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
BRIEF

The Episcopal Diocese of Rhode Island has objected and 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 pre-hearing procedure per Commission Rule 1.17, and it does not provide for a "hearing" as defined by Commission Rule 1.21, or as intended by the Supreme Court. The Diocese is in receipt of an email from Commission Counsel Patti Lucarelli that denies the objection and proceeds with her scheduling order requiring briefing for oral argument. The Diocese has raised procedural concerns about Ms. Lucarelli's email but produces its brief under an objection that it is still being denied the hearing ordered by the Supreme Court.

The procedural schedule itself also prejudices the Diocese. It issued on April 15, the day after the Diocese issued data requests to the Division of Public Utilities and Carriers. The Rules allow twenty-one days to respond to those data requests. The Division responded to the data requests on April 23, predominantly with objections. The scheduling order required the Diocese to file its brief by April 30 at 4 pm. The Diocese has no time to focus on seeking proper resolution of the Division's objections to its data requests. Then the Company and the Division

are given two weeks to reply to the Diocese position. The schedule itself demonstrates a biased process.

If granted a hearing, the Diocese would present more evidence to demonstrate the pernicious nature of the prejudicial influence the utility exerted, the Division's dereliction of its duty, and why the Commission's Order in this docket was illegal and unreasonable. It would 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 history of now clearly demonstrated bias on the issue of utility administration of interconnection. It would explore the Division's process for researching its legal position in docket 4981, how it consulted with the Commission on its decision, who prepared 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 would add content regarding the plague of utility influence on regulatory officials that imperils regulatory and adjudicatory processes and impedes energy policy across the United States. The Diocese would present its evidence on how this adjudicatory process felt to them; as if preordained to adopt the utility position. Given the Commission's questions about the import of the evidence now put before it, the Diocese submits that it would be helpful to have this customer's perspective on how and why the adjudication of this docket felt (and was) very basically unjust.

The Diocese is under the Commission's order to address the following issues in its brief.

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).*

The new evidence includes, but is not limited to, the fact that the Division of Public Utilities and Carriers: 1) claimed a "common interest privilege" with National Grid in docket 4981 that made its documented correspondence with National Grid attorney work product, protected against disclosure, 2) consulted extensively with National Grid's legal counsel, Keegan Werlin, LLP, in the development of its legal position in docket 4981, and 3) received an email from National Grid's counsel which was reproduced as the Division's comments in docket 4981.

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

In order to understand relevance, the Commission may need to appreciate the great economic and policy weight of the issue put to the Commission in docket 4981. Rhode Island's Energy Plan promotes renewable energy to enhance energy security, improve cost-effectiveness and reduce greenhouse gas emissions.[1] The plan directs us to reduce the soft costs of developing local renewable energy in order to serve those purposes. Those soft costs have long included the struggle to interconnect projects to the utility's distribution system. The cost of those utility system interconnections have gone up exorbitantly over the last ten years. The industry's fights to abolish improperly imposed costs of distribution system interconnection, including costs of upgrades that are not related to the interconnecting project, and the requirement to pay taxes on

[1] *Energy 2035: Rhode Island State Energy Plan (2015).*

those improvements despite a federal tax exemption, have thus far predominately gone unregulated and unremedied.

In docket 4981, the Diocese questioned a new utility practice of adding the cost of transmission system upgrades and operating and maintenance charges (also known as "direct assignment facility or DAF charges) to the already anti-economical utility bills to interconnect local clean energy projects. Forced by National Grid's interconnection tariff to dispute interconnection costs at the Commission, the Diocese argued that these transmission system charges are regulated by federal law, which did not authorize their imposition on such projects that do not touch or use the transmission system. Beyond that, the Diocese rebutted National Grid's unsupported presumption that these projects cause net costs to the transmission system, when the projects do not use the transmission system and, in fact, directly reduce its load. Since docket 4981, this utility practice of imposing the cost of the regional transmission system on local clean energy projects has been disputed in at least four Commission dockets (5090, 5103, 5128, and 5149), and at FERC in docket EL21-47. Many other renewable energy projects have suffered and failed from this specific utility indiscretion without capacity or will to dispute. Proposals to remedy the utility's egregious administration of interconnection are currently under consideration in two pieces of legislation pending with the general assembly this legislative session, H5673 and H6066. National Grid's abuse of discretion, endorsed by the Division and condoned by the Commission in docket 4981, shifting transmission system costs onto local renewable energy projects, has major economic and policy consequence for Rhode Island.[2]

[2] The economic consequences of the Commission's Order in this docket are astounding. As just one example, the Commission can refer to the filings in FERC Docket EL21-47 where the Complainant complains that National Grid has assessed the projects at issue $11,206,661 in transmission system upgrade costs and $514,740 per year for operating and maintaining those upgrades, for a total of almost $30 million over the 35-year life of the proposed projects. The economics of these new obligations are simply devastating to local renewable energy.

The disposition of docket 4981 also has major implications for National Grid's bottom line. One might think that a distribution service company might proactively advocate for its distribution customers, making sure they are not subjected to unwarranted assessments of transmission system costs. But, here National Grid owns both the distribution and the transmission utility and operates them in tandem, for its great profit. Narragansett Electric Company extracts these transmission system fees from local renewable energy customers to pay them to its own transmission system affiliate New England Power Company, expressing no qualms about it.

Approximately sixty five percent (65%) of our energy bill comes from the cost of National Grid's investment in and operation of our transmission and distribution systems through its affiliates New England Power Company and Narragansett Electric Co. In its annual report, U.S. National Grid reported an annual operational profit of £1.724 billion (Annual Report 2018/2019, hereafter "AR," p. 26), spending £2.6 billion on energy infrastructure in its United States regulated markets (AR p. 36). That year, 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. Rhode Island's Transforming the Power Sector report observes,

> One indication of how the utility business model and regulatory framework are out-of-step with today's expectations for a clean, cost-effective and resilient electricity system is the electric grid's system efficiency, defined as the ratio of peak to average demand. While many industries have become more efficient over the last few decades by leveraging information technologies to more fully utilize capital investment, 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, as illustrated in Figure 4. To meet peak demand, our system currently invests in solutions that are more expensive than is necessary. We have the technological opportunity to shift the hours of demand and thereby reduce everyone's utility bills.[3]

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

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 promise to bring down the need for National Grid's huge infrastructure investments.

Now that National Grid has announced its intent to sell its Rhode Island distribution company, Narragansett Electric Company, to PPL Corporation, the picture of the utility's financial interest in docket 4981 becomes even more evident. Transferring the financial obligation to upgrade, operate and maintain the transmission system to local renewable energy customers gives National Grid's transmission affiliate ongoing revenue from customers over which it has no direct regulatory jurisdiction, even after it will no longer have an interest in our distribution system. That is all to the detriment of Rhode Island policy supporting local clean energy, developers building such projects, and ratepayers who suffer reduced access to economical projects providing cheaper, cleaner and more secure local renewable energy.

The proposed Diocese camp project is a net metered solar farm designed to generate lease revenue for the operation of a summer camp for inner city kids while producing lower cost, more secure clean electricity to Diocese affiliated entities and serving the Diocese's mission of creation care. 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; <u>to improve distribution system resilience and reliability; and to reduce distribution system costs</u>." R.I. Gen. Laws §39-26.4-1 (emphasis added). In docket 4981 the Division (and consequently the Commission) completely

lost site of the legislative declaration of the beneficial impacts of net metering, fabricating an unsupported theory of transmission system cost causation to allow the extraction of huge new transmission system bills for National Grid's collection.

The new evidence has central relevance to the Commission's ruling in docket 4981. It demonstrates that National Grid subjected the Diocese and all Rhode Island customers to undue and unreasonable prejudice in violation of R.I. Gen. Laws §39-1-35. The admission and evidence of the Division's collaboration with National Grid in this docket, demonstrates that the Division failed its duties to both the Diocese and the State of Rhode Island in docket 4981 and that such prejudice and failure illegally and unreasonably biased the decision-making process and the Commission's decision against the Diocese's interests and the interests of Rhode Island energy law and policy.

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." The Division is to provide for just and reasonable rates and charges without unjust discrimination, undue

preferences or advantages, or unfair or destructive competitive practices, because greater competition and lower rates promote the state's economy. The Division's due regard for the preservation and enhancement of the environment is necessary to protect the health and general welfare of Rhode Island citizens.

The Division had an extremely important job to do in docket 4981. It was to represent the ratepayer interest in advising the Commission. Despite its charge and heavy responsibility, the new evidence shows that the Division believed it shared a common interest with National Grid. Narragansett is prohibited from subjecting its customers to undue or unreasonable prejudice. R.I. Gen. Laws §39-1-35. Yet, in its reply filed with the Attorney General in response to the Diocese's Access to Public Records Act appeal, the Division admits it succumbed to such utility prejudice to the detriment of its customers. It 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.[4]

The Diocese's concern that National Grid exerted undue influence arose out of the obvious symmetries in the position papers filed by National Grid and the Division. As set out in footnotes 5 and 9 of the Diocese's reply brief,

> [t]he Division's brief eerily echoes NEC's, controversially (for a state agency meant to act as "consumer advocate"), but it (sadly) adds little substance. . .The fact that public servants at ISO and the Division of Public Utilities and Carriers stand by and condone NEP/NEC's effort to impose costs and obligations on non-

[4] See **Exhibit A**.

> jurisdictional customers is gut-wrenching systemic bias that counters the interests of good policy on energy and climate change. Here it inappropriately and unaffordably burdens the Diocese with advocacy desperately needed to uphold those interests. The imbalance creates a culture that tends toward utility deference just when we most need to scrutinize how utility business models conflict with right public policy. . .

The Commission saw no cause to address such apparent prejudice. After Order 23811 issued, the Diocese pursued its access to public records act request to further document the extent of the utility prejudice and the Division's transgression. The Commission now asks the Diocese to explain the relevance of that production demonstrating that National Grid dealt prejudice to the Division.

As the Attorney General set out in its Access to Public Records Act decision, "the common interest doctrine privilege permits parties whose legal interests coincide to share privileged materials with one another in order to more effectively prosecute or defend their claims. . .The doctrine allows attorneys representing different clients with identical legal interests to share otherwise privileged information without a resultant waiver. . .The 'common interest doctrine' applies to communications that were made 'in the course of a joint defense effort." (citations omitted) The Attorney General rejected the Division's claim of common interest, finding no "evidence that it was engaged in such a joint defense effort with National Grid at the time when these emails were exchanged" and that "the record indicates that National Grid was an advocate for its own interests and not a provider of independent advice." Here again, Rhode Island's Transforming the Power Sector is most clear on the subject of conflicting purposes:

> The primary financial means through which the utility can grow its business and enhance earnings for shareholders is to invest in capital projects. This bias, created by the regulatory framework rather than by the utility itself, discourages the utility from seeking more efficient solutions that do not depend on large capital investments. . . the current regulatory framework does not incent the utility to maximize integration of DER [distributed energy resources], which would reduce customer exposure to increasing wholesale supply costs and also increase the region's energy security. That is, the regulatory framework may not sufficiently incent the utility to build a DER-centered system, consistent with the state's Least-Cost Procurement statute. Instead, under the

> current regulatory framework the utility neither benefits nor is penalized from increasing electricity supply costs that customers pay. [5]

The fact that the State's advocate believed that it shared National Grid's economic interest in the resolution of docket 4981 exposes rank prejudice that renders docket 4981 and the Commission's order illegal and unreasonable. The documents produced under the Attorney General's order 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. Despite the Division's attempt to convince our attorney general of the contrary, undue influence clearly does have a place in regulatory matters.

Astonishingly, the Division still has no remorse. It stubbornly maintains that it has a common interest with National Grid. Anticipating the evidentiary hearing (that it has been denied thus far), the Diocese recently served a data request on this point.

> **1-12 Explain how the Division could properly claim a common interest with a utility it is charged to regulate in a fair and non-discriminatory manner as to claims brought by a customer contesting the Company's right to impose federal obligations on a renewable energy project interconnecting to Rhode Island's distribution system under the Company's distribution system interconnection tariff so that it could generate cheaper, cleaner and more secure renewable energy?**
>
> RESPONSE:
>
> The Division objects to Data Request 1-12 on the grounds that it is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court's remand nor is reasonably likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-12 on the ground that the request erroneously assumes the that the Division must always support the generation of "cheaper . . . renewable energy." 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 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. It should also be noted that the Division was acting as a party/ratepayer advocate in this matter and not in its regulatory capacity.

[5] Id. at pp. 16, 18.

The Division's claim of harassment from this question is, by itself, evidence of unseemly imbalance. That the Division still so stubbornly clings to its position that it shares interests with the private utility further illustrates the rank prejudice that infects Rhode Island. Even after the attorney general's attempt at correction, the Division remains convinced that it has "common interest" with National Grid, the company who makes money from investments in moving electricity and thus prospers from the suppression of local energy projects that reduce those costs for Rhode Island ratepayers. Beyond that, the Division's conclusion that "local renewable energy projects are subsidized by the general body of ratepayers and exceed the cost of more traditional forms of energy within National Grid's portfolio" is not supported by any evidence, is at odds with the cost benefit principles and analysis expounded clearly in Commission docket 4600, and is wholly inconsistent with the findings and directives of well-established Rhode Island law and policy. The Division has absolutely no authority or basis to keep making such prejudicial policy pronouncements.[6]

The Division's still lingering prejudice is directly material to the Commission's deliberation and order in docket 4981. The Diocese argued that neither the utility nor the Division had any basis upon which to conclude that the camp project caused any cost to the transmission system. The Diocese project is not interconnecting to the transmission system and does not propose to use the transmission system in any way. The fact that National Grid's

[6] According to the United States Energy Information Service only one state had higher electric bills than Rhode Island as of December 2020. The Division's aggressive assertion that it shares the utility's wisdom on how traditional sources of electricity will keep our electrical costs down is (at best) not based on a record of success. The Commission Chair, who has recused himself from this proceeding (either due to his history of work for National Grid or because he was engaged to consult with the Division during docket 4981), made a similar policy pronouncement to the Northeast Clean Energy Council on its RI Clean Energy Day. See his presentation at **Exhibit B**. Chairman Geratowski laid out the components of the electrical bill, including its dominating transmission and distribution system service charges, and then focused in on the much smaller sliver representing cost of renewable energy, laying out his thoughts on how to bring those costs down. Since when does the Commission make such policy pronouncements? How could that pronouncement possibly be considered consistent with the general assembly's directives on implementation of our energy laws and policy?

transmission affiliate New England Power might conclude that one or more local renewable energy projects impact the transmission system does not sustain a conclusion that such projects cause net costs to that system (i.e., costs that exceed their benefits). The Commission has developed a more sophisticated analysis of the total costs and benefits of its energy decisions, it adopted in docket 4600. The Division and the Commission ignored that analysis entirely in reaching its presumptuous conclusions in docket 4981. The Commission has no jurisdiction to determine whether such charges are authorized and has no tariff on file that addresses the mechanics of any such transmission cost causation analysis, assessment or allocation.

The Division's collaboration with National Grid violates the administrative procedures act prohibition against ex parte consultations.

> **§ 42-35-13. Ex parte consultations.** Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render an order or to make findings of fact and conclusions of law in a contested case shall not, directly or indirectly, in connection with any issue of fact, communicate with any person or party, nor, in connection with any issue of law, with any party or his or her representative, except upon notice and opportunity for all parties to participate; but any agency member:
>
> (1) May communicate with other members of the agency, and
>
> (2) May have the aid and advice of one or more personal assistants.

The Division is an agency that was assigned to make findings of fact and draw conclusions of law in a contested case. The matter was a "contested case" in which the legal rights, duties, or privileges of a specific party were required by law to be determined by an agency after an opportunity for hearing. R.I. Gen. Laws §42-35-1(5). Commission rule of procedure 1.11(C) states that petitions for declaratory judgment are brought to the Commission pursuant to R.I. Gen. Laws §42-35-8. R.I. Gen. Laws §42-35-8(b) requires an agency to promulgate rules prescribing the form of a declaratory judgment petition and the procedure for its submission, consideration, and prompt disposition. Commission rule of procedure 1.21(D) grants all parties to a declaratory judgment proceeding the right to a hearing to present argument. In the context

of this contested case, the evidence is now clear that the Division directly communicated with one party in connection with issues of fact and law, without providing notice and opportunity for all parties to participate. That violation of Rhode Island's ex parte rules is enough to require reversal of the Commission's Order 23811.

The Commission and the Division get their duties from a shared enabling act and purpose. Ratepayers rely on the Division for the effectiveness of its independent advocacy on the cost, security and environmental impact of our energy supply. The Division's now evident failure to maintain its independence from National Grid in docket 4981 caused prejudice that resulted in an illegal and unreasonable Order.[7]

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.*

The Commission's question is off point. "New evidence" does not have to put facts in dispute to be relevant to the Commission's decision. The evidence of prejudice and the Division's dereliction of its duty presented here is overwhelmingly relevant to the Commission's disposition of docket 4981, whether it involves disputes of fact or not. The Commission was asked to make a declaration on legal questions presented for resolution. The new evidence demonstrates that the utility had prejudicial influence on the Division and that the Division's

[7] This is definitely not the first case of unscrupulous utility influence on state agencies; rather, it appears to be a page in the utility playbook that has caused a national epidemic. See Farrell, J., "Beyond Utility 2.0 to Energy Democracy," pp. 20-21 (Dec. 2014); OH PUC Chair Resigns Four Days After FBI Search (Utility Dive, 11/21/20) - https://www.utilitydive.com/news/ohio-puc-chairman-samuel-randazzo-abruptly-resigns-four-days-after-fbi-sear/589494/; Chesser, Paul. "Revolving Door" Issue Raised. (Carolina Journal Online, 12/3/03). Accessed 10/8/14 at http://bit.ly/1nd4oKD; Kusnetz, Nicholas. Revolving door swings freely in America's statehouses. (Center for Public Integrity, 12/16/13). Accessed 10/8/14 at http://bit.ly/1xpwgfe; Editorial staff. Revolving door between PG&E and CPUC must shut. (SF Examiner, 1/27/12). Accessed 10/8/14 at http://bit.ly/1xpwuTM; Patel, Julie. Florida Public Service Commission Under Investigation For Ties To Utilities. (Sun Sentinel, 9/2/09). Accessed 10/8/14 at http://bit.ly/1xpyBHb; Farrell, J. Ejecting the Power Line Foxes from the Electric Customer Henhouse. (Institute for Local Self-Reliance, 6/24/14). Accessed 9/12/14 at http://bit.ly/1qQb53S.

express utility bias impacted the presentation of positions, the deliberations and the resulting Order 23811 in ways that are fundamentally illegal and unreasonable.

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.*

The Commission's question is off point. "New evidence" does not have to put facts in dispute to be relevant to the Commission's decision. The evidence of prejudice and the Division's dereliction of its duty presented here is overwhelmingly relevant to the Commission's disposition of docket 4981, whether it involves disputes of fact or not. The Commission was asked to make a declaration on legal questions presented for resolution. The new evidence demonstrates that the utility had prejudicial influence on the Division and that the Division's express utility bias impacted the presentation of positions, the deliberations and the resulting Order 23811 in ways that are fundamentally illegal and unreasonable.

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.*

It is disturbing that the Commission persists with its questioning of how this new evidence might impact its position in docket 4981, after a second remand from the Supreme Court. In its first remand, the Supreme Court Ordered that "[u]pon consideration of the affidavit, this Court finds the newly discovered evidence to be of such character and sufficient importance to warrant reconsideration of the matter by the Commission." On this second Order of remand, the Court writes, "[t]his matter is remanded for the Commission to comply with G.L. 1956 § 39-5-5, with directions 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."

Like the Division's assertion of "common interest," the Commission's slant on this issue shows the extent of the problem of utility influence in Rhode Island's administrative, regulatory and adjudicatory bodies. 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. It was this evidently 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.

The Commission is presumably 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. In docket 4483, a developer fought excessive charges including the utility practice of overestimating upgrade costs for prepayment and never then truing up to the actual costs of the upgrades and of assessing taxes not actually owed to the federal government – the Division opposed the developer.[8] In docket 4547, the developer challenged the utility's requirement that it replace eleven miles of distribution system infrastructure that was more than thirty years old and had been fully depreciated at a cost of almost $13,000,000, while quoting the actual cost of interconnection at $42,000 – the Division abstained. In docket 4973, the Diocese first got feasibility approval with an estimate of $1.2 million and only later learned that over half of the project was infeasible and the cost to connect the rest would be over $3 million including over $300,000 to fix a transmission line that was

[8] See http://www.ripuc.ri.gov/eventsactions/docket/4483-DPU-Booth_6-5-15.pdf; http://www.ripuc.ri.gov/eventsactions/docket/4483-DPU-Memorandum_11-12-15.pdf

already overloaded – the Division abstained. In docket 5090, the utility entered an interconnection services agreement and then added an unanticipated and unauthorized $5.8 million transmission operating and maintenance (DAF) upcharge. In docket 5103, the petitioner disputes Narragansett's attempt to change the terms of its interconnection contract in order to impose more than $23 million of DAF charges on a project designed to send electricity to Brown University. In docket 5128 and FERC docket EL21-47, the complainant challenges National Grid's authority to impose almost $30 million in DAF charges to operate and maintain the transmission system on a local renewable energy project that will not use and will reduce the load on the transmission system. Most of these disputes also involve major utility delays that are too complicated to summarize here but also demonstrate failed regulatory enforcement of statutory and tariff deadlines which can have even greater consequence for project feasibility, financial and otherwise. For all the cases that have been disputed with the utility and reported, there are many more where the developer or benefiting customer does not have the resources to push back or has kept quiet, often out of fear of the utility's unfettered discretion and potential retribution.

The advocacy about cost causation and the need to consider benefits came to a head in Commission docket 4568 where the utility claimed it needed to assess an access fee on renewable energy projects to address a ratepayer subsidization problem. When renewable energy developers and advocates shot that filing down for its presumptions about costs and benefits that were not evidenced by any proper cost benefit analysis, the utility 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. Whenever experts and stakeholders have come together to develop plans or policies for Rhode Island's energy future, they have always and uniformly concluded that distributed generation of local renewable energy produces benefits to the security of our electrical system, to ratepayers, and to our environment. That was the case in docket 4600. It was also the result of the very robust public stakeholder process that produced our state energy plan, Energy 2035.

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 cost obligation is based on an unsupported utility presumption that local projects cost the transmission system, a presumption that openly disregards the great system benefits and other avoided costs that result from local distributed energy resources.

In docket 5077, the industry proposed to amend National Grid's interconnection tariff to provide for the appointment of an independent ombudsman to oversee the administration of interconnection and put limits on the utility's discretion to inflict its conflicting interests on the new energy economy – but, the Division once again did the utility's bidding in objecting to that proposal.[9] In Commission docket 5088, when a renewable energy developer moved to intervene in the price setting exercise for the renewable energy growth program to ensure that the projected cost of developing renewable energy properly reflects the new transmission system charges, the Division objected to the intervention claiming that it adequately represented the developer's interests and the interest of the public.[10] The Commission then refused intervention. We cannot

[9] http://www.ripuc.ri.gov/eventsactions/docket/5077-DIV-Comments%20re%20Interconnection%20Standards%201-19-20.pdf
[10] See http://www.ripuc.ri.gov/eventsactions/docket/5088-DPU-Objection%2012-21-20.pdf

know the full impact of this on equitable access to cheaper, cleaner and more secure local renewable energy or on Rhode Island's new energy economy. The very first of the Regulatory Assistance Project's principles of smart rate design is that "a customer should be able to connect to the grid for no more than the cost of connecting to the grid."[11] National Grid sure has not lived by that simple principle; nor has the Division helped enforce it.

The language of Order 23811 (Order) demonstrates the bias that betrayed the regulatory charge and rendered 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. 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 for the Commission to assess FERC-regulated transmission system costs directly to customers building locally distributed clean energy.

The view of cost causation enunciated in the Order bespeaks utility influenced error. It starts by properly reciting that FERC rules provide for allocation of interconnection costs on a nondiscriminatory basis and defining 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

[11] *Smart Rate design for a Smart Future,* Regulatory Assistance project (July 2015). https://www.raponline.org/knowledge-center/smart-rate-design-for-a-smart-future/

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 far far removed from the customer's premises. The transmission system is a regional grid regulated by the federal government precisely because it serves more than the state of Rhode Island. It clearly serves much more than any increased load presented by individual or even groups of local renewable energy projects. In fact, since those projects are purely local, they reduce the need to run electricity across the regional transmission system. If the Division had not submitted to utility influence, but had conducted the independent investigation that Rhode Island ratepayers are entitle to, they would have applied the cost/benefit analysis mandated from docket 4600 and had sufficient facts to conclude that distributed generation projects greatly reduce load and demands on the transmission system and in that way (and many others) produce significant net 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 consuming customers extending electrical service. Order at p. 19. The Commission Order 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 consuming customers that extend lines to receive electrical service produce to our electrical system. 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 with 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 benefit the system.

Among the many issues that the Division neglected to consider in reaching its utility influenced conclusion on the issue presented in Docket 4981 is administrative procedure. Consequently, one of many big repercussions of Order 23811, is that the utility has started administering the imposition of transmission system costs and allocating those costs at its totally unregulated indiscretion. The federal rules do not authorize the practice, so they do not provide guidance as to how it should be done. When the Commission decided that the practice was authorized according to state cost causation principles, one might expect that it would have at least ensured that the rules were in place to provide for equity in the administration of the assessment and allocation of transmission system costs. But there are no such rules in place. National Grid's tariff for "distribution system interconnections" simply does not address how the utility will hold distribution system projects responsible for transmission system expenses. As a result, there is pure pandemonium. The utility haphazardly charges single projects for impacts assessed to groups and even for impacts assessed to other groups, sometimes seemingly out of pure vengeance. There is no logic to the utility administration of this new windfall of transmission system wealth, nor is there any regulator overseeing it.

CONCLUSION

The state of Rhode Island has declared its purpose:

§ 39-1-1. Declaration of policy – Purposes.

(a) The general assembly finds and therefore declares that:

(1) The businesses of distributing electrical energy, producing and transporting manufactured and natural gas, operating water works and furnishing supplies of water for domestic, industrial, and commercial use, offering to the public transportation of persons and property, furnishing and servicing telephonic and wireless audio and visual communication systems, and operation of community antenna television systems are affected with a public interest;

(2) Supervision 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; and

(3) Preservation of the state's resources, commerce, and industry requires the assurance of adequate public transportation and communication facilities, water supplies, and an abundance of energy, all supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreational assets, and the strengthening of long-range, land-use planning.

(b) It is hereby declared to be the policy of the state 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 cooperate with other states and agencies of the federal government in promoting and coordinating efforts to achieve realization of this policy.

(c) To this end, there is hereby vested 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, and by securing a judicial review to any party aggrieved by such an administrative proceeding or ruling.

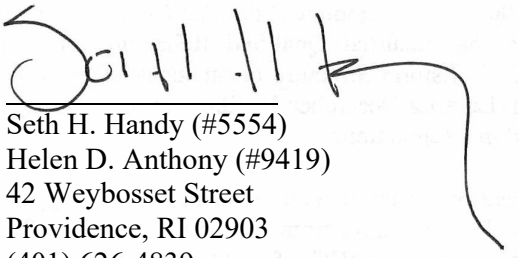
Beyond the questions directed by the Commission, Rhode Island is at a pivot point. Having resolved that we must turn to renewable energy to address our climate crisis, we can no longer afford unwarranted obstructions to our new energy economy. National Grid holds economic interests and incentives that are fundamentally inconsistent with Rhode Island's commitment to a future of cheaper, more secure and clean local renewable energy. The Division of Public Utilities and Carriers does not hold a common interest with National Grid. Its decision to consult with National Grid and adopt National Grid's position in docket 4981 undermined state interests and the Diocese's interests, including its mission of creation care. The resulting Order ignored Rhode Island policy for the benefit of the utility's worldview and profit. That is because

it was marred by utility prejudice that is now openly evident, thanks to the Affidavit of Dennis Burton. The Diocese asks the Commission to reconsider and reverse Order 23811.

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

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 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	Albert.Vitali@doa.ri.gov; nancy.russolino@doa.ri.gov;	401-222-8880

Shauna Beland Carrie Gill	Christopher.Kearns@energy.ri.gov; Shauna.Beland@energy.ri.gov; Nicholas.ucci@energy.ri.gov; Carrie.Gill@energy.ri.gov;	
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

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 Jefferson Boulevard
Warwick, R.I. 02888
(401) 941-4500

FAX (401) 941-9248
TDD (401) 941-4500

May 14, 2020

Kayla E. O'Rourke, Esq.
Special Assistant Attorney General
Office of Attorney General
150 South Main Street,
Providence, RI 02903

Re: Episcopal Diocese of Rhode Island v. Rhode Island Division of Public Utilities and Carriers.

Dear Attorney O'Rourke:

Please accept this letter as the Rhode Island Division of Public Utilities and Carriers' ("Division") substantive response to the May 4, 2020 Access to Public Records Act ("APRA") complaint filed by Attorney Seth Handy on behalf of the Episcopal Diocese of Rhode Island ("Complainant").

Travel

On April 21, 2020 the Complainant filed an APRA request with the Division seeking the following records:

"[a]ny record of any communications between staff of the... Division... and any employee of National Grid, New England Power Company or Narragansett Electric Company regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981...."

"[a]ny record of any communications between staff of the... Division... and any agent of National Grid, New England Power Company or Narragansett Electric Company, including but not limited to any employee or staff of its legal counsel Keegan Werlin LLP including but not limited to Jack Habib, Esq. or

Stephen Frias, Esq. regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981..."

"...any memorandums generated by...[Division] for the Interim Director's consideration regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981...."

In response to the Complainant's APRA request, on April 22, 2020, the Division issued a timely reply indicating that no such records existed and/or that the records requested were not deemed public under the exception contained in R.I.G.L. §38-2-2(4)(E). This exception covers "[a]ny records that would not be available by law or rule of court to opposing party in litigation."

Subsequently, on April 23, 2020, the Complainant filed a R.I.G.L. §38-2-8 administrative appeal with the Division's "chief administrative officer" (Administrator). The Complainant asserted that the Division improperly denied access to records by failing to provide "any explanation for why the requested records would not be available to opposing parties in litigation."

On April 30, 2020, the Division's Administrator affirmed that the records in issue were properly withheld from disclosure under APRA due to the "work product" nature of the records. The Administrator also confirmed that she never received "a legal memorandum on the subject matter contained in your APRA request." This confirmation was offered in support of the Division's declaration on April 22, 2020 that no records existed responsive to the Complainant's request for "any memorandums generated by...[Division] for the Interim Director's consideration regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981...."

In its appeal, the Complainant relies on a distinction between 'core' or 'opinion' work product materials and 'factual' or 'ordinary' work product materials. The Complainant properly describes "core" or "opinion" materials as materials constituting the attorney's mental impressions, conclusions, opinions, or legal theories and agrees that these materials are rightfully protected from discovery. With respect to "factual" or "ordinary" materials, which the Complainant properly describes as the remainder of work product materials, the Complainant argues that many courts have afforded such materials less protection. Citing to Rule 26(b)(3), the Complainant argues that these materials are discoverable if the party seeking the materials "demonstrates a substantial need for the materials and that it cannot obtain the substantial equivalent without undue hardship."

The Complainant next asserts that it needs the records "out of concern that National Grid and its affiliates... exercised undue influence over the [Division] in its adjudicatory proceeding at the RIPUC" [in Dockets 4973 and 4981].

Division Response

The Complainant recently initiated and appeared in two dockets before the Rhode Island Public Utilities Commission ("Commission"), in dockets 4973 and 4981. Docket 4973 relates to a September 13, 2019 petition filing the Complainant made with the Commission seeking a dispute resolution in accordance with National Grid's Standards for Connecting Distributed Generation Tariff. This matter is still pending before the Commission. Docket 4981 related to an October 9, 2019 petition filing with the Commission seeking a declaratory judgment on, *inter alia,* whether the Narragansett Electric Company may, pursuant to its distribution system interconnection tariff, subject the Complainant's planned renewable energy project to costs associated with studies and transmission system upgrades. The Division did not participate in Docket 4973; the Division did participate in Docket 4981.

The Complainant was aggrieved by the Commission's decision in Docket 4981, which was issued on April 14, 2020, and is currently appealing that decision to the Rhode Island Supreme Court.

It appears that in furtherance of pursuing its appeal of the Commission's decision in Docket 4981, the Complainant is engaging in a fishing expedition to identify communications between the Division's staff and employees and agents of National Grid. The Complainant is pursuing an absurd legal theory that the Division (the regulator and ratepayer advocate) was somehow "unduly influenced" by National Grid in Dockets 4973 and 4981. Before addressing the work product aspect of the records involved, the Division believes it to be necessary to address this claim by the Complainant.

There is absolutely no prohibition that precludes parties from discussing issues and related matters in docket proceedings before the Commission, or, for that matter, in cases before the Courts. Therefore, to suggest that the Division committed some breach of regulatory procedure or ethics by discussing a docket matter with National Grid is baseless and ridiculous on its face. Not to mention that the Division never participated in Docket 4973.

Claiming to need the requested records to confirm this imaginary "undue influence" fails to satisfy even the "factual" or "ordinary" work product standard. It is necessary for the Complainant to show that a denial of

production will result in an injustice or undue hardship.[1] It is also necessary for the Complainant to demonstrate that the records sought are relevant.[2] However, confirming that a Division attorney discussed the legal merits of the Complainant's petition with National Grid's counsel, and even knowing the substance 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 occur there must be a "dominant" party and a "subservient" party.[3] To suggest that the National Grid has dominance over the Division is patently absurd.

Further, under the "common interest doctrine," it is not surprising that National Grid and the Division would share discussions on the merits of the Complainant's petition for a declaratory ruling. Courts have generally recognized that if the parties share a **common interest** in litigation, they should be able to communicate with their respective attorneys and with each other to more effectively represent their clients.[4] The common interest privilege is "an extension of the attorney client privilege."[5] "[A]s an exception to waiver, the joint defense or common interest rule presupposes the existence of an otherwise valid privilege, and the rule applies not only to communications subject to the attorney-client privilege, but also to communications protected by the work-product doctrine."[6]

It is also important to recognize that the declaratory judgment matter before the Commission does not constitute a "contested case" under Rhode Island law. R.I.G.L. §42-35-1(5) defines a "contested case" as "a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an agency after an opportunity for hearing." However, in stark contrast, in declaratory judgment cases the legal rights, duties and privileges of a "specific party" are not in issue. Instead, the agency is narrowly charged with the obligation of issuing a legal opinion "as to the applicability of any statutory provision or of any rule or order of the agency."[7] Moreover, there is no requirement for a hearing, which must be required by law in order for an administrative matter to constitute a contested case.[8] The declaratory

---

[1] Fireman's Fund Insurance Co. v. McAlpine, 120 R.I. 744, 391 A.2d 84 (1978).
[2] Id.
[3] Tinney v. Tinney, 770 A.2d 420 (R.I. 2001).
[4] Hall v. Shiff, 2015 WL 730661 (R.I. Super).
[5] Waller v. Fin. Corp. of America, 828 F.2d 579, 583 n.7 (9th Cir. 1987).
[6] In re Grand Jury Subpoenas, 89-3 & 89-4, John Doe 89-129, 902 F.2d 244, 249 (4th Cir. 1990).
[7] R.I.G.L. §42-35-8.
[8] Property Advisory Group, Inc. v Rylant, 636 A.2d 317, 318 (R.I. 1994). See also, Interstate Navigation Co. v. Division of Public Utilities and Carriers, C.A. No. 01-5095, filed June 27, 2002.

judgment matter before the Commission in Docket 4981 was addressed by the Commission on a wholly discretionary basis. Under R.I.G.L. §42-35-8(c), the Commission could have declined to entertain the Complainant's petition.

The uncontested nature of declaratory judgment cases before Rhode Island administrative agencies is also abundantly evident from the "rulings" and "prompt disposition" terminology used in the State's Administrative Procedures Act ("APA").[9] The law contemplates the issuance of a "ruling" as opposed to an "order" or a "decision" and further, expects that the ruling be delivered in a "prompt" manner. This requirement is clearly at odds with the attendant "notice," "records" and "hearing" rights guaranteed in all contested cases.[10]

The uncontested nature of declaratory judgment cases before Rhode Island administrative agencies is further evidenced from the APA's prescribed treatment of agency declaratory rulings in the event of a subsequent appeal to the Court. The legislature has determined that "rulings disposing of petitions [for declaratory rulings] have the same status as agency orders in contested cases."[11] Clearly, it would be unnecessary for the legislature to provide this judicial review instruction in the APA if the declaratory judgment proceedings taking place before state administrative agencies were intended to be, and conducted as, "contested cases." Such an appeals-related instruction, in the opinion of the Division, exists solely to streamline the appellate process by providing the Courts with the same limited standard of review used in contested cases under the APA. In the absence of this instruction, the Courts would alternatively be faced with a de novo-type appeal, which would require a significantly more time-consuming examination of the declaratory ruling matter in issue.[12]

As additional support for the Division's conclusion that declaratory ruling cases before Rhode Island administrative agencies are not "contested cases" within the definition provided in the APA, the Division points to the similarities between declaratory judgment proceedings and rulemaking proceedings. Rulemaking proceedings before administrative agencies similarly do not guarantee a hearing or relate to "a proceeding... in which the legal rights, duties, or privileges of a specific party are required by law to be

[9] R.I.G.L. §42-35-8.
[10] R.I.G.L. §42-35-9.
[11] R.I.G.L. §42-35-8.
[12] See Herald Press, Inc. v. Norberg, 122 R.I. 264, 405 A.2d 1171 (R.I. 1979). The Court held that a taxpayer appeal was a "contested case" under the APA, and therefore, the taxpayer was not entitled to a de novo review in the superior court.

determined by an agency" and have for these reasons been determined not to be "contested cases" under Rhode Island law.[13]

The link between declaratory ruling cases and rulemaking proceedings before administrative agencies is particularly noteworthy in the context of the instant Docket 4981 matter. In rulemakings, administrative agencies are focused exclusively on the adoption and promulgation of rules and regulations; rules and regulations that would apply to everyone. The "legal rights, duties, or privileges of a specific party" are not in play, and therefore, the agency has no legal obligation to remain neutral or impartial with respect to the interests of a purported party. The same standard applies in declaratory ruling matters. In such matters, as noted above, an agency's role is to issue a legal opinion "as to the applicability of any statutory provision or of any rule or order of the agency." This legal opinion is not provided in response to the "legal rights, duties, or privileges of a specific party," but instead offered as a generic determination of whether an agency statute, rule or order would apply in a given set of facts. Accordingly, here too, an agency has no legal obligation to remain neutral or impartial with respect to the interests of a purported party. Indeed, there is no *de facto* party or parties in a rulemaking or declaratory ruling proceeding before administrative agencies, only petitioners and participants.

The Complainant correctly states that "opinion" or "core" work product is protected from disclosure. Such work product materials include an attorney's mental impressions, conclusions, opinions, or legal theories."[14] Email communications, if they contain such "opinion" or "core" work product materials, are similarly exempt from disclosure.[15] In the instant matter, the materials being protected from disclosure are several connected email communications between a Division staff attorney and attorneys for National Grid. While most of these emails benignly address scheduling matters, the core message in these email communications contain the mental impressions, conclusions, opinions and legal theories of the Division's attorney assigned to this docket. An *in camera* review will confirm this. Under Rhode Island law, "opinion" work product receives the highest level of protection. Such opinion work product qualifies for absolute immunity from discovery and under no circumstances may another party obtain, through discovery [or APRA request], an attorney's recorded thoughts and theories.[16]

---

[13] See Interstate Navigation Company v. Division of Public Utilities and Carriers, 202 WL 1804072 (R.I. Super.).

[14] Crowe Countryside Realty Associates, Co., LLC v. Novare Engineers, Inc., 891 A.2d 838 (R.I. 2006).

[15] Judicial Watch, Inc. v. Department of Justice, 432 F.3d 366 (2005).

[16] Henderson v. Newport County Regional Young Men's Christian Ass'n, 966 A.2d 1242, 1247 (R.I. 2009).

Alternatively, with only factual and ordinary work product materials, the Complainant is required to demonstrate that its case would be unduly prejudiced if the materials are not produced. However, in this matter, the Complainant has no litigation pending. The only case pending is an administrative appeal of a Commission decision before the Supreme Court, a matter that offers the Complainant no additional discovery opportunities; the Complainant's appeal before the Supreme Court is confined to the record below.

RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS

By its attorney,

John Spirito, Jr., Esq. (#2805)
Chief Legal Counsel
89 Jefferson Blvd.
Warwick, RI 02888
401-780-2152
john.spirito@dpuc.ri.gov

Dated: May 14, 2020

*The records that are the subject of this complaint are attached for an *in camera* inspection by the Attorney General.

CERTIFICATION

I hereby certify that on May 14, 2020, I sent a copy of this response to Attorney Seth Handy by electronic mail and regular mail. The records subject to the instant APRA appeal were omitted.

John Spirito, Jr., Esq. (#2805)
Chief Legal Counsel
89 Jefferson Blvd.
Warwick, RI 02888
401-780-2152
john.spirito@dpuc.ri.gov

EXHIBIT B

Presentation to NECEC

Chairman Ron Gerwatowski, RI PUC

Rhode Island Clean Energy Day

April 6, 2021

Unanimous Agreement in Rhode Island On a Three-fold Goal:

Clean, Reliable, and Affordable Energy

The PUC's Role and Focus Regarding Renewable Energy

- Support Initiatives that Prudently Advance Renewable Energy
- Facilitate Local Economic Growth from the Programs, while assuring that Rates Remain Just and Reasonable to Ratepayers
- Assure that the Benefits Exceed the Costs (both quantitative and qualitative)
- Protect Ratepayers from Over-paying for Benefits on their Electric Bills
- Seek the Most Cost Effective Solutions

Status Check:
Today's Electric Bill

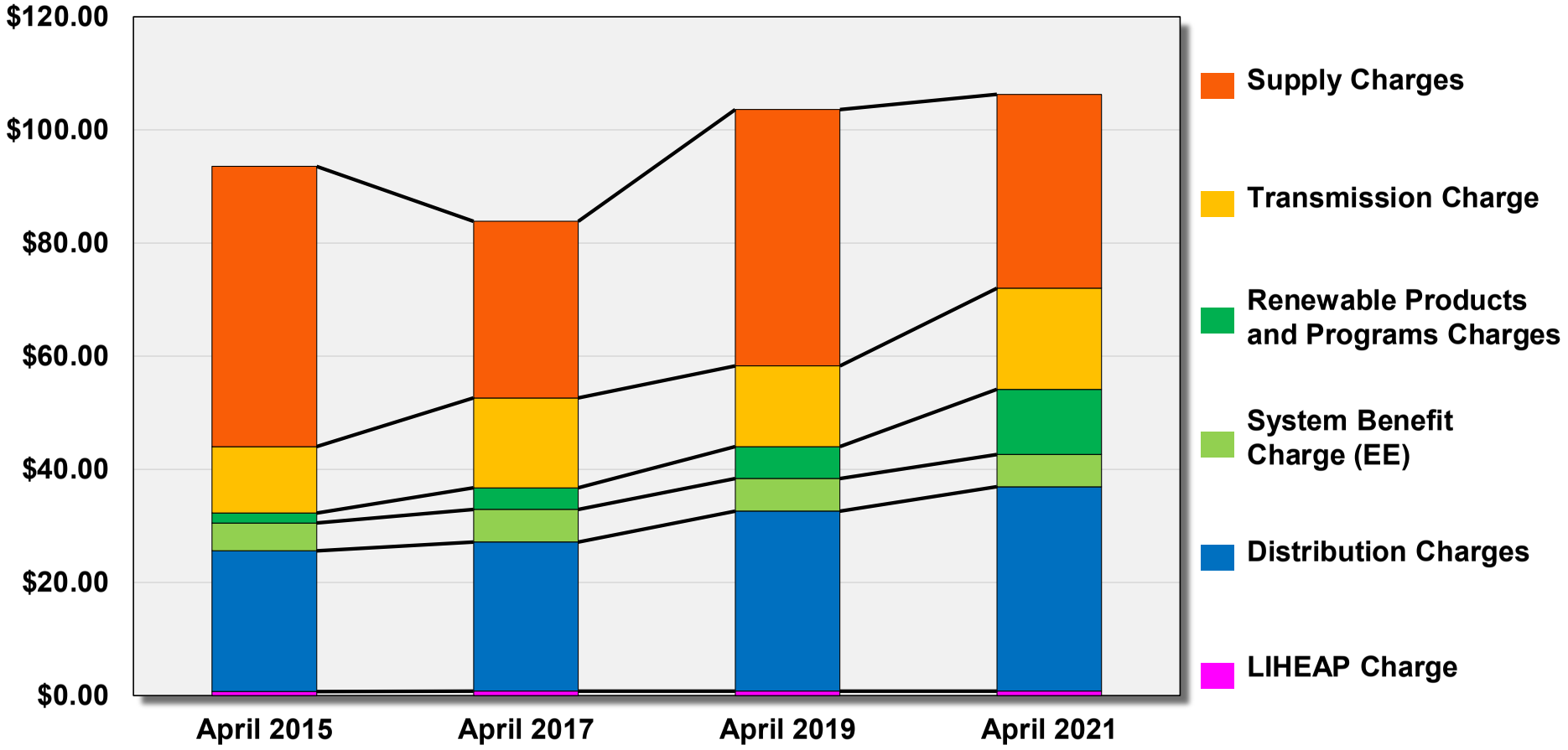
Depressing Observation:

It's Not Fun Being Seen as #49 out of 50*

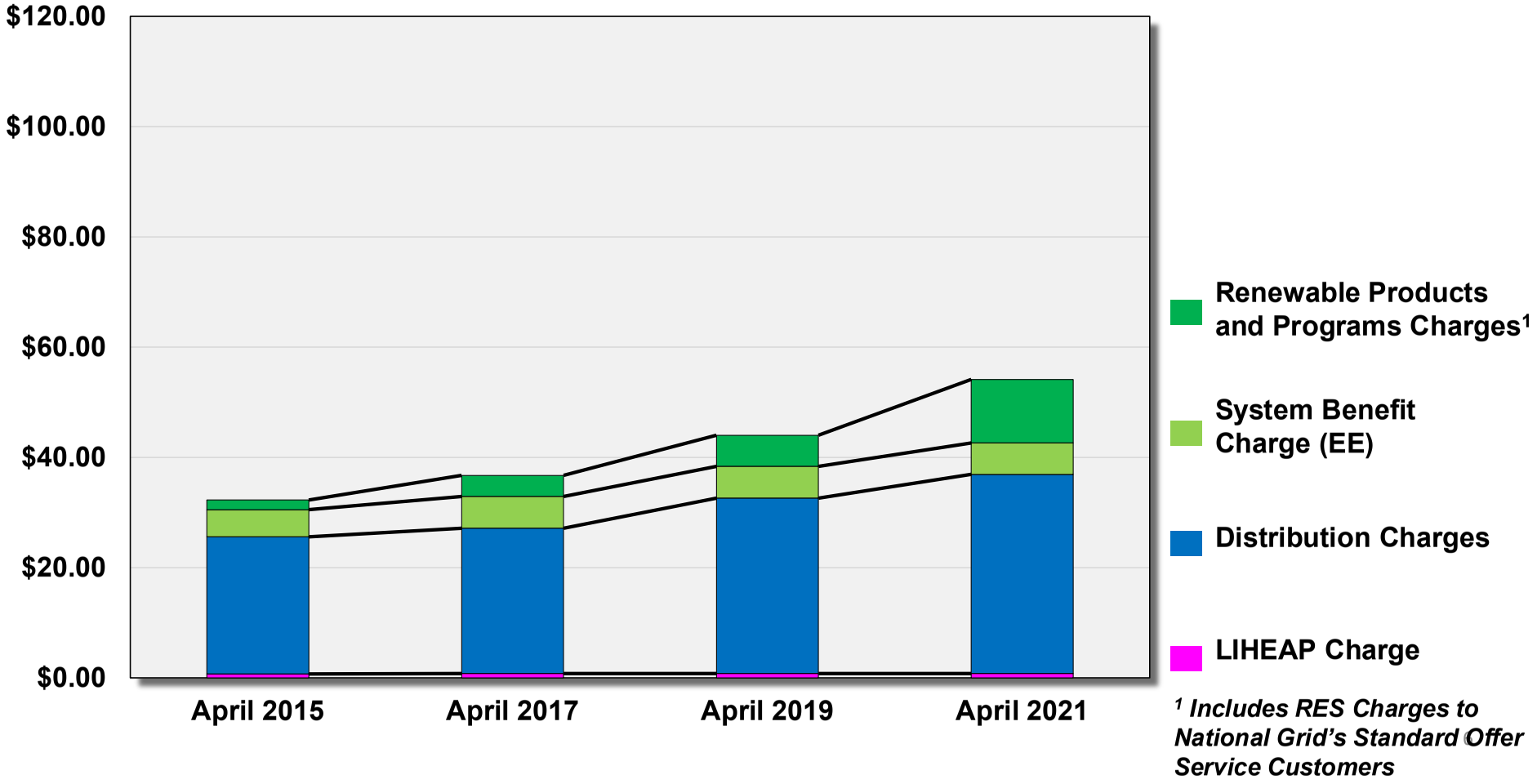
(even worse than Alaska)

*According to EIA, December 2020.

Categorized Charges to a 500 Kilowatt-hour Residential Customer (A-16) with Standard Offer Service Supply



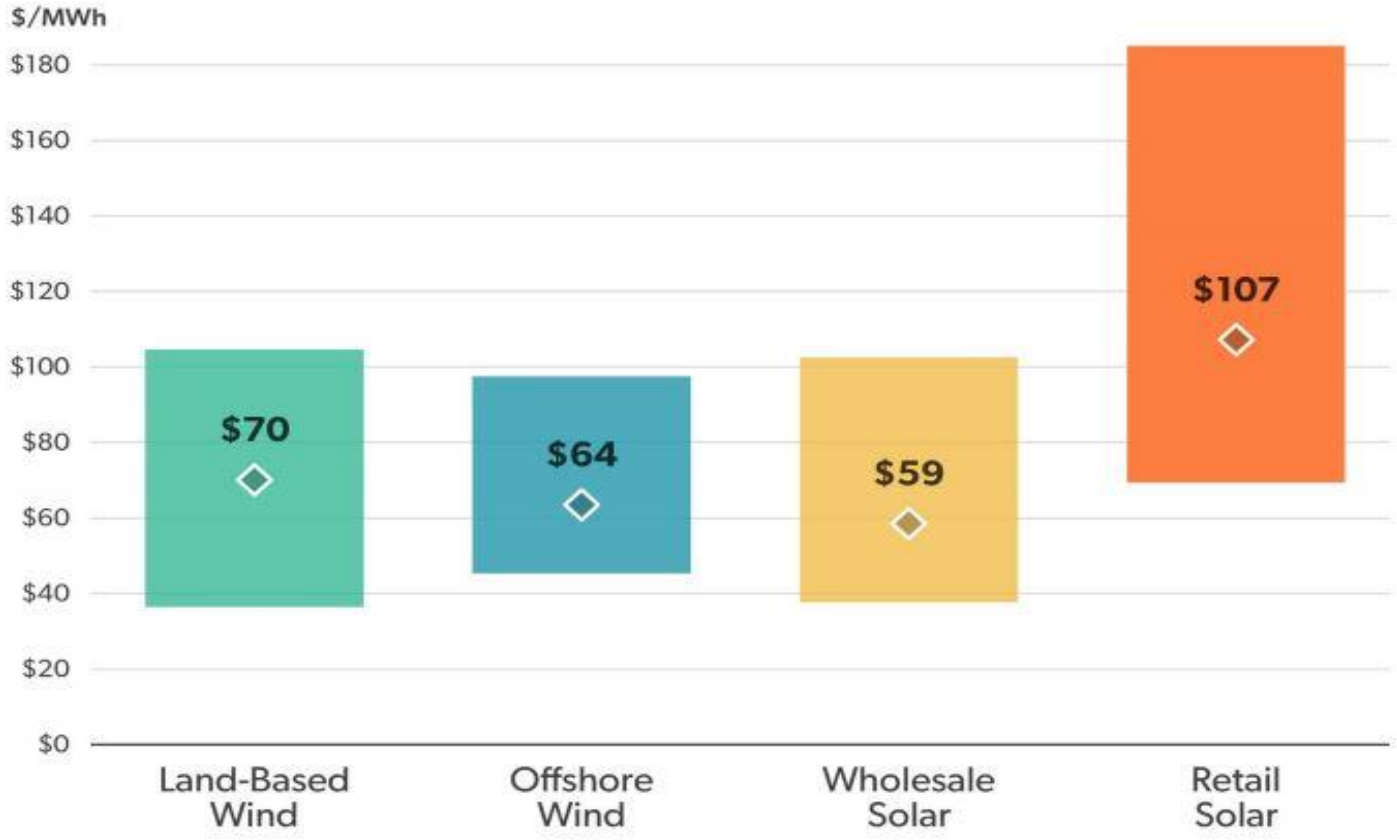
Categorized Charges to a 500 Kilowatt-hour Residential Customer (A-16)
State-Jurisdiction Delivery Rates Only



[1] Includes RES Charges to National Grid's Standard Offer Service Customers

Managing that Green Bar

Renewable Energy Resource Acquisition Costs, According to Brattle Group



Retail Solar includes facilities enrolled in:

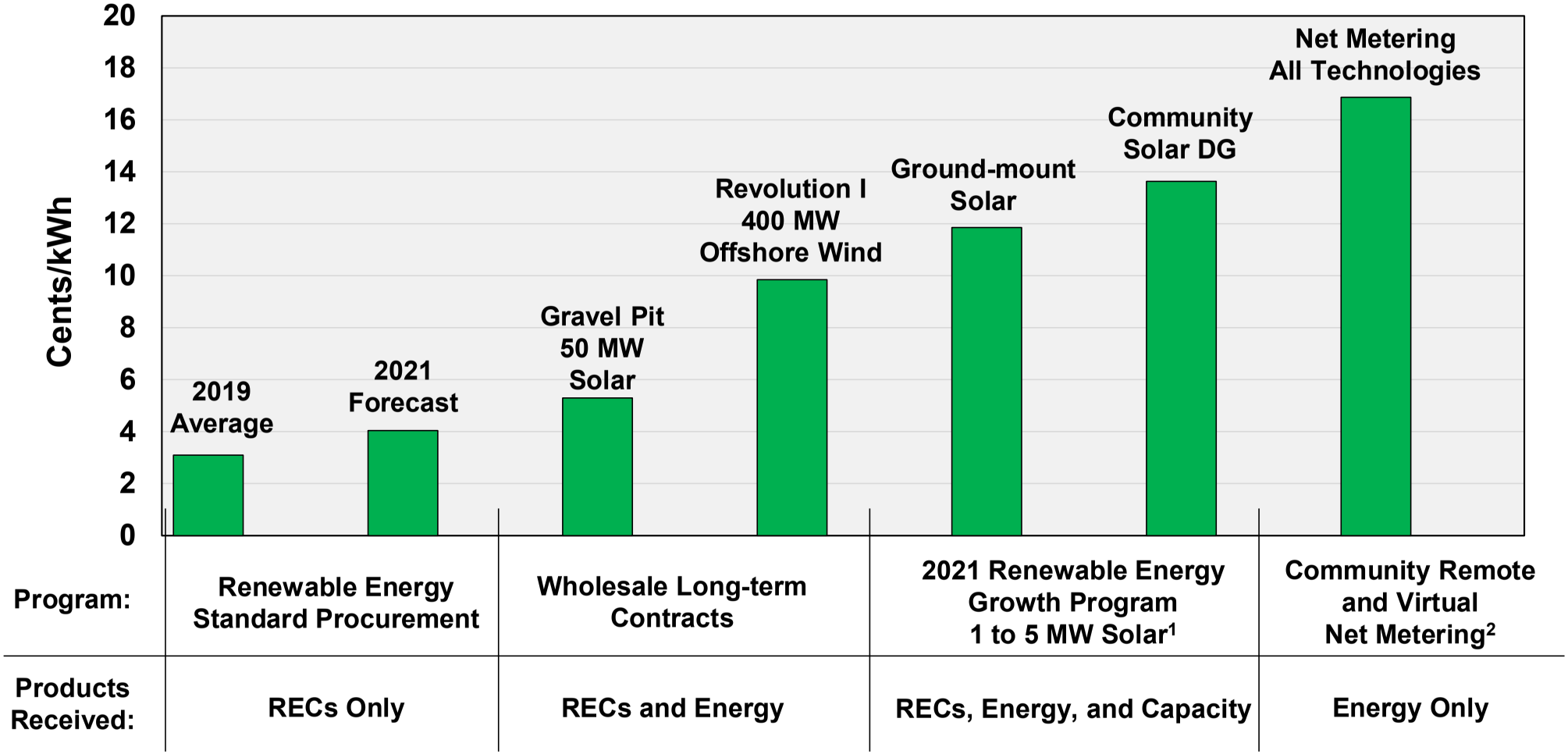
- **Net Metering (NEM)**
- **Renewable Energy Growth (REG)**

FIGURE 7: 2030 RESOURCE ACQUISITION COSTS

Note: Reflects the levelized $/MWh cost of a new resource online in 2030, at Base Resource Cost, with range reflecting alternative High and Low Resource Cost assumptions.

Source: The Road to 100% Renewable Electricity by 2030 in Rhode Island, Brattle Group (December 2020)

Ratepayer Payments for Facilities' Products Allowed in Various Renewables Programs

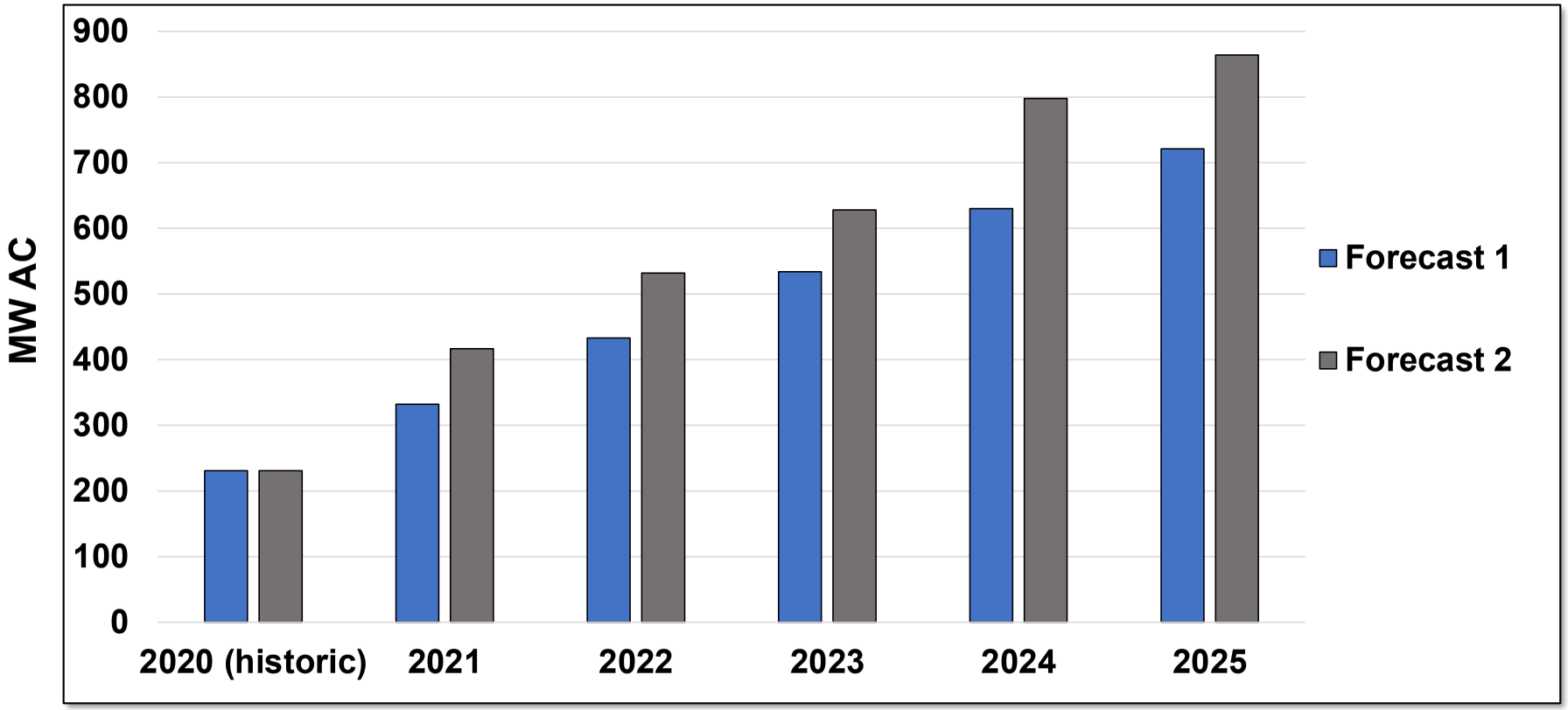


[1] Values are 2021 Program Year Ceiling Prices plus maximum applicable adders

[2] Value is C-06 Net Metering Credit Rate as of 3/1/21

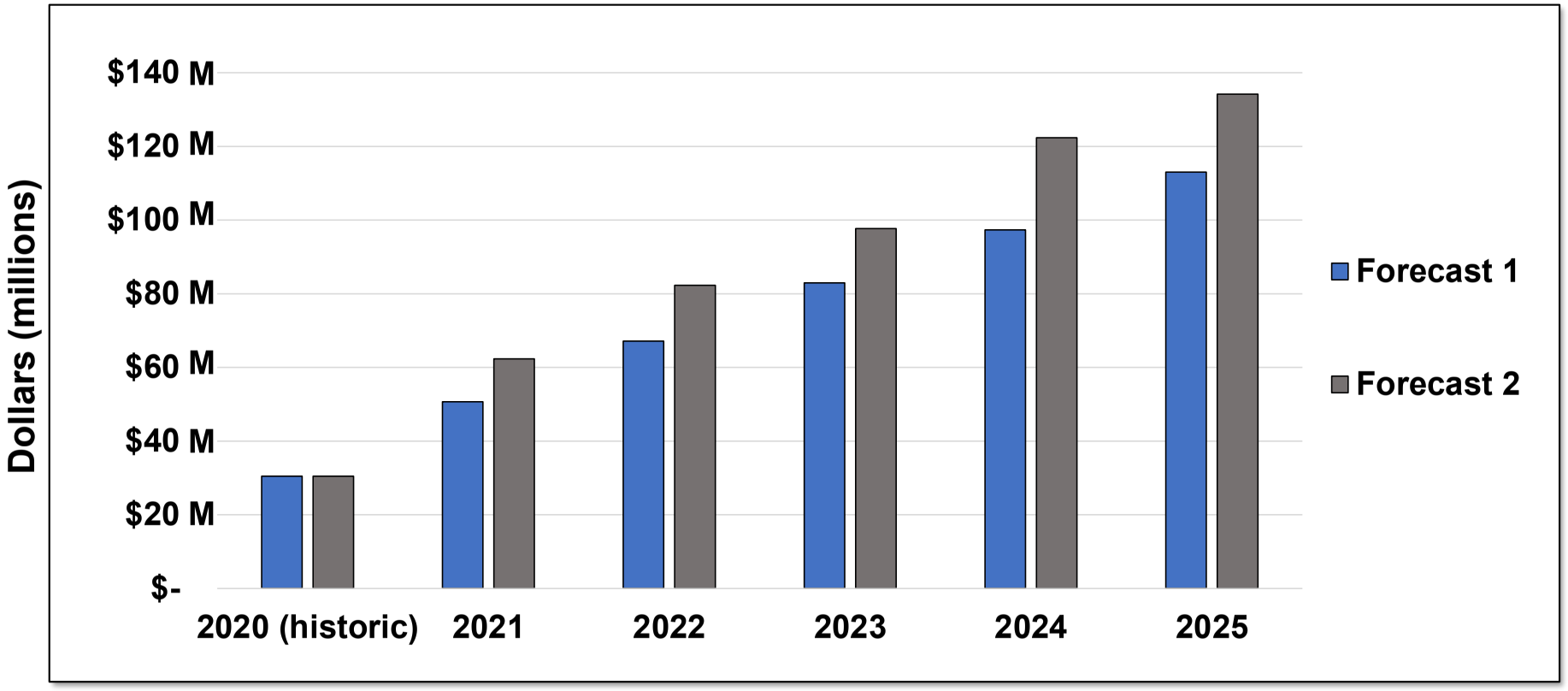
The Data:
Growth of Projects Driven Largely by Remote Net Metering

Cumulative NEM Capacity (based on data from National Grid*)



*Data response to PUC 3-4 in RI PUC Docket No. 5127
Forecast 1 = Grid's PV forecast used in load forecasting
Forecast 2 = based on data from current interconnection queue

Estimated NEM Program Cost (based on data from National Grid*)



*Data response to PUC 3-4 in RI PUC Docket No. 5127
Forecast 1 = Grid's PV forecast used in load forecasting
Forecast 2 = based on data from current interconnection queue

The Challenge:
How Can We Continue Sustainable Local Growth Without Over-Stressing the Affordability of Electricity?

Expand CRNM ?

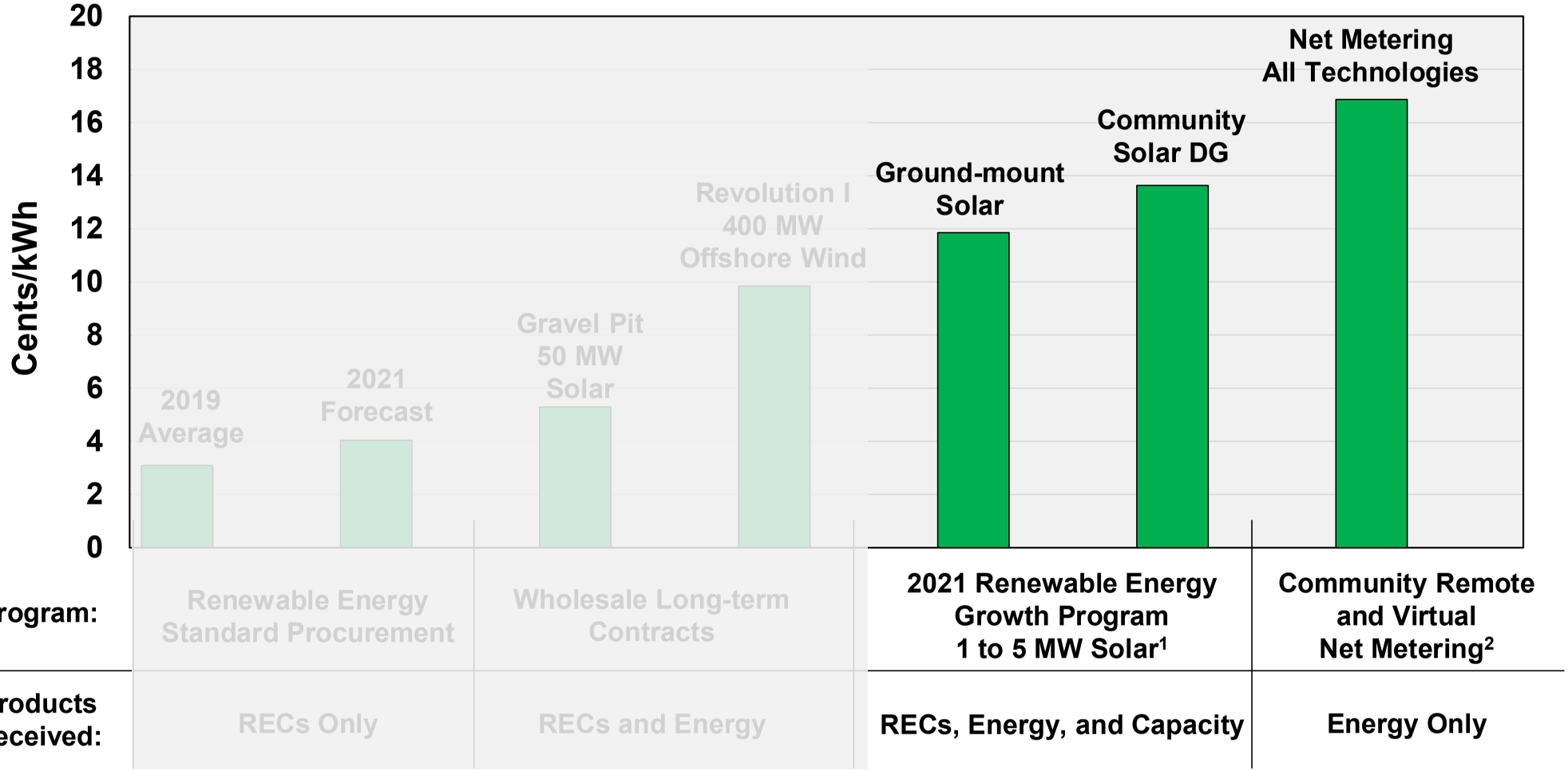
(Community Remote Net Metering)

or

Expand and Amend CRDG?

(Community Remote Distributed Generation)
Renewable Energy Growth Program

Comparison of CRDG and CRNM



[1] Values are 2021 Program Year Ceiling Prices plus maximum applicable adders

[2] Value is C-06 Net Metering Credit Rate as of 3/1/21

The Goal: Clean, Reliable, and Affordable Energy

If We Can Achieve More Green & Local Benefits at Lower Cost, Preventing "Clean" from Dwarfing "Affordable,"

Why Not Do It?