

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

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

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**MOTION FOR RECUSAL**

By its attorneys, and on behalf of its members, Circular Fuels, LLC, Heartwood Group, Inc., RER Energy Group, LLC, Clean Economy Development, LLC, and Green Development, LLC and Dr. Kenneth Payne, New Energy Rhode Island (“NERI”), moves pursuant to Rule 1.19 of the Rhode Island Division of Public Utilities and Carriers (“DPUC”) Rules of Practice and Procedure (Rules) for the hearing officer, John Spirito, to recuse himself in the above-captioned proceeding related to the proposed sale of the Narragansett Electric Company (“NEC”). Mr. Spirito has demonstrated his prejudice against distributed energy resources in a manner that indicates a personal bias and preconceived and settled opinion of such a character as to impair his judgment. Neither NERI nor the State of Rhode Island can have confidence in the fairness of his decision making in this matter.

To maintain public confidence in the fairness of the agency’s decision making, an agency adjudicator must not prejudge a matter before the agency. Champlin’s Realty Assoc. v. Tikoian, 989 A.2d 427, 443 (R.I. 2010) (citing Davis v. Wood, 427 A.2d 332, 337 (R.I.1981); see also Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 185 (R.I. 2008), cert. denied, 555 U.S. 955 (2008)). “An adjudicator must recuse himself or herself when he or she possesses “a

‘personal bias or prejudice by reason of a preconceived and settled opinion of a character calculated to impair his [or her] impartiality seriously and sway his [or her] judgment.’” Id. (quoting Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1246 (R.I. 1999)). Based on this standard and the actions of the hearing officer, neither NERI nor the public can have confidence in the hearing officer’s impartiality. “An agency adjudicator must not become ‘an advocate or a participant’” in a proceeding and must remain neutral. Tikoian, 989 A.2d at 443.

*I. The Hearing Officer has Shown his Bias.*

In response to an access to public records request, Mr. Spirito refused to produce correspondence with Narragansett related to PUC docket 4981, claiming that the Division has a “common interest” with Narragansett that made the correspondence work product privileged. (Division response to APRA Request attached as **Exhibit A**).

The Attorney General corrected Mr. Spirito’s misunderstanding in its decision on that APRA appeal. In pertinent part, that decision wrote: “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 Mr. Spirito’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.”

Yet, Mr. Spirito maintained his influence at the Division. In response to a subsequent data request, it only maintained and elaborated on its common interest with the utility.

**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 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.

Division's Objections and Responses to the Data Requests (First Set) of the Episcopal Diocese of Rhode Island Attached as **Exhibit B** (<http://www.ripuc.ri.gov/eventsactions/docket/4981-DPUC%20Response%20to%20Diocese%20DR%20-%204-23-21.pdf>). Even after the attorney general's attempt at correction, the Division stood by hearing officer Spirito's position that it had "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.

The unsupported declaration that the Division had a common interest with National Grid in protecting ratepayers from the cost of local renewable energy was inconsistent with public duty and public policy. The Commission and the Division share 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 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. There is no authority or basis to make such prejudicial policy pronouncements.<sup>1</sup> 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

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<sup>1</sup> 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.

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.<sup>2</sup>

Hearing officer Spirito's assertion of common interest is unfounded; the Division clearly does not and cannot share any common interest with National Grid.

*II. The Hearing Officer's Bias Prejudices his Rulings on the Public Interest as Implicated in This Sale.*

Petitioners object to NERI's intervention (and others) on the basis that the intervenors merely represent private commercial interests and cannot claim the right to participate in this proceeding for the public interest. NERI contests that in its intervention papers and in its oral argument. As examples, NERI's motion to intervene takes the following position:

For too long, NEC has inflated the value of its Rhode Island assets by prioritizing its profits above ratepayer, small business, and public interests. It has underserved our state's preference for lower cost, more secure, and cleaner distributed energy resources to provide for its own profit from natural gas and infrastructure investment. The "Transforming the Power Sector Phase 1 Report," found that

[w]hile 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 . . . To meet peak demand, our system currently invests in solutions that are more expensive than is necessary.

NEC has long undervalued the benefits local generation of clean energy provide to the distribution and transmission system. NEC just filed another three-year plan to achieve system reliability through the consideration of non-wires alternatives; but, it only proposed more wires and further study. In 2017, Rhode Island law required NEC to propose locational incentives for renewable energy projects that could save ratepayers money on upgrades to the distribution system. The company has yet to make any such proposal. The failure to pursue non-wires

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<sup>2</sup> Transforming the Power Sector Phase One Report (see [http://www.ripuc.ri.gov/utilityinfo/electric/PST%20Report\\_Nov\\_8.pdf](http://www.ripuc.ri.gov/utilityinfo/electric/PST%20Report_Nov_8.pdf)) at pp. 16, 18.

alternatives costs small businesses and consumers. NEC has sought to keep its cost benefit analyses of our energy decision-making confidential and not subject to stakeholder review and critique. Meanwhile, NEC has obstructed local small businesses seeking to use local labor to interconnect lower-cost, more secure, and cleaner supply alternatives. Those small businesses are fighting NEC's unauthorized assessment of huge transmission system operating and maintenance fees being billed by its transmission affiliate, New England Power, on projects designed to supply lower cost energy right here in Rhode Island. National Grid's recent acquisition of Geronimo Solar and its sale of NEC, positions its unregulated affiliate, "National Grid Renewables" to bring utility scale renewables to out-compete local clean energy businesses based on unparalleled access to information about our system.

Continued over-reliance on imported infrastructure-rich energy solutions compete with lower cost alternatives brought by local small businesses and supported by our local labor force. Fossil fuels have high energy density; they involve concentrated extraction and then transport huge facilities for transmission and distribution to end users. Their fuel is from elsewhere, taking local dollars go out of state. The current energy supply depends on dirty extraction industries and fossil fuel burning facilities too often sited in low-income areas. Our state energy plan emphasizes the need to diversify our energy supply to enhance our energy security and resiliency. Continued overreliance on dirty, imported energy solutions becomes even more of a threat as we seek to electrify our transportation and heating and cooling sectors and need more and more electricity. Rhode Island desperately needs a new brand of administration over its electrical system to reach our goal of getting 100% of our electricity from renewable resources.

NERI members are concerned that PPL's priorities may not align with Rhode Island's long-term energy, ratepayer, labor and public interests. PPL's Kentucky subsidiary has recently filed its third request for a rate increase with regulators in four years, while also slashing the benefit that Kentucky customers get from their own clean energy investments by 80%. In its "Strategic Repositioning of PPL Corporation" report of March 18, 2021, PPL boasts to its shareholders of "Further opportunities to invest in electric and gas infrastructure with annual rate base growth greater than 9% over the past 5 years." Rhode Island's public interest is not served by unwarranted infrastructure investments that drive rates higher and higher.

In this proceeding, NERI 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. That planning process must be transparent, allowing stakeholders the opportunity to provide input and help shape the plan around Rhode Island's public interest as expressed repeatedly in its public policies.

In its oral argument, NERI added:

NERI's members have a unique and unrepresented interest in the impacts of this sale on their capacity to compete for that energy future. . . In this docket NERI will advocate for the mechanics of a utility structure and future that will most effectively fulfill state policy -- 100% by 2030, Power Sector Transformation, and the 2021 Act on Climate. NERI will advocate for fair competitive practices and seek to get assurances re the competitive impacts of the sale for the generating class in Rhode Island. No other party can adequately represent the RI businesses, offtakers and advocates participating in NERI with respect to its concerns addressed here.

Yet, Petitioners persisted with their case that NERI's members simply sought their own profit and could not, therefore, represent any public interest.

Beyond Petitioner's overlooked facts that NERI's members are not all for profit companies (they do substantial work in and for the public sector), and that the effort to deny these intervenors a voice in this docket only unveils petitioners' anticompetitive profit seeking intent, the substantive question of whether those supplying local clean energy and benefitting from its production serve the public interest hinges on whether it can provide net value to electric customers, the electric system and to society. If, as NERI asserts, such local energy solutions provide economic benefit, then those advocating for them provide a service that is in the public interest. Rhode Island's energy policy strongly supports NERI's position that local clean energy projects provide great net benefit to ratepayers and Rhode Island.

Rhode Island's Energy Plan promotes renewable energy to enhance energy security, improve cost-effectiveness and reduce greenhouse gas emissions.<sup>3</sup> Cost savings is a common purpose of Rhode Island's renewable energy laws. R.I. Gen. Laws §§39-26-1; 39-26.4-1; 39-26.6-1. A common purpose is to "facilitate and promote installation of customer-sited, grid-connected generation of renewable energy [and] to support and encourage customer development

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<sup>3</sup> *Energy 2035: Rhode Island State Energy Plan (2015)*.

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; to improve distribution system resilience and reliability; and to reduce distribution system costs.”

R.I. Gen. Laws §§ 39-26.1-1; 39-26.4-1; 39-26.6-1 (emphasis added).

Indeed, the utility’s profit structure and profit also proves the benefit of local, distributed energy solutions. 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 NEC. 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.<sup>4</sup>

Local renewable energy projects and other non-wires alternatives reduce the demands on and the costs of our transmission and distribution systems. They promise to bring down the need for National Grid’s infrastructure investment and, thus, National Grid’s profits. However, hearing

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<sup>4</sup> Transforming the Power Sector Phase One Report (see [http://www.ripuc.ri.gov/utilityinfo/electric/PST%20Report\\_Nov\\_8.pdf](http://www.ripuc.ri.gov/utilityinfo/electric/PST%20Report_Nov_8.pdf)), pp. 13-14.

officer Spirito has prejudged that he has a “common interest” with our utility to prevent ratepayers from cross subsidizing local clean energy solutions. That prejudice does not allow NERI or Rhode Island confidence that he can be impartial in the decisions that are and will be before him.

*III. The Hearing Officer’s Bias Prejudices his Pending Ruling on Whether NERI’s Interests are Otherwise Adequately Represented.*

Petitioners claim that NERI’s interest in advocating for local energy solutions is adequately represented by the State of Rhode Island, through the Division’s advocacy section and the Office of Energy Resources. The hearing officer’s averred “common interest” with the utility and his unfounded opinion that local clean energy projects are subsidized by other ratepayers prove him unfit to determine whether NERI’s members are adequately represented by the advocacy section or OER.

The advocacy section claims that it “will represent the interests of all ratepayers in this matter.” In response, NERI argued:

In the last year, not once but twice, the DPUC has claimed a “common interest” with the utility in matters related to the mechanics and cost of interconnecting renewable energy projects to the distribution system, the undisputed objective of RI energy policy. The DPUC has openly stated its position that local clean energy solutions are subsidized by ratepayers. That conclusion (which is neither supported by state law/policy or evidence), inherently acknowledges that DG/DERs are a “different” interest than what the DPUC represents. The DPUC even wrongly sought to assert the attorney work product privilege to documents it had exchanged with National Grid as if they were a joint interest. This matter of utility influence on its regulator is currently on appeal in the Supreme Court. Despite its representation that “the Advocacy Section will represent the interests of all ratepayers in this matter” the DPUC clearly has not, does not and cannot represent the interest of the renewable energy developers, offtakers and advocates participating in NERI.

The resolution of this question of whether the advocacy section can adequately represent NERI's interests is currently pending decision by hearing officer Spirito. Given his demonstrated prejudice, Mr. Spirito is clearly unfit to decide that.

The current administration at OER has shown that it shares Mr. Spirito's prejudice against local energy resources. OER's report on Rhode Island's goal of 100% renewable energy by 2030 contains a (wholly unsupported) conclusion that local production of renewable energy is subsidized by other ratepayers and a policy recommendation that OER ought to commence a stakeholder process to evaluate ways to reduce the cost of homegrown clean energy (presumably by paying it less than it is worth). An APRA request regarding that study process revealed that OER set those policy findings and recommendations in consultation with National Grid. It also revealed that many stakeholders voiced concern that OER and its consultants had ignored the many benefits these local projects produce to the transmission and distribution systems which promise to reduce our great cost of operating and maintaining the electrical system (which cost is paid to National Grid). There was never any response much less any dialogue on this point. The concern was not even mentioned or addressed in the summary of comments produced with the final report. See

<http://www.energy.ri.gov/documents/renewable/The%20Road%20to%20100%20Percent%20Renewable%20Electricity%20-%20Brattle%2004Feb2021.pdf> There was no record of evidence to support OER's conclusion that local energy generation costs ratepayers more than the benefit it provides. Given his own demonstrated and shared prejudice on this point, Mr. Spirito is in no position to judge whether OER can adequately represent NERI's interests either.

*Conclusion*

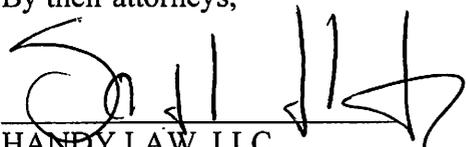
In the past, John Spirito acted as the hearing officer because of his position as counsel to the Division. He no longer serves in that position; he is now the deputy director of the Division. Christy Hetherington is now counsel to the Division. It is unclear why the Director of the Division appointed Mr. Spirito to be the hearing officer for this proceeding. Perhaps he could have represented the Division's advocacy section, given his history of policy advocacy.<sup>5</sup> Mr. Spirito's bias undermines confidence in his capacity to impartially adjudicate issues central to the resolution of the pending motion to intervene and the public interests in the sale of Narragansett Electric Company.

NERI respectfully asks hearing officer Spirito to recuse himself from docket D-21-09.

Respectfully submitted,

**NEW ENERGY RHODE ISLAND,  
CIRCULAR FUELS, LLC, RER  
ENERGY GROUP, LLC, CLEAN  
ECONOMY DEVELOPMENT, LLC,  
THE HEARTWOOD GROUP, INC.,  
GREEN DEVELOPMENT, LLC AND  
DR. KENNETH PAYNE**

By their attorneys,



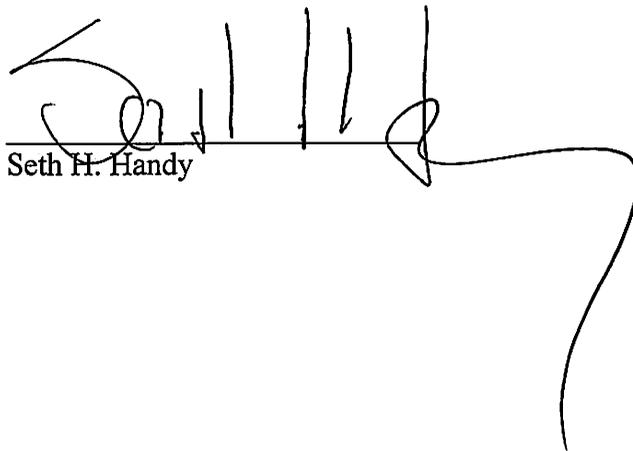
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<sup>5</sup> Tikoian, 989 A.2d at 443 (“An agency adjudicator must not become ‘an advocate or a participant.’”)

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2021, I sent a true copy of the document by electronic mail to the Division and the service list and filed the original pleading and four (4) photocopies with the Division.



Seth H. Handy

# Exhibit A



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**DIVISION OF PUBLIC UTILITIES AND CARRIERS**

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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.<sup>1</sup> It is also necessary for the Complainant to demonstrate that the records sought are relevant.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The common interest privilege is "an extension of the attorney client privilege."<sup>5</sup> "[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."<sup>6</sup>

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."<sup>7</sup> 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.<sup>8</sup> The declaratory

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<sup>1</sup> Fireman's Fund Insurance Co. v. McAlpine, 120 R.I. 744, 391 A.2d 84 (1978).

<sup>2</sup> Id.

<sup>3</sup> Tinney v. Tinney, 770 A.2d 420 (R.I. 2001).

<sup>4</sup> Hall v. Shiff, 2015 WL 730661 (R.I. Super).

<sup>5</sup> Waller v. Fin. Corp. of America, 828 F.2d 579, 583 n.7 (9th Cir. 1987).

<sup>6</sup> In re Grand Jury Subpoenas, 89-3 & 89-4, John Doe 89-129, 902 F.2d 244, 249 (4th Cir. 1990).

<sup>7</sup> R.I.G.L. §42-35-8.

<sup>8</sup> 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”).<sup>9</sup> 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.<sup>10</sup>

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.”<sup>11</sup> 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.<sup>12</sup>

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

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<sup>9</sup> R.I.G.L. §42-35-8.

<sup>10</sup> R.I.G.L. §42-35-9.

<sup>11</sup> R.I.G.L. §42-35-8.

<sup>12</sup> 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.<sup>13</sup>

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.”<sup>14</sup> Email communications, if they contain such “opinion” or “core” work product materials, are similarly exempt from disclosure.<sup>15</sup> 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.<sup>16</sup>

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<sup>13</sup> See Interstate Navigation Company v. Division of Public Utilities and Carriers, 202 WL 1804072 (R.I. Super.).

<sup>14</sup> Crowe Countryside Realty Associates, Co., LLC v. Novare Engineers, Inc., 891 A.2d 838 (R.I. 2006).

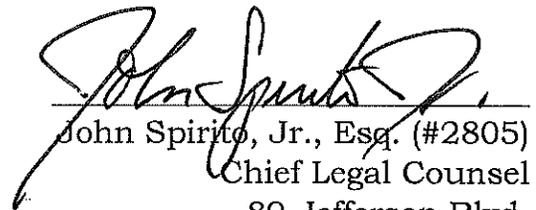
<sup>15</sup> Judicial Watch, Inc. v. Department of Justice, 432 F.3d 366 (2005).

<sup>16</sup> 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

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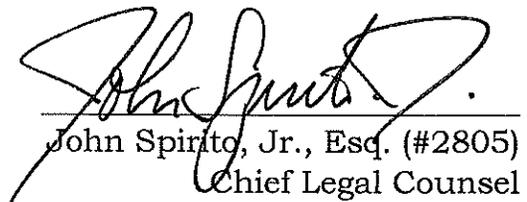
john.spirito@dpuc.ri.gov

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.



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# Exhibit B

**STATE OF RHODE ISLAND  
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**  
 )  
 )

Pursuant to Rule 1.19 of the Commission’s Rules of Practice and Procedure, the Division submits the following objections and responses to the Data Requests (First Set) of the Episcopal Diocese of Rhode Island:

**GENERAL OBJECTION**

The Division objects to all of the data requests contained in the First Set in that they are beyond the scope of the Supreme Court’s Order dated March 24, 2021 (see e.g., Sansone v. Morton Mach. Works, Inc., 957 A.2d 386, 398 (R.I.2008) (holding that an inferior tribunal may not exceed the scope of the remand or open up the proceeding to legal issues beyond the remand.)). That Order explicitly provides:

This 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.

(Emphasis added).

By the clause “to consider the new evidence,” the Supreme Court clearly is referencing the production made by the Division in response to the Petitioner’s APRA request after the Attorney General ruled that the materials should be produced. The Supreme Court also explicitly required the Commission “to provide findings of fact and citations to the rules upon which the Commission” relied rather than forwarding the Supreme Court a transcript of its open meeting decision. Nowhere in its Order did the Supreme Court authorize the Petitioner to conduct additional

discovery in the remand proceeding. The Petitioner does not possess any right to conduct discovery in the remand proceeding which is confined to the record that is currently before the Commission.

### **SPECIAL OBJECTIONS**

- 1-1 Describe the discussion referenced in the first sentence of the email between Mathew Stern and Jon Hagopian dated November 12, 2019, including who participated, their place of employment, where it occurred, and what was discussed.**

RESPONSE:

The Division objects to Data Request 1-1 on the ground 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. Without waiving the foregoing objection, on November 19, 2019, Jack Habib and Mathew Stern of the law firm of Keegan Werlin, LLP and attorney Brooke Scully of National Grid, all representing National Grid, came to the Division of Public Utilities and Carriers to meet with Division attorney Jon G. Hagopian to discuss this filing. The meeting was short, Mr. Habib informed attorney Hagopian of the position of the company with respect to the Petition. Attorney Habib stated that National Grid was opposing the petition. The discussion of the meeting centered around transmission upgrades and who bore responsibility for their costs. Attorney Hagopian was concerned that ratepayers would be held responsible for transmission upgrade costs rather than the parties who required the upgrades. The representatives of National Grid shared the same opinion. The parties also discussed reporting requirements of ISO New England relating to the Petition.

- 1-2 Please identify any other meetings or conversations that occurred between Matthew Stern, Jack Habib, Brooke Skulley or any other representative of Narragansett Electric Company d/b/a National Grid (the Company) and Jon Hagopian or any other representative of the Division of Public Utilities and Carriers (the Division) including who participated, their place of employment, where it occurred, and what was discussed.**

RESPONSE:

The Division objects to Data Request 1-2 on the ground 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. Without waiving the foregoing objection, no other meeting or conversations took place other than at the hearing.

- 1-3 Explain the process by which the Division reached the conclusion reflected in the email of November 13, 2019, from John Hagopian to Matthew Stern and in the comments it filed in this docket 4981, including any research done, meetings or conversations had and any other diligence.**

RESPONSE:

The Division objects to Data Request 1-3 on the ground 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 1-3 in that it seeks information protected by the deliberative process privilege. Without waiving the foregoing objections, the Division, with the advice of an outside consultant, formed its conclusion based upon a review and interpretation of the Petition, case law, and the applicable tariff and ISO New England rules.

- 1-4 Explain the similarities in the content of the Division’s comments filed in docket 4981 and the contents of Matthew Stern’s email dated November 12, 2019.**

RESPONSE:

The Division objects to Data Request 1-4 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 likely to lead to the discovery of admissible materials and/or information. Without waiving the foregoing objection, the documents speak for themselves.

- 1-5 Is it the Division’s standard practice to ask the Company for advice on how to present its legal position regarding a legal issue presented to the Public Utilities Commission (Commission)?**

RESPONSE:

The Division objects to Data Request 1-5 on the grounds that is geared to unduly harass the Division and that it seeks information that is neither relevant to the Supreme Court’s remand nor is likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-5 on the ground that it seeks a response based on the wholly erroneous assumption that the Division asked the advice of National Grid on “how to present its legal position” to the Commission. Without waiving the foregoing objections, as a matter of practice, as an independent party to Commission adjudications, the Division oftentimes makes inquiry of the Company to be able to formulate the Division’s own recommendation for submission to the Commission. In Docket No. 4981, the Division did not receive any advice on how to present its position to the PUC. It concluded that the Petition, if successful, would impose substantial costs on ratepayers to pay for transmission upgrades and studies—upgrades and studies that were caused by the

developer, not ratepayers. The Division found this view to be supported by the relevant legal authority.

**1-6 Is it appropriate for a purportedly neutral regulatory agency to have its mental impressions shaped by one party to an adjudication in which it is meant to serve as the ratepayer advocate? If so, why?**

RESPONSE:

The Division objects to Data Request 1-6 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 likely to lead to the discovery of admissible materials and/or information. The Division also objects to Data Request 1-6 on the ground that it seeks a response based on the wholly erroneous assumption contained in the request that the Division's "mental impressions" were shaped by National Grid. Without waiving the foregoing objections, in Docket No. 4981, in no way were the Division's impressions shaped by National Grid. Rather, in the docket, the Division fulfilled its statutory mission to advocate for the ratepayers of Rhode Island when it opposed and successfully defeated a prayer in the Petition that would have potentially made ratepayers responsible for millions of dollars in transmission upgrades and study costs—costs that the Petitioner was responsible for according to accepted principles of cost causation. Furthermore, the relevant legal authority supports the Division's position in the matter.

**1-7 On what basis did the Division conclude that its communications with its regulated for profit utility could be considered attorney work product?**

RESPONSE:

The Division objects to Data Request 1-7 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. Without waiving the foregoing objections, the Division concluded that its e-mail communications with National Grid were attorney work product in that the e-mails were prepared by an attorney of the Division in anticipation of preparing the Division's recommendation to the Commission regarding the merits of a then pending contested administrative proceeding, Docket No. 4981. The assertion of attorney work product has not been waived because the Division and National Grid possess the common interests to ensure that transmission upgrade and study costs are not imposed on ratepayers and/or do not produce unjust and unreasonable rates.

**1-8 Explain the basis for the Division's position that its "common interest" with the Company made it right and proper for the Division to confer in response to an energy policy issue put before the Commission?**

RESPONSE:

The Division objects to Data Request 1-8 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. Without waiving the foregoing objections, the Division and National Grid possess a "common interest" to ensure that transmission upgrade and study costs that were the subject of Docket No. 4981 are not imposed on ratepayers and/or produce unjust and unreasonable rates. Where National Grid has taken a position that is consistent with ratepayer interests in keeping rates as low as possible, it is particularly "right and proper" for the Division to consult Company to be able to formulate the Division's own recommendation for submission to the Commission.

- 1-9 Explain how such a claimed "common interest" is consistent with the Division's charge 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).**

RESPONSE:

The Division objects to Data Request 1-9 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 1-9 on the ground that it seeks a response based on the erroneous assumption contained in the request that the Division's sole charge is to regulate utilities 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. Without waiving the foregoing objections, the Division and National Grid possess a "common interest" to ensure that transmission upgrade and study costs that are the subject of Docket No. 4981 do not produce unjust and unreasonable rates.

- 1-10 Explain how such an observed "common interest" provide for just and reasonable rates and charges without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.**

RESPONSE:

The Division objects to Data Request 1-10 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. Without waiving the foregoing objections, National Grid and the Division

both believe, in accordance with long-established and accepted regulatory principles that cost causers, (specifically, Petitioner, in Docket No. 4981) must be responsible for the transmission upgrade and study costs that are the subject of the docket. Failure to adhere to this principle would produce unjust and unreasonable rates, and rates that in all probability, would be discriminatory, rife with preference and advantages, and/or unfair and anticompetitive.

**1-11 Explain how such a perceived “common interest” ensures the Division’s due regard for the preservation and enhancement of the environment as our general assembly deemed necessary to protect the health and general welfare of Rhode Island citizens.**

RESPONSE:

The Division objects to Data Request 1-11 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 1-11 on the ground that it seeks a response based on the wholly erroneous assumption contained in the request that the Division’s sole charge is to regulate utilities 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.

**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.

**1-13 Did the Division consider whether the Company could have any economic interests that might influence its advocacy on the issue presented to the Commission in this docket 4981?**

RESPONSE:

The Division objects to Data Request 1-13 on the ground 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 1-13 in that it calls for undue speculation as to the Company's motives for espousing the position that it did before the Commission in Docket No. 4981. Without waiving the foregoing objections, the Division's recommendation to the Commission in Docket No. 4981 speaks for itself, and was formed based upon its own review of the matter and the advice of an outside consultant.

**1-14 What economic interests might have influenced the Company's advocacy on the issue presented to the Commission in this docket 4981?**

RESPONSE:

The Division objects to Data Request 1-14 on the ground 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 1-14 in that it calls for undue speculation as to the Company's motives for espousing the position that it did before the Commission in Docket No. 4981.

**1-15 How are the Company's interests that might influence its advocacy on the issue presented to the Commission in this docket 4981 consistent with assuring 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?**

RESPONSE:

The Division objects to Data Request 1-15 on the ground 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 1-15 in that it calls for undue speculation as to the Company's motives for espousing the position that it did before the Commission in Docket No. 4981.

**1-16 Did the Division consider whether the Episcopal Diocese of Rhode Island (EDRI) could have interests that might influence its advocacy on the issue presented to the Commission in this docket 4981?**

RESPONSE:

The Division objects to Data Request 1-16 on the ground 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 1-16 in that it calls for undue speculation as to EDRI's motives for espousing the position that it did before the Commission in Docket No. 4981. Without waiving the foregoing objections, the Division did not agree with the position that the Diocese took in its petition so could not join with it.

**1-17<sup>1</sup> What economic interests might have influenced EDRI's advocacy on the issue presented to the Commission in this docket 4981?**

RESPONSE:

The Division objects to Data Request 1-17 on the ground 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 1-17 in that it calls for undue speculation as to the EDRI's motives for espousing the position that it did before the Commission in Docket No. 4981.

**1-18 How are EDRI's interests that might influence its advocacy on the issue presented to the Commission in this docket 4981 consistent with assuring 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?**

RESPONSE:

The Division objects to Data Request 1-18 on the ground 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 1-18 in that it calls for undue speculation as to the EDRI's motives for espousing the position that it did before the Commission in Docket No. 4981.

**1-19 If the Division concluded that the Company's interests were better aligned with assuring an abundance of energy supplied to the people with reliability, at economical**

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<sup>1</sup> Note the last three data requests in Petitioner's First Set are erroneously numbered. They have been properly renumbered for the purposes of this response.

**cost, and with due regard for the preservation and enhancement of the environment than were EDRI's**

RESPONSE:

Data Request No. 1-19 is an incomplete data request; therefore, no response is required.