

July 9, 2021

VIA ELECTRONIC MAIL

Luly E. Massaro, Division Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket D-21-09 – Petition of PPL Corporation, PPL Rhode Island Holdings, LLC, National Grid USA, and The Narragansett Electric Company for Authority to Transfer Ownership of The Narragansett Electric Company to PPL Rhode Island Holdings, LLC and Related Approvals
National Grid Opposition to Motions to Intervene

Dear Ms. Massaro:

On behalf of National Grid USA and The Narragansett Electric Company (together, “National Grid”), enclosed is National Grid’s opposition to the motions to intervene made by (1) Energy Development Partners, LLC (“EDP”); (2) Friends of India Point Park, Fox Point Neighborhood Association, Jewelry District Association, Residential Properties, Narragansett Brewing Company, Grand Festivals, and David Riley (the “Providence Intervenors”); (3) Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC, and XOOM Energy Rhode Island LLC (together, the “NRG Retail Companies”); (4) New Energy Rhode Island, Circular Fuels, LLC, RER Energy Group, LLC, Clean Economy Development, LLC, Heartwood Group, Inc., and Green Development, LLC (“NERP”).¹

Thank you for your attention to this matter. If you have any questions, please contact me at 401-784-7288.

¹ Although this is a Division filing, consistent with Public Utilities Commission’s filing requirements during the COVID-19 emergency period, National Grid is submitting an electronic version of this filing. National Grid will provide the Division Clerk with five hard copies within 24 hours and, if needed, additional hard copies of the enclosures upon request.

Luly E. Massaro, Division Clerk
Docket D-21-09 – National Grid Opposition to Motions to Intervene
July 9, 2021
Page 2 of 2

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jennifer Brooks Hutchinson", with a long horizontal flourish extending to the right.

Jennifer Brooks Hutchinson

Enclosures

cc: Docket D-21-09 Service List (electronic only)
John Bell, Division
Leo Wold, Esq.
Christy Hetherington, Esq.
Scott H. Strauss, Esq. (electronic only)
Latif M. Nurani, Esq. (electronic only)
Amber L. Martin Stone, Esq. (electronic only)
Anree G. Little, Esq. (electronic only)

Festivals, and David Riley (the “Providence Intervenors”); (3) Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC, and XOOM Energy Rhode Island LLC (together, the “NRG Retail Companies”); (4) New Energy Rhode Island, Circular Fuels, LLC, RER Energy Group, LLC, Clean Economy Development, LLC, Heartwood Group, Inc., and Green Development, LLC (“NERI”) (exclusive of Acadia Center, CLF and GECA, the “Movants”).

The purpose of this proceeding is to consider the joint petition of National Grid, PPL Corporation (“PPL”), and PPL Rhode Island Holdings, LLC (“PPL RI”) (PPL and PPL RI are collectively referred to hereinafter as “PPL”) requesting authorization by the Division for PPL RI’s purchase of the common equity interest in Narragansett, currently held by National Grid USA (the “Transaction”). The standard of review applicable to the Transaction is set by R.I. Gen. Laws § 39-3-25, which grants the Division the authority to approve the transaction upon a finding that: (1) the facilities for furnishing service to the public will not be diminished; and (2) the purchase, sale or lease, and terms thereof are consistent with the public interest. For the reasons set forth below, the Division should find that the interests seeking to intervene in the proceeding are advocating for interests well-beyond the scope of proceeding and, therefore, have failed to state sufficient grounds for intervention under Division Rule 1.17.B. Accordingly, with the exception of OER and the Attorney General (and the Acadia Center, CLF and GECA, subject to the condition that their intervention is limited to the scope of this proceeding), the motions for intervention should be denied.

I. BACKGROUND

On May 4, 2021, PPL, PPL RI, National Grid USA, and Narragansett submitted a petition in the above-captioned docket requesting approval of the Transaction. The standard for approval

of the Transaction under R.I. Gen. Laws § 39-3-25 is that “the facilities for furnishing service to the public will not thereby be diminished [by the Transaction] and . . . the terms [of the Agreement and the Transaction] are consistent with the public interest.” The Division has previously construed these terms, finding that the first criteria “requires a finding that “there will be no degradation of utility services after the transaction is consummated.” The Division has further found that the second criteria “ensures no harm to the general public as a whole (including ratepayers).”³

On June 11, 2021, the Division issued a Notice of Filing and Deadline to Intervene in this matter. The Notice established a deadline of June 25, 2021, for all motions to intervene and directed responsive pleadings to be filed on or before Friday, July 9, 2021.

II. LEGAL STANDARD

Division Rule 1.17.B. provides that “any person with a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Division.” 815-RICR-00-00-1.17.B. Rule 1.17.B. defines such an interest as:

- (a) A right conferred by statute;
- (b) An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Division’s action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent; or
- (c) Any other interest of such a nature that movant’s participation may be in the public interest.

815-RICR-00-00-1.17.B.1.a.-c.

To find that a movant’s participation would be in the public interest, “the Division must logically find that their individual interests warrant recognition and protection in furtherance of

³ See In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket D-06-13, Report and Order No. 18676, at 52 (July 25, 2006).

the general welfare of the public.” City of E. Providence, 2006 WL 1660761 (quoting Order, In re Joint Pet. for Purchase & Sale of Assets by the Narragansett Elec. Co. & So. Union Co., Dkt. No. D-06-13 (R.I.D.P.U.C. May 4, 2006)) (affirming denial of motion to intervene by City of East Providence). The Division must also consider “whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the petitioners and other parties.” Id.

III. DISCUSSION

National Grid objects to the motions to intervene filed by EDP, the Providence Intervenors, the NRG Retail Companies, and NERI.⁴ The Division should deny these interventions because the Movants seek to advance individual or financial interests that are far beyond the scope of the Division’s review under R.I. Gen. Laws § 39-3-25 and the Division’s jurisdiction. The Movants have failed to state legally sufficient interests that will be directly affected by this proceeding. The Movants’ participation in this docket would unduly delay adjudication of the legal issues under review in this docket and is therefore not in the public interest. The impermissible basis for each Movant’s motion to intervene is addressed below.

A. The Interests Asserted by the Movants.

1. EDP

EDP is a renewable energy developer that develops distributed energy generation projects in Rhode Island (EDP Motion at 2). EDP seeks to introduce issues related to the financial cost of interconnection related to a specific 50 MW solar project that it is developing in North Kingstown.

⁴ As discussed in Section III.D., infra, National Grid would not object to the intervention of Acadia Center, CLF, and GECA if the participation of those parties is limited to the scope of the proceeding under R.I. Gen. Laws § 39-3-25.

EDP raises complaints about the alleged “multi-million-dollar financial impact of the incumbent’s constantly evolving regulatory interpretations and lack of transparency to EDP...” (id. at 3-4). EDP also raises complaints about the assignment of certain Direct Assignment Facility charges associated with the interconnection of its North Kingstown projects (id. at 5). In its own words: “EDP requests participation in this proceeding *to protect its economic interests* and the public interest in a pro-competitive, pro-renewable, and well-managed electrical infrastructure grid” (id. at 6, emphasis added).

2. The Providence Intervenors

The Providence Intervenors seek to “protect vital environmental, social and economic interests as they relate to siting and operation of energy infrastructure in close proximity to nearby residents, businesses and parklands along the waterfront of the City of Providence” (Providence Intervenors Motion at 1). The Providence Intervenors are concerned about efforts requiring the E-183 transmission line to be buried underground. Id. at 2. The Providence Intervenors have requested specific relief in the form of commitments from PPL to: (1) remove certain existing transmission infrastructure along India Point Park; (2) not erect and operate energy facilities that undermine the Providence Intervenors’ interests; (3) discontinue alleged discriminatory practices towards certain Providence communities; (4) provide information about all internal and external legal, engineering, and construction costs related to the burial of infrastructure projects, including a list of projects dating back to 1994; and (5) restore certain funds that the Providence Intervenors

claim were inappropriately used by National Grid under the terms of a 2004 settlement agreement approved by the Energy Facility Siting Board in prior litigation.

3. NRG Retail Companies

The NRG Retail Companies are subsidiaries of NRG Energy, Inc., an “integrated energy and home services company in North America serving over six (6) million customers” (NRG Retail Companies Motion at 1, n.1). The NRG Retail Companies operate as nonregulated power producers in Rhode Island within Narragansett’s service territory and sell electricity to residential and non-residential customers in the competitive retail market. Id. at 2. Certain of the NRG Retail Companies are also registered natural gas marketers that sell natural gas to non-residential customers in the competitive market. Id.

The NRG Retail Companies represent that their interest in this proceeding is to facilitate the development of Rhode Island’s competitive electric and natural gas retail markets. NRG Retail Companies Motion at 3-4. The NRG Retail Companies further state “a substantial and direct interest in ensuring that this transaction does not negatively affect the operations of the NRG Retail Companies and their ability to compete for and service customers in the Narragansett service territories in Rhode Island.” Id. at 4. The NRG Retail Companies seek to address operational processes that could impact its business following the transition to PPL. Id. The NRG Retail Companies also ask the Division to “examine whether operational or policy improvements could be implemented as part of the approved transaction” to advance its interests in competitive retail markets. Id. at 5.

4. NERI

NERI represents a group of member participants that are developers of renewable energy projects in Rhode Island or that have ownership, energy offtake, or other financial or policy

interests in such projects. NERI Motion at 1. NERI represents that, if permitted to intervene, it will “seek PPL’s commitment to a proactive plan for rate reduction through implementation of local, distributed-energy solutions and for managing the electric system to achieve the state’s goals of reaching 100% renewable energy by 2030 and net zero emissions by 2050.” Id. at 5, 7.

5. Acadia Center

Acadia Center is a non-profit research and advocacy organization that advocates for energy and environmental issues in Rhode Island. Acadia Center Motion at 1. Acadia Center represents that it has interests as a settling party in RIPUC Dockets 4770 and 4780 that may be directly impacted by this proceeding. Id. at 3. Acadia Center also represents that it “has a substantial interest in advancing policies that achieve the state’s greenhouse gas emissions reductions targets required by the 2021 Act on Climate law...” Id. at 4.

Acadia Center further argues that its intervention in this matter would be in the public interest because its staff has significant “experience on the design and implementation of consumer-friendly and climate conscious policies, energy efficiency, utility innovation, and clean energy technologies.” Acadia Center Motion at 4. Acadia Center also points to its publications regarding regulatory frameworks for modernizing the electric grid to advance climate, economic and consumer goals. Id. at 4-5.

6. CLF

CLF is a non-profit environmental advocacy organization with offices throughout New England, including in Rhode Island. CLF Motion at 1. CLF represents that its interests in this proceeding are to ensure that the Transaction does not result in the deterioration of programs “related to decarbonization and environmental protection, including procurement of renewable electricity, replacement of leak-prone pipe, avoidance of stranded assets in the transition to clean

energy, and the administration of programs related to energy efficiency, non-wires alternatives, non-pipeline alternatives, electric vehicle charging infrastructure, home heating conversions, and distributed generation. Id. at 3-4. CLF also notes its prior participation in dockets related to such programs as evidence of its interests. Id. at 4. CLF states that its objective in this docket would be “to ensure that PPL maintains National Grid’s programs and honors National Grid’s commitments related to decarbonization and clean energy....” Id.

7. GECA

GECA is a non-profit organization that advocates for local and statewide energy issues and offers energy-related assistance programming on green power, distributed energy, electric vehicles, grid modernization, home heating, and energy efficiency. GECA Motion at 1-2. GECA is a renewable energy certificate supplier in Narragansett’s GreenUp program and also promotes municipal aggregation Id. at 2. GECA represents that it advocates for emission reduction policies, including advancing the development of rooftop solar, energy efficiency, electric vehicles and heat pumps, and also manages the “Shave the Peak” program to offer consumers information about reducing energy consumption. Id. at 3. GECA states that effective implementation of the programs in which it is interested require implementation and cooperation by the utility, which may be impacted by the Transaction. Id. at 4-5.

B. The Interests Asserted are Outside the Scope of This Proceeding and the Division’s Jurisdiction.

Each of the Movants seek to advance financial and policy interests outside the scope of the proceeding and properly placed before the Rhode Island Public Utilities Commission (“Commission”). As the Division has done in the past, the Division should deny these motions to intervene because the interests raised are “beyond the scope of” and “not directly related to the instant proceeding” and allowing those motions would “unreasonably broaden the issues in this

case” and “unduly delay and prejudice the adjudication of the rights of the Petitioners.” City of E. Providence v. Narragansett Elec. Co., No. C.A. 06-2888, 2006 WL 1660761 (Super. Ct. June 15, 2006).

In accordance with the criteria established by R.I. Gen. Laws § 39-3-25, the Division must evaluate whether Rhode Island consumers would experience a diminishment of service if the Transaction is approved, or whether service-quality would suffer, by considering factors such as the buyer’s operational experience, overall size, and financial strength. Order No. 18676, Dkt. No. D-06-13, In re Joint Pet. For Purchase & Sale of Assets by The Narragansett Elec. Co. & So Union Co., at 51 (R.I.D.P.U.C. July 25, 2006). The Division has also specifically rejected the premise that the criteria in R.I. Gen. Laws § 39-3-25 require a proposed transaction to result in a “net benefit” to customers to gain approval. Id. at 51-52. Instead, the public interest criterion “requires a finding that the proposed transaction will not unfavorably impact the general public (including ratepayers).” Id. at 52. Moreover, “an expansive reading of § 39-3-25 is not consistent with the legislative scheme contemplated by the chapters of our General Laws which deal with the Duties of Utilities and Carriers (§ 39-2-1 *et seq.*) and with the Regulatory Powers of Administration (§ 39-3-1 *et seq.*)” City of E. Providence v. Narragansett Elec. Co., No. C.A. 06-2888, 2006 WL 1660761 (Super. Ct. June 15, 2006).

Remaining within the scope of review set by R.I. Gen. Laws § 39-3-25 is important because the Division is an agency of limited jurisdiction. R.I. Gen. Laws § 39-1-3 establishes two separate agencies: the Public Utilities Commission and the Division of Public Utilities and Carriers. The Rhode Island Supreme Court has explained the roles of each agency as follows:

The Legislature intended to segregate the judicial and administrative attributes of ratemaking and utilities regulation and to vest them separately and respectively in the commission and the administrator (or division). The commission is to function as a quasi-judicial tribunal. It has the power to hold hearings and to ‘sit as an

impartial, independent body [...] 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.’

O’Neil v. Interstate Nav. Co., 565 A.2d 530, 531–32 (R.I. 1989), citing R.I. Gen. Laws § 39-1-11 (internal quotations and citations omitted).

The Commission’s authority includes matters “involving the rates, tariffs, tolls, and charges, and the sufficiency and reasonableness of facilities and accommodations of railroad, gas, electric distribution . . . public utilities.” R.I. Gen. Laws § 39-1-3(a). The Commission has the exclusive jurisdiction to determine the rates of public utilities. O’Neil, 565 A.2d at 532; Town of Shoreham v. Rhode Island Public Utilities Commission, 464 A.2d 730, 737 n. 5 (1983). The Division exercises powers not specifically assigned to the Commission. In re Kent Cty. Water Auth. Change Rate Schedules, 996 A.2d 123, 126 (2010); In re Proposed Town of New Shoreham Project, 25 A.3d 482, 487 (2011) (“In the simplest of terms, the Division of Public Utilities and Carriers (the division) performs any functions not specifically reserved to the Public Utilities Commission (the commission)”). “The Division’s powers include the ‘effective administration, supervision and regulation of public utilities, communications carriers, and common or contract carriers.’” O’Neil, 565 A.2d at 532. citing R.I. Gen. Laws § 39-1-15.

In fact, the Division has recognized that “to attach rate-related . . . conditions to an approval of the proposed transaction would not only be contrary to the Division’s jurisdiction powers under R.I.G.L. § 39-3-25, but also tantamount to an attempted usurpation of a long-established Commission ratemaking function.” Order No. 18676, Dkt. No. D-06-13, In re Joint Pet. For Purchase & Sale of Assets by The Narragansett Elec. Co. & So Union Co., at 57 (R.I.D.P.U.C. July 25, 2006).

Here, the Movants have asserted interests related to rates and policies regarding the development and interconnection of renewable energy resources, the siting of distribution and

transmission infrastructure, and the advancement of the competitive retail electricity and natural gas markets. None of these issues are within the scope of the Division’s authority to address. Nor will any of these issues be “directly affected” by the Division’s decision in this case. 815-RICR-00-00-1.17.B.1.b. (Movant must demonstrate “an interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Division’s action in the proceeding.”).

First, because the Division lacks jurisdiction to address the Movants’ ratemaking and policy interests, the Movants will not be bound in any way if the Division approves the Transaction. The Transaction will not limit the Movants’ ability to advocate for these interests before the Commission. Second, review of the Transaction under R.I. Gen. Laws § 39-3-25 requires only a finding that the proposed transaction will not cause an adverse impact to customers. The specific and nuanced policy issues raised by the Movants are not relevant to the issues under consideration in this proceeding, and, conversely, it is not necessary for the Division to delve into these specific, nuanced issues to make a finding that the Transaction will not cause an adverse impact to customers.

C. EDP, The Providence Intervenors, NRG Retail Companies, and NERI Raise Individual Interests That are Inappropriate for Intervention and Will be Represented by Other Parties.

EDP, the Providence Intervenors, NRG Retail Companies, and NERI have not asserted interests showing that their participation would be in the “public interest.” Instead, each has raised specific disputes largely related to their own proprietary economic interests. Specifically, EDP complains of interconnection costs for distributed generation facilities it is currently developing and seeks assurances that “reimbursable funds due to EDP in 2024” will be available after the Transaction (EDP Motion at 5). EDP also “seeks PPL’s assent to terminate” specific charges that

are being assessed against EDP for its project.⁵ NERI likewise seeks to promote rate policies to benefit its members' economic interests in developing distributed generation projects (NERI Motion at 5-6).

Similar to the Movants invested in distributed generation, the NRG Retail Companies are purely interested in pursuing matters that will benefit their own business practices. For example, despite their efforts to frame their interests as enabling the competitive retail electric and natural gas markets, it is clear that the NRG Retail Companies are interested exclusively in benefiting their "unique business models." NRG Retail Companies Motion at 6.

The Providence Intervenors, in addition to raising concerns over facility siting that are outside the Division's jurisdiction to address, seek to leverage intervention in this proceeding to requirement repayment of "burial funds" they allege were used inappropriately by National Grid. Providence Intervenors Motion at 17. This request relates to a private dispute between the Providence Intervenors and National Grid related to the terms of a 2004 settlement agreement. *Id.* at 7-8. The 2004 settlement agreement is not before the Division and should not be litigated here. Simply stated, resolution of this dispute related to the 2004 settlement agreement is not in the "*public* interest" (emphasis added).

In fact, none of the Movants' stated objectives are in the *public* interest. To the extent the Transaction may have any impact on policies related to the development of distributed generation, competitive retail electric and natural gas markets, or the siting of electric facilities, the interests of the *public* in those topics will be represented adequately by OER and the Attorney General.

⁵ These are charges disputed currently by EDP through the Commission's alternative dispute resolution process for distributed generation and which EDP and other parties have already litigated in front of the Commission. *See, e.g.*, RIPUC Docket No. 5149, Energy Development Partners Petition for Declaratory Judgment; RIPUC Docket No. 4981, Episcopal Diocese of Rhode Island Petition for Declaratory Judgment on Transmission System Costs and Related "Affected System Operator" Studies.

For example, OER’s mission is “to lead the state toward a clean, affordable, reliable and equitable energy future.” OER Motion at 3. OER has further stated that, through its intervention in this docket, it will ensure that clean energy programs OER supports will “continue to act as robust, responsive tools in helping Rhode Island achieve its policy goals, particularly as they relate to the Act on Climate and greenhouse gas emissions reduction strategies.” Id. at 4.

Similarly, as stated in the Attorney General’s motion, the Attorney General is “the public officer charged with representing the State of Rhode Island, the public interest, and the people of the State.” Attorney General Motion at 2-3. The Attorney General also has a statutory duty to “take all possible action for the protection, preservation, and enhancement of air, water, land and other natural resources located within the state” and “has a common law duty to protect the public interest.” (Id. at 3 (citing, R.I. Gen. Laws §§ 10-20-1, 10-20-3(d)(5); State v. Lead Indus., Ass’n Inc., 951 A.2d 428, 471 (2008)).

The general interests in energy policy asserted by EDP, the Providence Intervenors, NRG Retail Companies, and NERI will be adequately represented by the OER and Attorney General, if applicable to the Transaction. The more specific economic interests asserted by those parties are not appropriate to be litigated in this case and should be pursued in other fora. Permitting the Movants to intervene for the purpose of pursuing their proprietary interests will result in unreasonable delay, distraction, and burden to the petitioners and to the Division’s investigation pursuant to R.I. Gen. Laws § 39-3-25.

D. National Grid Does Not Oppose Intervention of Acadia Center, CLF, and GECA, So Long as the Scope of Intervention is Limited to the Examination of Adverse Impact Under R.I. Gen. Laws § 39-3-25.

As discussed above, the Division lacks general authority to address the policy issues raised in Acadia Center, CLF, and GECA’s motions. The standard for approval of the Transaction under

R.I. Gen. Laws § 39-3-25 is that “the facilities for furnishing service to the public will not thereby be diminished [by the Transaction] and . . . the terms [of the Agreement and the Transaction] are consistent with the public interest.” R.I. Gen. Laws § 39-3-25. To address the criteria under R.I. Gen. Laws § 39-3-25, the Division must evaluate whether Rhode Island consumers would be harmed by the Transaction or whether service quality would suffer, by considering factors such as the buyer’s operational experience, overall size, and financial strength. Order No. 18676, Dkt. No. D-06-13, In re Joint Pet. For Purchase & Sale of Assets by The Narragansett Elec. Co. & So Union Co., at 51 (R.I.D.P.U.C. July 25, 2006). The investigation in this docket is therefore appropriately limited to this review. If permitted to intervene, the participation of Acadia Center, CLF, and GECA should be strictly limited to confirming that PPL is capable of continuing to implement renewable energy policies already in place, which is the standard of review for this proceeding, set forth in R.I. Gen. Laws § 39-3-25.

IV. CONCLUSION

The interests asserted by the Movants are outside the scope of the Division’s jurisdiction and the scope of its review pursuant to R.I. Gen. Laws § 39-3-25. The Movants seek to address pecuniary interests that are not appropriate for litigation in this docket or raise general policy issues that fall outside the jurisdiction of the Division or will be represented adequately by the OER and Attorney General. Therefore, for the foregoing reasons, National Grid respectfully requests the Division limit the scope of intervention of Acadia Center, CLF and GECA in alignment with the Division’s scope of review in this proceeding and deny the motions to intervene submitted by EDP, the Providence Intervenors, NRG Retail Companies.

Respectfully submitted,

**NATIONAL GRID USA and
THE NARRAGANSETT ELECTRIC
COMPANY**

By their attorneys,



Cheryl M. Kimball, Esq.
Robert J. Humm, Esq.
Keegan Werlin LLP
99 High Street, Ste. 2900
Boston, Massachusetts 02110
(617) 951-1400



Jennifer Brooks Hutchinson, Esq.
Senior Counsel
National Grid
280 Melrose Street
Providence, Rhode Island 02907
(401) 784-7288

Dated: July 9, 2021