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May 14, 2021

**VIA E-MAIL AND FIRST CLASS MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

Re: *Episcopal Diocese of Rhode Island – Petition for Declaratory Judgment on Transmission System Costs and Related “Affected System Operator” Studies*, PUC Docket No. 4981

Dear Ms. Massaro:

Enclosed please find an original plus nine copies of The Narragansett Electric Company d/b/a National Grid’s Response Brief, which is to be filed in the above-entitled docket.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Adam M. Ramos".

Adam M. Ramos

AMR:cw  
Enclosures

cc: Docket No. 4981 Service List

60986676 (57972.182923)

**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**

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STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION

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

**THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID’S  
BRIEF**

The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) submits this Brief in Response to the Brief filed by the Episcopal Diocese of Rhode Island (the “Diocese”) on April 30, 2021 (“Brief”).

**I. INTRODUCTION**

This matter is before the Rhode Island Public Utilities Commission (“PUC”) on remand from the Rhode Island Supreme Court for consideration of an affidavit of purported “new evidence” the Diocese submitted under R.I. Gen. Laws § 39-5-5. As demonstrated by the Diocese’s complete failure to answer the PUC’s direct questions about how the purported “new evidence” is relevant to the facts and decision before it, this purported new evidence has no relevance whatsoever to any of the issues considered and decided by the PUC in this docket. As demonstrated in this response brief, the purported new evidence does not impact the correct application of the law to the Agreed Facts submitted by the parties. Rather, the Diocese’s purported new evidence improperly attacks the process that led to the PUC’s decision. As demonstrated in this response brief, all communications by and between the parties in this matter were proper and complied with the governing law, rules and regulations. The PUC, therefore,

should conclude that the purported new facts do not impact its Order and affirm its previous Order for transmission to the Supreme Court.

## **II. BACKGROUND**

This docket arises from an October 9, 2019 petition filed with the PUC seeking a declaratory judgment (the “Docket”) on, among other things, whether National Grid may, pursuant to its tariff establishing Standards for Connecting Distributed Generation, charge the Diocese for costs associated with transmission system studies and transmission system upgrades. National Grid was a party to the Docket. The Division of Public Utilities and Carriers (the “Division”) also participated in the Docket as a party.

As part of the Docket, on October 25, 2019, the Diocese and National Grid filed Agreed Facts. At an Open Meeting held on March 6, 2020, the PUC considered the information in the record (following oral argument from the parties and two rounds of public comment), reviewed the law and the Agreed Facts, and, on April 14, 2021, issued Order No. 23811 (the “Order”), in which it concluded that the Company can pass through costs of transmission system studies and transmission system modifications to distributed generation developers.<sup>1</sup> The Diocese timely obtained a statutory writ of certiorari under R.I. Gen. Laws § 39-5-1 to appeal the Order.

The Diocese sent the Division an Access to Public Records Act (“APRA”) request on April 21, 2020, to obtain the Division’s communications with National Grid relating to the Docket. After the Division initially denied the APRA request, the Diocese filed a complaint with the Attorney General, who concluded that the Division should have produced the requested documents. After the Attorney General’s decision, the Division produced the requested

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<sup>1</sup> The PUC made several findings and conclusions, including declining to interpret certain aspects of federal law. *See* Order No. 23811 at 28-29.

documents on November 12, 2020.<sup>2</sup> On December 18, 2020, the Diocese filed an affidavit of new evidence with the Supreme Court pursuant to R.I. Gen. Laws § 39-5-5. The “new evidence” is comprised of 24 pages of email records.

On January 12, 2021, the Rhode Island Supreme Court entered an Order directing the PUC to confirm, alter, amend, rescind, or reverse the Order being appealed after consideration of the affidavit of new evidence. On February 11, 2021, pursuant to a properly noticed Open Meeting, the PUC considered the affidavit together with the attached evidence and after discussion, voted 2-0 to confirm the Order. The PUC responded to the Supreme Court’s Order with a letter dated March 4, 2021, noting that the additional evidence did not change its interpretation of the law and attaching a transcript of the February 11 Open Meeting.

On March 24, 2021, the Supreme Court entered an Order remanding this matter for the PUC “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.” On April 15, 2021, the PUC posed questions for the parties to answer in written briefs and indicated that a hearing would be scheduled to hear oral argument.

It is against this background that the PUC must determine whether the “new evidence” filed by the Diocese should affect or change the Order. It should not. The “new evidence” is not relevant to any of the facts or legal issues that were originally before the PUC.

Rather than respond to the PUC’s questions, the Diocese filled its Brief with baseless procedural arguments questioning the propriety of legitimate communications between the parties to the Docket. It appears that the Diocese evaded the PUC’s questions because it is clear the “new evidence” advanced by the Diocese has no relevance to the Agreed Facts or the legal

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<sup>2</sup> While the Diocese’s APRA request was pending, the Diocese filed its Statement of the Case with the Supreme Court on June 9, 2020. National Grid filed its Rule 12A Counterstatement on August 21, 2020.

questions that were before the PUC when it issued the Order, consistent with the PUC's Open Meeting decision on the original remand. In light of the answers to the PUC's questions, which National Grid sets forth herein, the "new evidence" should be disregarded as irrelevant and the Order should stand. Further, the PUC should affirm that communications between parties in proceedings before it are proper and consistent with governing law and procedural rules.

### III. ARGUMENT

#### A. All of National Grid's Communications With the Division Were Permissible and Appropriate.

This proceeding was ordered for the PUC to review the Order in light of the "new evidence." The scope in this Docket is limited strictly to the remand order.<sup>3</sup> *See State v. Arciliares*, 194 A.3d 1159, 1162 (R.I. 2018) ("lower courts that receive our remand orders may not exceed the scope of the remand or open up the proceeding to legal issues beyond the remand.") (Citations and internal quotation marks omitted).

Contrary to the Diocese's assertions, the communications at issue are not prohibited by any law, rule or regulation. The "new evidence" is comprised of communications National Grid had with the Division while the Division was acting in its role as a party before the PUC. *See, e.g., Narragansett Elec. Co. v. Harsch*, 117 R.I. 395, 368 A.2d 1194 (1977) (noting the Division, in addition to having regulatory powers, is to appear on behalf of public as a party to present

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<sup>3</sup> The Diocese references without quoting several PUC Rules and claims the procedural schedule is "a departure from standard pre-hearing procedure" and "prejudices the Diocese." Brief, p. 1. The Diocese's procedural arguments are without merit. First, Rule 1.17 does not require the PUC to develop a schedule in consultation with the parties as the Diocese suggests. Rule 1.17 permits the PUC to schedule a pre-hearing conference to make hearing time more effective, but does not require the PUC do so. Second, Rule 1.21 does not require a public hearing in this instance because this is not a proceeding in the first instance. Accordingly, the procedures in Rule 1.21 are inapplicable. The Diocese's ability to present its arguments in a brief and at oral argument satisfies the directive from the Supreme Court. Third, this is not a "biased process." The Diocese has the ability to submit a brief and argue its claims on the merits. The Diocese's frustration with the briefing schedule set by the PUC seems to stem from the fact that it does not have all the time it would like to conduct an endless fishing expedition. The Supreme Court did not remand this matter for the Diocese to search out documents it believes might exist. The Diocese's specious claim that this is a "biased process" must be rejected.

evidence and make arguments in rate cases before the PUC). The Division was not a decision-making body in this case, nor did it serve a regulatory function with respect to National Grid or the Diocese. That was the role of the PUC.<sup>4</sup> There is absolutely no prohibition against parties discussing issues and related matters with one another in proceedings before the PUC.

The Diocese's contention that National Grid "unduly influenced" the Division fails on its face because the Division participated in the Docket as a party and not in its regulatory capacity, making the communications at issue entirely permissible. The communications are not made suspect merely because the Division acts as a regulator in other instances. The Division was not exercising any regulatory authority in the matter before the PUC, nor was it investigating National Grid. The Diocese's spin on the context of these communications as evidence of "rank bias" and "undue influence" should be rejected outright.

The PUC Rules provide:

The PUC is an impartial, independent, governmental body having the powers of a court of record, and charged ... with responsibility for implementing and enforcing standards of conduct under R.I. Gen. Laws § 39-1-27.6, and holding hearings and conducting investigations involving the rates, tariffs, tolls and charges and the sufficiency and reasonableness of facilities and accommodations of railroad, gas, electric distribution, water, telephone, telegraph and pipeline public utilities..., the revocation, suspension or alteration of certificates issued pursuant to R.I. Gen. Laws § 39-19-4, appeals under R.I. Gen. Laws § 31-9-30, petitions under R.I. Gen. Laws § 39-1-31 and proceedings under R.I. Gen. Laws § 39-1-32.

800-RICR-00-00-1.3A. In matters pending before the PUC, parties are prohibited from communicating *ex parte* with any Commissioner about or in any way related to the proceeding. 800-RICR-00-00-1.3I. This prohibition on *ex parte* communications does not prohibit parties from communicating with each other, however. *See id.* The PUC

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<sup>4</sup> It is not suggested that National Grid or the Division had any inappropriate communications with the PUC.



Rules define a “Party” as “the Division and each person named or admitted as a party to a proceeding before the Commission.” *Id.* at Rule 1.2A(20).<sup>5</sup>

Here, the Diocese filed a petition with the PUC, and so the PUC Rules govern what constitutes an *ex parte* communication. The Division was a party to the proceeding under the PUC Rules. PUC Rule 1.2A(20); *see also* R.I. Gen. Laws § 39-1-11 (“The commission shall sit as an impartial, independent body, and is charged with the duty of rendering independent decisions affecting the public interest and private rights based upon the law and upon the evidence presented before it by the division and by the parties in interest.”). Under the PUC Rules, National Grid and the Division were permitted to communicate with one another because they were both parties to the Docket. *See* PUC Rule 1.3I; R.I. Gen. Laws § 39-1-11. The Diocese’s attempt to recast the Division’s role as that of a regulator in the proceedings before the PUC is unavailing in light of the PUC Rule defining the Division as a “Party” and outlining the permissible scope of *ex parte* communications. *See* PUC Rules 1.2A(2) and 1.3I.

National Grid’s communications with the Division were entirely permissible and appropriate. The Diocese’s claims of bias are without merit and should be rejected.

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<sup>5</sup> Although this was a proceeding before the PUC and not before the Division, the communications identified in the affidavit of “new evidence” still would have been proper even before the Division. The Division’s Rules of Practice and Procedure (“Division Rules”) state that the Division “is a governmental body charged with the supervision and execution of all laws relating to public utilities and carriers and all regulations and orders of the Commission governing the conduct and charges of public utilities.” 815-RICR-00-00-1.3A. Parties or participants in proceedings pending before the Division are prohibited from communicating *ex parte* only with a defined set of individuals, namely “the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer about or in any way related to the proceeding...” *Id.* at Rule 1.3E. The Division Rules define a “Party” as “each person named or admitted or entitled as of right to be admitted as a party to a proceeding before the Division,” while a “Participant” is “any party or any person or entity admitted by the Division to limited participation in a proceeding.” *Id.* at Rule 1.2A(16)-(17). None of the communications between National Grid’s counsel and the Division’s counsel implicated any of the individuals with whom *ex parte* communications are impermissible.

**B. The Diocese Failed to Meaningfully Respond to Any of the PUC’s Questions.**

The PUC asked the Diocese to answer five discrete questions going to the ultimate question of whether the affidavit of new evidence should affect or change the Order. The Diocese filed a 22-page Brief that does not aid the PUC in answering any of its questions. Instead of meaningfully responding to the Diocese’s questions, the Diocese filed its Brief under protest. The Diocese’s Brief is full of unfounded conjecture concerning communications between the Company and the Division which were entirely permissible. The Diocese’s irrelevant arguments should not distract the PUC from the fact that the Diocese’s challenge to the Order through purported “new evidence” lacks any merit.

**C. The Answers to the PUC’s Questions Demonstrate the Order Is Not Affected by the “New Evidence.”**

The Diocese’s planned project is located on the grounds of the Episcopal Conference Center and Camp in Gloucester. The Diocese intends to develop two solar arrays on the camp property and received Master Plan approval, a special use permit from Gloucester, and a feasibility study. The Diocese applied for Impact Studies on both projects.

On April 17, 2019, National Grid informed the Diocese that interconnection would not be possible unless the project was limited to 3MW or less and the Diocese paid for upgrades to several circuits and a substation at a projected cost of \$3 to \$3.5 million. In June 2019, the Company informed the Diocese that the 2.2MW Eastern Array would be subject to a Transfer Analysis for Transmission Impacts Study. National Grid’s transmission affiliate, New England Power Company, would administer the study and the cost would be allocated to the Diocese and other interconnecting customers in its cluster. In August 2019, the Company produced an Impact Study for the Eastern Array and issued a “Final Impact Study” on the Western Array.

The issue before the PUC in the Docket was whether, in view of the forgoing Agreed Facts, federal and state law governing electric regulation authorize National Grid to allocate to interconnecting customers the costs of transmission system studies and upgrades related to the interconnection of the proposed distributed generation projects.

The PUC propounded five questions for the parties to address through briefing. Those questions all inquire as to how the affidavit of purported new evidence impacts the PUC's application of law to the Agreed Facts when it determined that the costs of transmission system studies and upgrades related to the interconnection of the proposed distributed generation projects could be allocated to interconnecting customers. Although the Diocese failed to answer the PUC's questions, the Company sets forth the answers to each question below – demonstrating that the affidavit of “new evidence” actually contains no new evidence at all and should not result in any changes to the Order.

**1. Nothing in the Affidavit of “New Evidence” Constitutes New Evidence.**

The purported “new evidence” is comprised of communications between National Grid and the Division concerning the legal issues in the Docket. None of these communications constitutes new evidence. Rather, the Diocese's purported new evidence is comprised of permissible communications between two parties that are being mischaracterized to assert a completely unfounded conflict of interest argument.

**2. The “New Evidence” Has No Relevance to the Decision.**

The Diocese's petition sought a declaration about the law and its application to a set of Agreed Facts. The “new evidence” identified by the Diocese is the fact that the Division (1) claimed a “common interest privilege” with National Grid in the Docket; (2) consulted with National Grid's legal counsel; and (3) received an email from National Grid's counsel. Brief

at 3. None of these facts change the Order because they do not affect the Agreed Facts or the application of the law to those facts.

The Diocese spends four pages of its Brief pontificating about “the great economic and policy weight of the issue put to the Commission” and National Grid’s purported “abuse of discretion” without explaining the relevancy of the purported “new evidence” to the Order. Brief, pp. 3-7. The Diocese’s Brief offers nothing more than speculation and conjecture about a perceived “collaboration” between the Division and National Grid. Nevertheless, any symmetries that might exist between the legal positions of National Grid and the Division do not change the PUC’s application of the law to the facts. The PUC’s Order was not “illegal and unreasonable.” It was a well-reasoned and completely independent application of the law to a set of Agreed Facts.

**3. The “New Evidence” Does Not Put Any of the Agreed Facts Into Dispute.**

The PUC asked the Diocese to indicate “with specificity” the extent to which there are any facts within the new evidence which are now in dispute. The Diocese failed to respond to this question. The answer is, quite simply: the “new evidence” does not change any of the Agreed Facts.

**4. The Agreed Facts Need Not Be Amended.**

The Diocese also failed to explain the extent to which there are any facts (within the “new evidence”) which are now in dispute, let alone do so “with specificity” like the PUC requested. The answer to this question is that the communications between National Grid and the Division have no bearing whatsoever on any of the facts that were relevant to the Order. No facts upon which the PUC based its original decision need to be amended.

5. **The “New Evidence” Does Not Affect or Change the Original Decision.**

The Diocese once again fails to respond to the PUC’s narrow question. The Diocese does not address how the “new evidence” identified should be part of the PUC’s analysis of the legal issues. Because the “new evidence” is not relevant to the Agreed Facts, the application of the law to the facts militates that the original Order is not affected or changed.

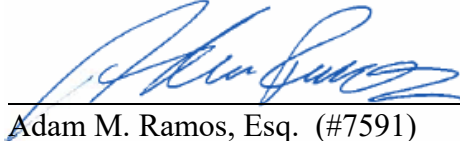
The “new evidence” should not change the PUC’s initial decision. To the extent the Diocese answers this question, the inference is that the proceeding was somehow infected with bias because of the communications identified in the “new evidence.” However, those communications were proper and appropriate communications between parties, as demonstrated herein.

IV. **CONCLUSION**

For the reasons set forth herein, The Narragansett Electric Company d/b/a National Grid respectfully requests that the PUC reject the arguments in the Diocese’s Brief and uphold the Order.

THE NARRAGANSETT ELECTRIC COMPANY  
d/b/a NATIONAL GRID

By Its Attorneys,




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Dated: May 14, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2021, I delivered a true copy of the foregoing document to the service list by electronic mail.

  
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Adam M. Ramos

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