company's, but as proposed, at NGrid's discretion, the Company may bill the Interconnection Customer for those costs directly. This is a change not attributable to the current legislation but brought forth by NGrid. . . After consideration and review of the tariff advice filing of National Grid and the Data Responses filed together with the recommendation here, the Division recommends the tariff advice be accepted as filed.[7] Division of Public Utilities and Carriers' Comments (Dec. 29, 2017).

The Division has a long history of ignoring renewable energy industry concerns on the affected system operator costs at issue in docket 4981.

The Division now demonstrates that its utility inspired prejudice for business as usual and against the State of Rhode Island's interest in lower cost, more secure and cleaner local renewable energy persists even after the attorney general disabused it of its claim to "common interest." It responds to the Diocese data request 1-12 with the statement that

> Without waiving the foregoing objections, both the Company and the Division possess a common interest in ensuring the application of accepted ratemaking principles to ensure that transmission

[7] http://www.ripuc.ri.gov/eventsactions/docket/4763-DPU-Comments(12-29-17).pdf

> upgrade and study costs are not passed on to the general body of ratepayers, particularly when the energy that is produced by Petitioner's project is subsidized by the general body of ratepayers and exceeds the cost of more traditional forms of energy within National Grid's portfolio.

This presumptuous and conclusory supposition aligns with a long-advocated utility position focused solely on capital cost and neglecting operating benefit. It completely overlooks the many benefits renewable energy projects provide, a by-product of years of renewable energy industry advocacy against the utility interest that was supported by experts and stakeholders and adopted by the Commission in docket 4600. The docket 4600 cost benefit analysis approved by the Commission is intended to be used to evaluate alternative rate designs and major proposed distribution capital investments just like these.[8] Some benefits deemed to be relevant to any such analysis include:

- Electric Transmission Capacity Costs / Value
- Forward commitment: capacity value
- Forward commitment: avoided ancillary services value
- Net risk benefits to utility system operations (generation, transmission, distribution) from 1) Ability of flexible resources to adapt, and 2) Resource diversity that limits impacts, taking into account that DER need to be studied to determine if they reduce or increase utility system risk based on their locational, resource, and performance diversity
- Energy Demand Reduction Induced Price Effect

Id. at Appendix B, Benefit Cost Framework. The Division persistently refuses to contemplate any such benefits in repeating its unsubstantiated proposition that local renewable energy projects are "subsidized by the general body of ratepayers."

The consequences of the Division taking sides and neglecting its duty to "protect the public against improper and unreasonable rates, tolls, and charges by providing full, fair, and adequate administrative procedures and remedies" go far beyond this case. R.I. Gen. Laws §39-1-1. For one thing, when the Division does not explore all sides of such an issue, it leaves entities like the Diocese with the obligation to advocate for the public good. Like many others

[8] Stakeholder Report to the PUC dated April 5, 2017, p. 10-11.

faced with such imbalance, the Diocese is already at a disadvantage when matched against the much greater (ratepayer subsidized) resources of a utility. It cannot afford the burden of countering state bias with advocacy meant to be done by the ratepayer advocate. In this case, the Division and the Commission presumed that National Grid has the authority to impose federally regulated charges because National Grid said it did. Whether the decision to accept National Grid's arguments on federal authorization while refusing to exercise jurisdiction over the Diocese's counterclaims failed to uphold National Grid's burden to demonstrate the reasonableness of its rates and was an abuse of discretion is another question on appeal to the Supreme Court. This remand directs the Commission's attention to the question of whether the Division's wrongful presumption of common interest in the utility position denied the Diocese, customers and the State of Rhode Island its right to representation by the Division and, as a result, undermined the Commission's independence. There is no doubt, it did.

The Division's decision to take sides without a full and transparent investigation is a failure to "supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy . . . for the purpose of increasing and maintaining the efficiency of the companies." Id. National Grid has a clear and substantial economic interest in profiting from the infrastructure investment at issue here. It has no economic interest in reducing the cost of such infrastructure investment, especially as long as the financial obligation for such cost can be thrust on local renewable energy developers. The failure to supervise and regulate that economic interest explains why "Rhode Island's peak to average demand ratio is 1.98, meaning that nearly half of the utility's capital investment is not utilized most of the time. . . The top 1% of hours cost the state ratepayers around 9% of spending, at around $23 million, while the top 10% of hours cost 26% of costs at $67 million. . . To meet peak demand, our system

currently invests in solutions that are more expensive than is necessary."[9] It is little wonder why Rhode Island's electrical rates are currently the fourth highest in the country behind Hawaii, Alaska and Connecticut.[10] Where would we be today if regulators had so shielded Ma Bell against the competitive advantage of telecommunications innovation?

ii. The Respondents Cannot and do not Rightly Contest the Diocese Right to a Hearing and the Presentation of its Evidence.

The Diocese stands by its objection to the Commission's procedure. The questions put forth by the Commission for briefing are patently designed to support a repeat, summarily reached second confirmation that no new relevant factual evidence warrants reconsideration and reversal of the Commission's legal conclusions. However, as the Division's brief points out, the questions addressed in docket 4981 were issues of law, not of fact. The focus on whether the new evidence raises any new questions of fact is plain distraction.

As was set out in the Diocese objection, the emailed scheduling order is also inconsistent with the provision of the Rules regarding hearings. Commission Rules of Practice and Procedure (Rules) 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." It is no longer up to the Commission's discretion to dictate whether there are issues here that warrant the admission of evidence. The Supreme Court's order and the Rules make that determination. The proposed procedural schedule only contemplates oral argument on the Commission's specific questions. It does not allow the parties' their right to present evidence on the import and impact of bias.

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[9] Transforming the Power Sector Phase One Report (see http://www.ripuc.ri.gov/utilityinfo/electric/PST%20Report_Nov_8.pdf), pp. 13-14.

[10] U.S. Energy Information Agency, March 2021; See https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a

The Diocese maintains that the full evidentiary hearing ordered by the Supreme Court and provided by Commission Rule is necessary and warranted to fully address the significance of the prejudicial impact of utility influence in docket 4981. The Commission has yet to commit to such a hearing but has set aside two dates for if and when it resolves that a hearing is warranted, after hearing oral argument. It is procedurally anomalous to require oral argument as a "hearing" before the presentation of relevant evidence.

Not knowing whether a hearing will happen, the Diocese has presented its pre-filed testimony fourteen days in advance of the still tentative dates, as required by Rule 1.21(E) of the Commission Rules, with hope that it will be heard, fairly considered, and will become part of the record on this remand.[11] That testimony includes the following:

- Prefiled Testimony of Dennis Burton: The Chief Financial Officer of the Episcopal Diocese of Rhode Island provides his perspective on the bias he observed in the processing of the Diocese's petition for declaratory judgment in docket 4981 and his view on the impact such prejudice has on Rhode Island.
- Prefiled testimony of Kenneth Payne: The former administrator of Rhode Island's Office of Energy Resources provides expert testimony on the essential role of the Division and why any compromise in that function is so detrimental to Rhode Island's energy policy and our energy future.
- Prefiled testimony of John Farrell and Karl Rábago: National energy experts opine on the record of prejudicial utility influence in such affairs across the country and why it has such deleterious impact on the efficient and effective delivery of energy and energy services.
- Prefiled testimony of Fred Unger of Heartwood Group, on the impact that National Grid's administration of the affected system operator policy for transmission system upgrades has had on their company its projects.
- Prefiled testimony of Matt Ursillo: Director of Project Management for Green Development, LLC on the impact of National Grid's administration of interconnection requirements and process and the Division's history of utility-aligned advocacy on the issue on Green Development, its projects and on Rhode Island energy policy.
- Prefiled testimony of Scott Milnes of Econox Renewables on the impact that National Grid's administration of the affected system operator policy for transmission system upgrades has had on their company its projects.

In addition to this testimony, the Diocese asks the Commission to take judicial notice of the petitions filed in Commission dockets 5090, 5103, 5128, and 5149, and the complaint filed with the Federal Energy Regulatory Commission in its docket EL21-47 for this record, all of which

[11] The Commission's refusal to commit on whether there will be an evidentiary hearing could put the Diocese at a procedural disadvantage of having to advance produce testimony to which the Division and National Grid may be given additional time to rebut. It certainly has unfairly required considerable time and effort amidst uncertainty.

disputes address National Grid's abuses of authority and administration of these affected system operator requirements for transmission system upgrades improperly imposed on local renewable energy projects in Rhode Island. Since filing its initial brief, the Diocese has also become aware of Energy Development Partners petition for declaratory judgment filed in PUC Docket 5149, which it will also ask to admit to the record. EDP summarizes that claim as follows:

> This Petition arises from The Narragansett Electric Company ("NEC") and its affiliate New England Power Company's ("NEP") (collectively, the "Company") attempt to impose approximately $30 million of plant costs, plus millions more in Direct Assignment Facility ("DAF") charges, on EDP and four other renewable energy project developers whose combined projects total approximately 70 MW in Southern Rhode Island (the "70 MW Group"). The Company asserts that the 70 MW Group's projects require the installation of a voltage regulating synchronous condenser at Tower Hill in North Kingstown, Rhode Island. The Company's illegitimate demand for this massive additional infrastructure cost – which the Company knows full well will likely cause "attrition" among the affected projects, thereby undermining the State's renewable energy goals – fails to acknowledge a fact that NEP has known for at least a year: that an even larger synchronous condenser is already being planned in North Stonington, Connecticut. That larger synchronous condenser in Connecticut would almost certainly make the $30 million Tower Hill synchronous condenser completely unnecessary for EDP's projects. The Company's actions are yet one more example of the Company's failure to support the development of renewable energy projects in Rhode Island.

At such a hearing, if granted, the Diocese would also take the opportunity to cross examine any witnesses proffered by the Division and National Grid.

In Docket 5145, this Commission resolved to reconsider its legal conclusion on a petition for declaratory judgment because "since the issuance of the Declaration, the Commission has received informal requests for clarification and has been advised that its denial of the requested interpretation has resulted in, or will result in, a significant disruption to the renewable energy development market."[12] These charges for transmission system upgrades were new when the Diocese requested the Commission's declarations; since then the evidence strongly suggests that the Division overlooked and the Commission missed the extent to which Order 23811 would disrupt the renewable energy development market. The Diocese requests its full opportunity to

[12] Docket No. 5145 - Reconsideration of Interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii), Notice to Solicit Comments, p. 1. http://www.ripuc.ri.gov/eventsactions/docket/5145-notice%20to%20solicit.pdf

present and cross examine all such evidence relevant to bias in state agency decision-making and its impact.

The Diocese need not argue with National Grid, the Division or the Commission over whether such evidence is relevant to or within the scope of the Supreme Court's order on remand or whether it is in the public's interest to hear it. It will leave this matter to the Commission's discretion, and then the Supreme Court's review. The pre-filed testimony speaks to the importance and impact of the prejudice it suffered here. If the Supreme Court's call for a hearing is not honored, the Diocese asks to make all of the evidence identified above part of the record of this remand proceeding.

iii. Procedure and Remedy.

The Commission has not addressed or asked about the proper scope of review, process, or remedy upon reconsideration. The Division's prejudicial comments addressed all eight requests for declaratory relief, advising the Commission to deny all of them. Therefore, the new evidence of prejudice and administrative indiscretion requires the Commission's reconsideration of all eight requests.

The next procedural question is whether the Commission remains sufficiently independent to reconsider Order 23811. The Chair appeared to have recused himself on the Supreme Court's first remand but has now reasserted himself and his views in this case.[13] Thus, the Diocese has been forced to move for the Chair's recusal in the remand in this docket for two reasons: 1) because he worked as a Senior Regulatory Advisor to the Division at the time Docket 4891 was decided;[14] and 2) because the Notice he sent on May 19, 2021, demonstrates

[13] "Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner's Brief." Attached as **Exhibit A**.

[14] See bio at http://www.ripuc.ri.gov/generalinfo/meetcommish.html

his bias. Champlin's, 989 A.2d at 443 (citing Davis v. Wood, 427 A.2d 332, 337 (R.I.1981) ("to maintain public confidence in the fairness of the agency's decision making, an agency adjudicator also must not prejudge a matter before the agency")); Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 185 (R.I. 2008), cert. denied, 555 U.S. 955, 129 S.Ct. 422 (2008) (quoting Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1246 (R.I. 1999) (a judge must recuse himself or herself when the judge possesses "a ' personal bias or prejudice by reason of a preconceived and settled opinion of a character calculated to impair his [or her] impartiality seriously and sway his [or her] judgment.'"). The Chairman's Notice states that he has reviewed the record of docket 4981 and takes up substantive issues addressed in the record. He states that the Petitioner's brief "makes two statements which do not appear to be supported by any information that is in the current record before the Commission" and then argues that "[w]ith respect to Petitioner's assumption about New England Power Company ownership, the Chairman points out (through administrative notice of proceedings recently occurring in Docket 4770) that Narragansett Electric owns transmission facilities in Rhode Island." After all it has been through, the Diocese should not be forced to present its case for reconsideration to a Commission chaired by an apparent advocate against them. In fact, the Chair's notice is now sufficiently prejudicial to raise questions about whether anyone at the Commission can now be neutral in reconsidering this matter under the Supreme Court's order. The Diocese has asked the other two Commissioners to take the necessary time to make that determination in consultation with an appropriately neutral authority.

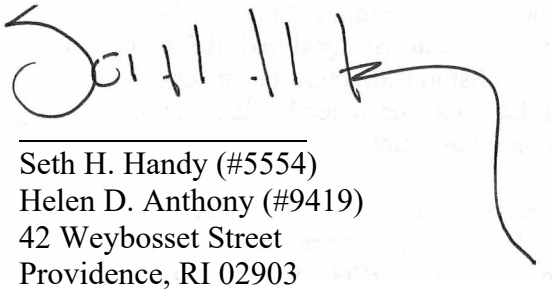
The Diocese submits that any reconsideration of Order 23811 must put measures in place to ensure that the Division's job is done independently, openly, and appropriately, even if that means requiring that the Division must temporarily assign its responsibilities to a neutral

advocate. The Diocese asks the State of Rhode Island and any authority assigned the reconsideration of Order 23811, to require National Grid to meet its burden of proof that these new transmission system charges on local renewable energy projects that do not use the transmission system are authorized by federal law and are just and reasonable, even if such proof must be sought through an open and transparent proceeding initiated at the Federal Energy Regulatory Commission. Until National Grid meets its burden on such charges, it should not be authorized to impose them or allow them to further delay valuable, local renewable energy projects.

THE EPISCOPAL DIOCESE OF RHODE ISLAND

By its attorneys,

HANDY LAW, LLC



Seth H. Handy (#5554)
Helen D. Anthony (#9419)
42 Weybosset Street
Providence, RI 02903
(401) 626-4839
seth@handylawllc.com

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 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.

Seth H. Handy

PUC Docket No. 4981 - Episcopal Diocese of RI – Petition for Declaratory Judgment on Transmission System Costs and Related "Affected System Operator" Studies Service List Updated 4/27/2021

Name/Address	E-mail	
Seth H. Handy, Esq. HANDY LAW, LLC 42 Weybosset Street Providence, RI 02903	seth@handylawllc.com; helen@handylawllc.com;	401-626-4839
Jim Kurtz Burton Dennis	jkurtz@rerenergygroup.com; dennis@episcopalri.org;	
National Grid John K. Habib, Esq. Matthew Stern, Esq. Keegan Werlin LLP 99 High Street, Suite 2900 Boston, MA 02110	jhabib@keeganwerlin.com; Mstern@keeganwerlin.com;	617-951-1354
Adam M. Ramos, Esq. Hinckley, Allen & Snyder LLP 100 Westminster Street Suite 1500 Providence, RI 02903-2319	aramos@hinckleyallen.com; cwhaley@hinckleyallen.com;	
Raquel Webster, Esq. **National Grid** 280 Melrose Street Providence, RI 02907	Raquel.webster@nationalgrid.com; Joanne.Scanlon@nationalgrid.com; Brooke.Skulley@nationalgrid.com; Nancy.Israel@nationalgrid.com; John.Kennedy@nationalgrid.com;	781-907-2121
Division of Public Utilities Jon Hagopian, Division of Public Utilities & Carriers	Jon.hagopian@dpuc.ri.gov; Linda.george@dpuc.ri.gov; TParenteau@riag.ri.gov; gschultz@riag.ri.gov; dmacrae@riag.ri.gov; Christy.hetherington@dpuc.ri.gov; Margaret.L.Hogan@dpuc.ri.gov;	
Luly E. Massaro, Commission Clerk **Public Utilities Commission** 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov; Patricia.lucarelli@puc.ri.gov; Todd.bianco@puc.ri.gov; Alan.nault@puc.ri.gov;	401-780-2017
Office of Energy Resources Albert Vitali, Esq. Nick Ucci Chris Kearns Shauna Beland Carrie Gill	Albert.Vitali@doa.ri.gov; nancy.russolino@doa.ri.gov; Christopher.Kearns@energy.ri.gov; Shauna.Beland@energy.ri.gov; Nicholas.ucci@energy.ri.gov; Carrie.Gill@energy.ri.gov;	401-222-8880
Nicholas Al Ferzly	nalferzly@seadvantage.com	
Jim Kennerly	jkennerly@seadvantage.com	
Hannah Morini Green Development	hm@green-ri.com;	
Scott Milnes Econox Renewables, Inc.	smilnes@econoxgroup.com;	
	skbreininger@pplweb.com;	

Exhibit A

"Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner's Brief."

STATE OF RHODE ISLAND

Public Utilities Commission

89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500

To: Parties in Docket 4981
From: Patricia Lucarelli
Date: May 19, 2021

Subject: **Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner's Brief**

The Chairman has requested that I provide this Notice and Request to the parties well in advance of the hearing on June 2, 2021. The Chairman was not involved in the initial proceedings below and, for that reason, he has reviewed the complete record of the proceedings. In that review, two separate and unrelated issues have been identified.

I. Inclusion of Filings in Docket 4973 Into the Record of this Proceeding

In reviewing the entire record of the proceedings in this Docket 4981, it was noted that there are several references that were made by the parties to Docket of 4973. As the parties are aware, it was a Petition for Dispute Resolution in Docket 4973 and its associated mediation process which commenced the proceedings at the Commission regarding the Episcopal Diocese's requests for relief. That docket then proceeded in parallel with Docket 4981. The references to Docket 4973 and its associated mediation process appeared as follows:

(a) Narragansett Electric's Brief filed in Docket 4981on November 22, 2019, page 10, footnote 10;
(b) Reply of the Episcopal Diocese filed on November 27, 2019, page 2 & footnote 2, page 4, page 5, footnote 5; and
(c) Comments of Narragansett Electric filed on January 23, 2020, page 4.
(d) The Petitioner then cited Docket 4973 in its Brief filed in this remand on April 30, 2021, pages 15-16.

Since the Petitioner has raised issues in the filings with both the Commission (in this remand) and the Supreme Court (initiating the appeal) about how the prior proceedings were conducted, the Chairman intends to include certain public documents from Docket 4973 as a record of the travel of the case that occurred earlier, to inform the Supreme Court of how the dockets proceeded in parallel. All of the documents currently available on the Commission's website listed under Docket 4973 would be included in the record for that purpose. Specifically, the following:

(i) Petition for Dispute Resolution, filed by the Petitioner (Episcopal Diocese) on September 12, 2019;
(ii) The Interim Report of the Mediator, Cynthia Wilson-Frias, published on December 30, 2019;[1]
(iii) Mediator's Recommendations, published April 22, 2020; and
(iv) Letter from the Episcopal Diocese filed April 23, 2020.

If any party has an objection to the inclusion of any of these documents in the record of the travel of the case, the objection will be considered at oral argument. Please notify the Commission by no later than noon on June 1 if you intend to raise an objection at oral argument.

II. Request for Updated Information

The second matter to which the Chairman wishes to draw the parties' attention is not necessarily within the scope of this remand, but relates to information that could have been material to the assumptions that were made by the Commission in the original proceedings, had the information been available. Specifically, at the time of ruling on the Petition, the details of the transmission modifications or improvements that Narragansett Electric claimed should be the cost responsibility of the Petitioner were not known. At that time, it is apparent the parties were waiting for the results of a transmission impact study which would identify the transmission modifications or improvements.

Regarding the prospective transmission improvements or modifications, the Petitioner's Brief filed on April 30, 2021 in this remand proceeding makes two statements which do not appear to be supported by any information that is in the current record before the Commission:

(1) A reference on pages 15-16 to "over $300,000 to fix a transmission line that was already overloaded;" and
(2) The statement on page 19: "The transmission system improvements at issue in Docket 4981 are far far removed from the customer's premises."[2]

Based on the Petitioner's second statement quoted above, it appears to the Chairman that the disputed transmission study may have been completed and, consequently, the parties may now be aware of the transmission improvements or modifications referenced by the Petitioner, their location, and the associated costs that Narragansett Electric has sought to allocate to the Petitioner.

The details of the improvements could be important new information. Those details could have had an impact on how the Commission interpreted R.I.G.L. §39-26.3-4(a) if they had been known at the time the Order. A question of statutory interpretation arises because the Petitioner made the following statement in a reply brief during the earlier proceedings about the assumed ownership of the facilities being modified:

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[1] Footnote 1 on page 2 of the Interim Report (which was also signed by the Petitioner and Narragansett Electric), states in pertinent part: "Following discussion at the October 4, 2019 meeting during which the mediator opined that she could not provide a ruling on one of the claims, the Diocese filed a Declaratory Judgment petition which was docketed by the Commission as Docket No. 4981."

[2] The words "far far" is an accurate quote. The word "far" was repeated, which we assume was written to place emphasis on a great distance (as opposed to a typo).

"The Rhode Island statute states that 'the electric distribution company may only charge an interconnecting, renewable-energy customer for any system modifications *to its electric power system* specifically necessary for and directly related to the interconnection.' R.I. Gen. Laws §39-26.3-4.1(a) Despite [Narragansett Electric's] misguided reference to 'legislative history,' NEP's transmission system very distinctly and definitely is not part of [Narragansett Electric's] 'electric power system.' It is clear from [Narragansett Electric's] comments that the transmission system is owned by NEP – not [Narragansett Electric]."[3] (emphasis in original)

With respect to the Petitioner's assumption about New England Power Company ownership, the Chairman points out (through administrative notice of proceedings recently occurring in Docket 4770) that Narragansett Electric owns transmission facilities in Rhode Island.[4] Further, Narragansett Electric also may own distribution facilities that are used for transmission purposes in Rhode Island.[5] While knowing the ownership or classification of the modified facilities may not have changed the outcome for relief, it could have affected the reasoning that was set forth in the Order when applying the statute to the facts under state law.

In light of the foregoing, the Chairman asks the Petitioner and Narragansett Electric to each provide a project update by responding to the following multi-part question:

Referring to the Petitioner's Brief on page 19 that states: "The transmission system improvements at issue in Docket 4981 are far far removed from the customer's premises," please indicate the status of the transmission impact study and describe:

(i) where the referenced transmission improvements or modifications are proposed to be made and the relative distance from the Eastern Array,
(ii) the facilities that will be improved or modified, including voltage and whether they are classified as transmission or distribution used for transmission,
(iii) the specific legal entity-owner of the facilities to be improved or modified for transmission purposes (i.e., Narragansett Electric, New England Power Company, or an owner not affiliated with National Grid, if known),
(iv) the nature of the improvements or modifications, and
(v) the estimated cost (if any) that Narragansett Electric maintains should be allocated to the Petitioner from the referenced transmission system improvements or modifications.

Please note that this request for updated information should **not** 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

[3] See "The Episcopal Diocese of Rhode Island Reply to TNEC's Public Comment," p. 5
[4] See Docket 4770 at http://www.ripuc.ri.gov/eventsactions/docket/4770page.html under "Compliance Financial Reports", response to PUC 3-10, Attachment 3-10 "New England Electric Transmission-Distribution Classification Asset Rules Document," pages 4-5, and PUC 4-11. The response indicates that Narragansett Electric owns transmission lines and transmission substations in Rhode Island.
[5] The response to PUC 1-2, page 3 in Docket 4770 indicates that there can be distribution facilities owned by Narragansett Electric that are used for transmission purposes, the cost of which flow through transmission rates.

opportunity to address any issues regarding the content and relevancy of the responses – procedural or otherwise – at oral argument. The responses are due no later than close of business, May 24.