

State of Rhode Island

Public Utilities Commission

Minutes of Open Meeting Held on January 25, 2023

An Open Meeting of the Public Utilities Commission (Commission or PUC) was held Wednesday, January 25, 2023, at 11:00 A.M. in Hearing Room A, 89 Jefferson Boulevard, Warwick, Rhode Island to discuss, deliberate, and/or vote on the following dockets.

In attendance: Chairman Ronald Gerwatowski, Commissioner John Revens, Cynthia Wilson Frias, Alan Nault and Todd Bianco. Commissioner Anthony was not available to attend the Open Meeting.

- I. Chairman Gerwatowski called the Open Meeting to order at 11:00 A.M. A quorum was present

- II. **Docket No. 22-49-EL – The Narragansett Electric d/b/a Rhode Island Energy (Company)** – On November 18, 2022, Rhode Island Energy (Company) filed for approval of the Company’s Advance Meter Functionality (AMF) Business Case. The Commission received seven motions to intervene in the docket. The parties that filed to intervene are the RI Office of Energy Resources (OER), the RI Attorney General, Acadia Center, Conservation Law Foundation (CLF), the George Wiley Center, Mission:data, and Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC, and XOOM Energy Rhode Island LLC (collectively, NRG Retail Companies). Rhode Island Energy submitted an Omnibus Response to the Motions to Intervene. At this Open Meeting, the Commission discussed the issues raised in the motions to intervene, the objection of the Company, and the replies of the parties.

Chairman Gerwatowski noted that there are three issues to address. First, there is the question of who is permitted to intervene. Second, there is the question whether any limits should be placed on the interventions. And, third, there is the question raised about the scope of the proceeding, which is an issue that relates to the second question before us regarding whether any limits should be placed on the interventions.

- Regarding the question of who is permitted to intervene, the Chairman noted that
- (1) The Division and OER are intervenors as a matter of statutory right. So, there are no decisions to be made with respect to the Division or OER. They are parties to the case.
 - (2) No objection was raised to the Attorney General’s intervention.
 - (3) No objection was raised to the intervention of the George Wiley Center, even though the filing was made out of time; and
 - (4) No objection was raised to the interventions of the Acadia Center and the Conservation Law foundation.

Given the fact that there are no objections, the Chairman supported granting the motions to intervene of the Attorney General, the Wiley Center, the Acadia Center, and CLF.

The Company objected to Mission:data and the NRG Retail Companies motion to intervene.

- (1) The objection raised regarding the NRG Retail Companies was not an outright objection. Rather, the Company takes the position that only two of the NRG affiliates should be allowed intervention status.
- (2) As for Mission:data, however, the Company objects outright to their intervention.

Regarding the NRG Retail Companies, the Company argues that the NRG Retail Companies should be limited as to which entities are allowed to participate. This seems to be more form than substance. The NRG Retail Companies can be treated as one intervenor. Rhode Island Energy has not really given any reason why it is prejudiced by the fact that there were five entities identified within the NRG Group as opposed to only two. The Chairman cited NRG's Reply (pages 7-8) setting forth the five issues that relate to their interests. He noted that those five categories of issues seem reasonable for retail suppliers to present in this proceeding. The Chairman is inclined to allow the NRG Retail Companies to participate as one intervening party on the issues identified on pages 7-8 of the Reply.

As for the objection to the participation of Mission:data, they indicate a very narrow interest on page 3 of its Reply. The Chairman noted no problem allowing them into the proceeding in order to express their views on those limited issues. Specifically, they identify concerns about the financial and technological aspects of the AMF proposal which relate to: "(1) Green Button Connect, (2) the Home Area Network, and (3) whether and how advanced metering functionality enables a market for third party energy management services. The Chairman is inclined to allow Mission:data them to intervene on those issues. That does not grant them unlimited ability to discovery, but it gives them an opportunity to address its concerns on these topics.

Even though the Chairman would condition the interventions on those issues, he considered leaving the door open for either the NRG Retail Companies or Mission:data to seek permission during the course of the proceeding to address other matters that may arise. However, they would need to seek leave to do so when the issues arise, with substantial support for their position.

Regarding the scope of the proceeding, Rhode Island Energy self-defines the scope of the proceeding in its objection, stating on page 4:

"The question before the Commission is whether to approve Rhode Island Energy's proposal for full-scale deployment of AMF and associated cost recovery as prudent and reasonable."

While Rhode Island Energy wishes to define the scope this way, the Chairman finds this as premature and procedurally presumptuous. The Attorney General makes a point in that regard, arguing in his brief:

"[T]he Commission should determine the scope of these proceedings and make any decisions about the relevance of certain topics, discovery requests,

testimony, etc. as they arise rather than accepting the Company's articulation of its preferred scope at this juncture."

The Chairman completely agrees with the Attorney General's on this point. The Commission will control and define the scope as the proceeding moves along.

In that regard, the Chairman wants to take the opportunity at this early stage to signal to the parties that while the Commission will be reviewing the proposal, no assumptions should be made about what the Commission will or will not rule upon. The Commission has no obligation to pre-approve a plan or preemptively disapprove anything that has been proposed by the Company in this case. This does not mean that the Commission will not issue any orders affecting the proposal. There is no statutory or regulatory requirement for the Commission to do so.

Most important, no assumptions should be made that the Commission will guarantee prudence before the Company begins to spend over \$200 million on this proposed project over the course of five years. Providing a reasonable opportunity for cost recovery of prudently incurred costs is not the same as giving a stamp of pre-approval or guaranteeing that there will not be any regulatory reviews in the future as the utility exercises its responsibility to run its business, reliably, safely, and at reasonable cost.

In that regard, the Chairman is concerned about the way the Company defined the scope of the proceeding. It looks like they are assuming a stamp of approval that allows them to launch a spending plan without ever having to reassess or adjust course. The Company must always exercise its managerial authority prudently, taking into account the facts and circumstances before it at the time it makes each incremental investment decision every year. Markets change, circumstances change, and other factors can emerge that require prudent reconsideration of prospective investment paths. That is the risk of running any business, whether private or regulated.

Commissioner Revens concurred with the Chairman's comprehensive discussion. The following motions were made:

- (1) Chairman Gerwatowski moved to grant the motion to intervene of the Attorney General. Commissioner Revens seconded and the motion passed. **Vote 2-0.**
- (2) Chairman Gerwatowski moved to grant the motion to intervene of the George Wiley Center. Commissioner Revens seconded and the motion passed. **Vote 2-0.**
- (3) Chairman Gerwatowski moved to grant the motions to intervene of the Acadia Center and the Conservation Law Foundation. Commissioner Revens seconded and the motion passed. **Vote 2-0.**
- (4) Chairman Gerwatowski moved to conditionally grant the motion to intervene of the NRG Retail Companies, limiting the scope of their intervention to the issues identified on pages 7-8 of their Reply Brief. Commissioner Revens seconded and the motion passed. **Vote 2-0.**
- (5) Chairman Gerwatowski moved to conditionally grant the motion to intervene of Mission: data, limiting the scope of their intervention to the financial and technological aspects of the AMF proposal which relate to Green Button Connect,

the Home Area Network, and whether and how the proposed advanced metering functionality affects the market for third party energy management services. Commissioner Revens seconded and the motion passed. **Vote 2-0.**

- (6) Chairman Gerwatowski moved that the NRG Retail Companies and Mission: data may seek leave to address other issues as they arise during the course of the proceedings that may be beyond the limited scope of their interventions set forth in the prior motions, provided they provide substantial support for their request.
- III. There being no further business to discuss, the Chairman adjourned the Open Meeting at 11:15 A.M. A web video of the Open Meeting discussion can be accessed at <https://video.ibm.com/recorded/132489263>.