



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS

Legal Section
89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500
(401) 941-9207 - Fax

January 19, 2024

Ms. Luly Massaro
Public Utilities Commission
89 Jefferson Boulevard
Warwick, R.I. 02888

In re: Investigation of Misconduct by The Narragansett Electric Company Relating to Past
Payments of Energy Efficiency Program Shareholder Incentives
No. 22-05-EE

Dear Ms. Massaro:

Attached please find a Memorandum by the Division of Public Utilities and Carriers, for
filing in the above-entitled docket. Hard copies will be provided to the Commission as well.

Very truly yours,

/s/ Margaret L. Hogan

Margaret L. Hogan, Esq.

cc: Linda D. George, Esq., Administrator, DPUC
22-05-EE Service List

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

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| In re: Investigation of Misconduct by The Narragansett Electric Company Relating to Past Payments of Energy Efficiency Program Shareholder Incentives | : | |
| | : | DOCKET NO. 22-05-EE |
| | : | |

**PENALTY MEMORANDUM OF THE
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

I) INTRODUCTION

In its Briefing Memorandum dated December 7, 2023, the Public Utilities Commission (“Commission”) directed the parties to address a series of “threshold” questions in an organized procedural timeframe. Accordingly, the Division of Public Utilities and Carriers’ (Division) hereby provides its response to address the following questions:

1. Whether R.I. Gen Laws §39-2-8 applies to the admitted conduct of out-of-period invoicing, including the filing of reports and financial schedules supporting the award of performance incentives that may have reflected inaccurate or false reporting of cost incurrence in applicable program years.
2. To what extent does R.I. Gen Laws §39-2-8 apply to the filing of the Annual Reports or other accounting or rate schedules if such reports or rate schedules reflected inaccurate or false information caused by the out-of-period invoicing?
3. If R.I. Gen Laws §39-2-8 was applicable and the Commission were to determine that a penalty should be assessed, what factors should the Commission consider in determining the amount of the penalty?
4. To what extent is R.I. Gen Laws §39-1-22 implicated if the Commission finds that witnesses in prior evidentiary proceedings supported figures or other information under oath that was based on inaccurate or false information caused by the out-of-period invoicing?
5. If the Division or Attorney General believes there is another statutory or other basis for the assessment of penalties, that should be addressed as well, with an explanation.

In the California case cited by the Commission in its briefing memorandum, the California Public Utilities Commission (“CA-PUC”), evaluated various remedies for California Edison Company’s (“SCE”) mismanagement of the 2017-2019 Energy Efficiency upstream lighting program, including: (1) refunding program expenses to ratepayers; (2) refund of Energy Savings and Performance Incentive (“ESPI”) payments; and (3) fines and penalties.

While the Commission’s briefing directive in this matter only sought answers relative to penalties, the Division has also considered and will briefly discuss the issue of refunding program expenses to ratepayers, as well as recouping funds paid to the Company as part of its Performance Incentive Mechanism (“PIM”) as further discussed in the Division’s pre-filed testimony of Jake Van Reen and Michael Ballaban.

Refunding Program Expenses:

In the SCE matter, the CA-PUC ordered a refund of program expenses totaling \$76.1 million due to unaccounted-for lightbulbs and the resulting non-savings in impact evaluation results. There, SCE admitted that there were issues with its program delivery but argued that a refund of \$4.3 million in administration costs was more appropriate.

Here, Narragansett Electric’s investigation was focused on the timing of invoice payments and *not* on the legitimacy of savings delivered. The company has represented that they delivered the savings reported. While the Division has not yet seen evidence that contradicts the Company’s representation, the findings submitted by the Company to the Commission on March 10, 2023 regarding out-of-period invoicing clearly indicates that there is a compelling integrity problem within the EE program. An audit to verify the legitimacy of savings has not occurred and therefore any discussion of refunding program expenses at this time would be premature. Should the

Commission determine that such an audit should occur, the Division submits that the cost of same should be borne entirely by the Company's shareholders and not ratepayers.

Refunding/Crediting to Ratepayers- Performance Incentive

R.I. Gen. Law §39-2-1 requires the rate, toll, or charge of all public utilities to be reasonable and just. Moreover, §39-2-1 declares every unjust or unreasonable charge as **prohibited** and **unlawful**. In the case of energy efficiency charges, the amount paid by ratepayers includes the administrative costs of delivering the various efficiency programs, the costs of customer incentives, required regulatory costs, and the shareholder incentive, often referred to as the performance incentive mechanism ("PIM").

In recent years, there has been extensive discussion and regulatory action taken by the Commission to reform the PIM so that the utility is encouraged to undertake prudent spending decisions that drive benefits at the least cost.¹ The intent of a PIM is *not* to manipulate the program to maximize the Company's performance incentive.

The Division has submitted extensive pre-filed testimony concerning the Company's failure to perform its critical obligations of financial accuracy as a result of widespread invoice manipulation through the out-of-period invoicing practices. The Division submits that the Company's failure to meet its critical obligations to its customers should result in a disallowance of a portion of the performance incentives awarded in each of the years examined: 2012 through 2020.

The Division asserts that a PIM which is based, in whole, or in part, upon manipulated invoices, to maximize shareholder profits, creates an energy efficiency charge that is unjust and unreasonable

¹ See Public Utilities Commission Order No. 24225 for an extensive discussion of the evolution of the PIM and its purposes.

and therefore, unlawful and prohibited. The Company should not be allowed to keep funds that were unlawfully garnered through deception and manipulation.

In support of this position, the Division is filing simultaneously with this Memo, copies of motions being filed in each of the Dockets for EE program years 2012-2020. Copies of these motions are attached hereto as Exhibit A. These motions, under Rule 810 RICR-00-00-1.29 (D), seek to have the Commission set aside its prior orders in each program year on the basis of “fraud upon the court” [Commission], defined by Black’s Law Dictionary, 19th Ed. as: “In a judicial proceeding, a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the proceeding. Examples are bribery of a juror and introduction of fabricated evidence.” Setting aside the Commission’s prior orders and re-opening those dockets will permit Narragansett Electric’s March 2023 report to be admitted into evidence in each docket for proper consideration of the appropriate shareholder incentive, as well as any penalties that may be appropriate under the circumstances.

II) DISCUSSION ON PENALTIES

1. Whether R.I. Gen Laws §39-2-8 applies to the admitted conduct of out-of-period invoicing, including the filing of reports and financial schedules supporting the award of performance incentives that may have reflected inaccurate or false reporting of cost incurrence in applicable program years.

R.I. Gen Laws §39-2-8 provides in pertinent part:

“Any public utility which shall violate any provision of chapters 1-5 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it **for which a penalty has not been provided**, shall be subject to the penalty of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00), and in the case of a continuing violation of any of the provisions of the chapters, every day’s continuance thereof shall be deemed to be a separate and distinct offense.” (Emphasis added herein)

Although there is no statute that specifically prohibits invoice manipulation or the filing of false documents or the making of false statements by regulated utilities and their representatives, there is an inherent duty in all administrative proceedings before the Commission and the Division, including any filings within dockets, for truthfulness, accuracy, and candor to both agencies. Indeed, statutorily prescribed public policy provides the Commission and the Division with: “the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies ... and to protect the public against improper and unreasonable rates, tolls, and charges by providing full, fair, and adequate administrative procedures and remedies.” R.I. Gen Laws §39-1-1 (c). Such authority to protect the public against unreasonable rates, tolls, and charges necessarily requires truthfulness from a utility and would therefore expose such a utility to penalties for its untruthfulness.

In its report dated March 11, 2022, the Narragansett Electric Company d/b/a National Grid admits, that since at least 2012, its employees had been engaged in a practice of manipulating invoices for four reasons, three of which were to benefit the Company:

1. To manage budgets;
2. To avoid negative effects to customers from program shut-down;
3. To maximize the Company’s performance incentive; and
4. To better position the programs’ performance for the following program year.²

Narragansett Electric/d/b/a/ National Grid defines “out-of-period invoicing” as the practice of inappropriately waiting to pay invoices or asking vendors to delay submitting invoices until the following program year.³ Even the most cursory review of the evidence in this Docket reveals that such invoice manipulation was a regular, common, and open occurrence within the energy

² National Grid Report on Out of Period Invoicing, March 11, 2023 at 13;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf.

³ *Id.*

efficiency programs. It was part of the normal day-to-day executed business practices admittedly designed to maximize shareholder profits, among other objectives, and was not truthful to the tribunal.

The Division submits that the Company's actions, both internally between its employees, and externally, by co-opting vendor participation that caused fraudulent and misleading filings are actionable under R.I. Gen Laws §39-2-8. Certainly, the acts of filing a written annual plan (which often had an undisclosed "head start" on achieving its targets), submitting deliberately misleading or untruthful pre-filed testimony and schedules, answering data requests untruthfully, testifying untruthfully or in a deliberately deceiving manner under oath, and submitting untruthful post-hearing compliance filings are all prohibited acts for which a Company can be penalized under R.I. Gen Laws §39-2-8. The extent to which each of these acts took place has yet to be determined. Penalties under R.I. Gen Laws §39-2-8 are to be applied, however, to those acts for which the greater penalty of R.I. Gen Laws §39-1-22 does not apply.

2. To what extent does R.I. Gen Laws §39-2-8 apply to the filing of the Annual Reports or other accounting or rate schedules if such reports or rate schedules reflected inaccurate or false information caused by the out-of-period invoicing?

As an initial matter, the Division submits that R.I. Gen Laws §39-2-8 would apply only if the greater penalty set forth in R.I. Gen Laws §39-1-22 is not applicable. R.I. Gen Laws §39-2-8 also provides that "in the case of a continuing violation of any of the provisions of the chapters, every day's continuance thereof shall be deemed to be a separate and distinct offense." Since, the Company's March 2023 report acknowledges that there is evidence that invoice manipulation was identified as a practice as far back as 2012, and since there has been absolutely no attempt to correct prior filings or account for them, penalties for offenses from 2012, even if assessed at the minimum of \$200.00 each, could result in a very substantial penalty, should the Commission so determine.

If there are many such actionable violations, which is a distinct possibility, the Company could be facing potentially many millions of dollars, just in penalties.

3. If R.I. Gen Laws §39-2-8 was applicable and the Commission were to determine that a penalty should be assessed, what factors should the Commission consider to determine the amount of the penalty?

As instructed by the Briefing order, the Division has reviewed the order issued by the California Public Utilities Commission against the Southern California Edison Company in Docket Rulemaking 13-11-005.⁴ In that case, after concluding that penalties were warranted, the CA-PUC considered the following factors when determining the amount of the penalty:

1. The severity of the offense, including harm to the regulatory process, as well as the ongoing nature of the offense, and deliberately inaccurate reporting;
2. Conduct of the utility before, during, and after the offense. To be considered here is: 1) the utility's actions to prevent a violation; 2) the utility's actions to detect a violation; and 3) the utility's actions to disclose and rectify a violation;
3. The financial resources of the utility. This review should also consider the value of deterrence, as well as the need to avoid excessiveness;
4. Totality of the Circumstances in furtherance of the public interest; and
5. Amount of the fine in relation to prior commission decisions or precedent.

The Divisions submits that all these factors, which were developed in a prior CA-PUC Docket, D.98-12-075, are appropriate for the Commission in its review.⁵ Additionally, the Division submits that the Commission should consider the span of time encompassing the existence of the unlawful

⁴ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M498/K964/498964399.PDF>

⁵ <https://www.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/caladvocates-motion-for-contempt-and-sanctions-with-exhibits---6-23-20.pdf>

practices and apparent corporate culture that such conduct was acceptable. The Commission should further consider the complete failure of the Company's accounting division to identify and flag the decrease in invoices in Q-4 of one year, as compared to the volume of invoicing in Q-1 of the following program year, from activities that occurred in Q-4 of the preceding year. It is hard to fathom how such disparities could *not* have been discovered through basic monitoring.⁶ In Exhibit B attached hereto, the Division has provided the Commission with additional information and examples on how other PUCs have addressed fines and penalties, incorporating many of these same factors.

4. To what extent is R.I. Gen Laws §39-1-22 implicated if the Commission finds that witnesses in prior evidentiary proceedings supported figures or other information under oath that was based on inaccurate or false information caused by the out-of-period invoicing?

R.I. Gen Laws §39-1-22 – False Returns provides:

“A company subject to the supervision of the commission or division that furnishes it with a sworn or affirmed report, return, or statement, that the company knows or should know contains false figures or information regarding any material matter lawfully required of it, and any company that fails within a reasonable time to obey a final order of the commission or division, shall be fined not more than twenty thousand dollars (\$20,000.00).”

As set forth above, the Division submits that the Commission should grant the Motions being simultaneously filed by the Division seeking to have the Commission set aside its prior orders in each and every energy efficiency docket from 2012 through 2020 and re-open those proceedings. In its report, the Company repeatedly stated that certain employees were no longer employed by the Company and therefore their knowledge of certain facts and about who knew what and when, was information that was not available to the Company. It was clear from its report that the Company took no steps to contact any of its former employees to secure answers to certain data requests. From the Division's perspective, the Company's approach to this important question

⁶ See Division's Redacted Testimony at pages 19-20 and Data Requests with attachments referenced therein.

leads to an inference that the Company was not interested in knowing whether its former employees would be willing to talk- or conversely, may have been more concerned that those former employees were all-too-willing to talk.⁷ To the extent that such former employees might indeed be willing to discuss these matters and other related matters, the Commission could consider authorizing a further audit, at the Company's expense.

The Company's March 2023 report provides more than an adequate basis for the Commission to request the Division to conduct further investigations into whether all elements of the energy efficiency charges paid by ratepayers were unjust, unreasonable, or otherwise in violation of any provisions of Title 39. Indeed, the Division avers that the admissions established in the record to date are sufficient grounds for the Commission, under R.I. Gen Law § 39-4-12, to order the Company to pay for the Division's costs in this docket to date as well as for all of the Division's future investigatory costs.⁸ Should the Commission agree to set aside its prior orders and re-open the energy efficiency dockets for the years 2012 through 2020, the evidence adduced to date herein is sufficient to order the Company to pay for all investigative costs therein.

5. If the Division or Attorney General believes there is another statutory or other basis for the assessment of penalties, that should be addressed as well, with an explanation.

R.I. Gen Law §39-3-10 (c) provides:

Nothing in subsection (b) herein or in § 39-2-5(12) shall derogate from the statutory authority of the commission or of the division, including, but not limited to, **the authority to protect ratepayers from unreasonable rates.** Nor shall

⁷ In this day and age of Google and Linked-In, people are easily found, if there is indeed a desire to find them.

⁸ **§ 39-4-12. Payment of investigation expense by utility.** If, upon a hearing and investigation, it shall be found that any rate, toll, charge, or joint rate or rates is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this title, or that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, or otherwise in violation of any of the provisions of this title, or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the public utility found to be at fault shall, if the commission finds the utility to have knowingly and intentionally violated the provisions, pay the expenses incurred by the division in the investigation and hearing.

anything in subsection (b) herein or in § 39-2-5(12) derogate from the common law or statutory authority of the attorney general, including, but not limited to, the authority to enforce consumer protection or unfair or deceptive trade practice statutes and regulations. (Emphasis added.)

From the Division's perspective, it is clear that the General Assembly has provided the Commission and Division with broad authority to protect the ratepayers from unreasonable rates. Further, the Division contends that the Company's actions manipulating invoices constitutes fraud upon the Commission. The Company's long-standing disregard of ethical conduct, coupled with its lack of effective internal controls to prevent such conduct, warrants further investigations in each of the energy efficiency dockets.

CONCLUSION

In the case of energy efficiency charges, the rates paid by customers includes the administrative costs of delivering the various efficiency programs, the costs of customer incentives, required regulatory costs, and the shareholder incentive. To the extent that the shareholder incentive for each year was admittedly based upon fraudulent accounting, the resulting rates approved in each energy efficiency docket, including the shareholder incentive, were unjust and unreasonable and therefore **prohibited** and **unlawful**. The Commission should exercise all its statutory authority to penalize the Company for its conduct and should consider further regulatory investigations and analysis within each of the energy efficiency dockets to confirm accuracy of claimed savings, and further, to document all conduct and actions that would trigger penalties pursuant to §39-2-8 §39-1-22. In pursuit of this endeavor, the Commission should set aside all its prior orders in the energy efficiency dockets from 2012 through 2020 and pursue regulatory audits, paid for by the Company's shareholders. Relevant statutory provisions for penalties as set forth above should be exercised to

the fullest extent, in recognition of the grave damage to the regulatory process and the Company's unlawful conduct.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities & Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
401-780-2120
Margaret.l.hogan@dpuc.ri.gov

CERTIFICATION OF NOTICE

A true copy of the within Memorandum is sent this 19th day of January 2024 to the current service list for Docket No. 22-05-EE.

/s/ Ellen Golde

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

In re: Investigation of Misconduct by The Narragansett :
Electric Company Relating to Past Payments of Energy : DOCKET NO. 22-05-EE
Efficiency Program Shareholder Incentives :

EXHIBIT A

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID – 2012
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4295

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #20596**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #20596 entered on December 22, 2011, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #20596, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #20596, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
401-780-2120
Margaret.l.hogan@dpuc.ri.gov

CERTIFICATION OF NOTICE

A true copy of the within pleading is sent this 19th day of January 2024 to the current service list for Docket No. 22-05-EE.

/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID – 2013
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4366

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #20911**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #20911 entered on December 21, 2012, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #20911, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #20911, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities & Carriers
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CERTIFICATION OF NOTICE

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/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID – 2014
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4451

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #21298**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #21298 entered on December 24, 2013, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #21298, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #21298, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
401-780-2120
Margaret.l.hogan@dpuc.ri.gov

CERTIFICATION OF NOTICE

A true copy of the within pleading is sent this 19th day of January 2024 to the current service list for Docket No. 22-05-EE.

/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID – 2015
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4527

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #21854**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #21854 entered on March 19, 2015, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #21854, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #21854, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
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By its attorney:

/s/ Margaret L. Hogan
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/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID – 2016
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4580

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #22926**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #22926 entered on October 17, 2017, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #22926, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #22926, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
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Warwick, R.I. 02888
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Margaret.l.hogan@dpuc.ri.gov

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/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID - 2017
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4654

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #23382**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #23382 entered on January 8, 2019, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #23382, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #23382, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
401-780-2120
Margaret.l.hogan@dpuc.ri.gov

CERTIFICATION OF NOTICE

A true copy of the within pleading is sent this 19th day of January 2024 to the current service list for Docket No. 22-05-EE.

/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID - 2018
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4755

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #23385**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #23385 entered on January 8, 2019, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #23385, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
4. The order is void;
5. A prior order on which the order is based has been reversed or otherwise vacated, or is no longer equitable that the order should have prospective application; or
6. Any other reason justifying relief from the order.

Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #23385, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings

and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
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CERTIFICATION OF NOTICE

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/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID - 2019
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4888

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #23775**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #23775 entered on April 16, 2020, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #23775, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
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Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #23775, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the

proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
2. Re-visiting the performance incentive approved by the Commission;
3. Possible audit at shareholder expense;
4. Consideration of the award of penalties against the Company for its conduct or lack thereof in its implementation and supervision of the administration of the energy efficiency program approved in this docket.

Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS,
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
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/s/ Ellen Golde

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC
CO. d/b/a NATIONAL GRID - 2020
ENERGY EFFICIENCY PLAN**

DOCKET NO. 4979

**MOTION BY DIVISION OF PUBLIC UTILITIES AND CARRIERS
REQUESTING THE COMMISSION
TO SET ASIDE COMMISSION FINAL ORDER #23937**

Now comes the Division of Public Utilities and Carriers (“Division”), pursuant to Commission Rules, 810 RICR-00-00-1.29 (D) requesting that the Public Utilities Commission (“PUC” or “Commission”) set aside its final order, #23937 entered on October 29, 2020, due to admitted fraud upon the Commission.

As grounds therefore, the Division refers the Commission to its ongoing investigation in Docket No. 22-05-EE, the “Commission’s Investigation of Misconduct or Fraud by the Narragansett Electric Co. d/b/a/ Rhode Island Energy Relating to Past Payment of Shareholder Incentive” in which the Company has filed a report dated March 10, 2023, admitting to and evidencing widespread invoice manipulation over the course of at least a decade.¹ This report is attached hereto as Exhibit A.

The Executive Summary of the report at page 1, states:

“National Grid’s investigation revealed that out-of-period invoicing occurred in multiple Rhode Island EEPs [energy efficiency programs] from 2012-2021, across the three EEP sectors (Residential, Low-Income, and Commercial & Industrial). Certain employees generally viewed out-of-period invoicing as an available and permissible practice for managing program spending and energy savings against the budgets and energy savings targets set in Narragansett’s Annual EE Plan.

¹ See Report filed by the Narragansett Electric Company dated March 10, 2023;
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

Believing that the practice was acceptable, employees engaged in out-of-period invoicing to manage budgets and avoid the negative effects that program shutdowns would have on customers and vendors; to maximize Narragansett's performance incentive; and to better position the EEPs to start the next year. To the extent that employees were engaging in this practice to maximize performance incentives or future goals, they acted inappropriately. Even if undertaken for customer-friendly purposes, out-of-period invoicing was not proper."

Since more than one year has passed since the entry of the Commission's order #23937, the Division, as a party, cannot file a motion to re-open the prior proceedings, even though within a one-year period a motion by the Division under Rule 1.29 (B) would be permitted under the following grounds:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
3. Fraud, misrepresentation, or other conduct of an adverse party;
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Notwithstanding the Division's inability to file a motion to re-open beyond a one-year period after the Commission's final order has been entered, the Commission retains the right to set aside its order and re-open a docket on the basis of fraud upon the Commission.

The Division asserts that to rectify the admitted fraud perpetrated by the Narragansett Electric Company upon the Commission, and by approval of Order #23937, the resulting fraud upon the ratepayers, the Commission should set aside its previous order and reopen the

proceedings to permit entering a new order that accounts for the admitted fraud. Such proceedings and new order should include:

1. Accepting the attached report dated March 10, 2023 as newly discovered evidence in the docket;
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Respectfully Submitted:
DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney:

/s/ Margaret L. Hogan
Margaret L. Hogan, Esq. (#5006)
Division of Public Utilities and Carriers
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Margaret.l.hogan@dpuc.ri.gov

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/s/ Ellen Golde

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

| | | |
|---|------------------|---------------------|
| In re: Investigation of Misconduct by The Narragansett Electric Company Relating to Past Payments of Energy Efficiency Program Shareholder Incentives | : : : : | DOCKET NO. 22-05-EE |
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EXHIBIT B

Retail Electric Supplier Penalties

Below are a series of penalties assessed against retail electric suppliers (also referred to as electric generation supplier or EGS) in Ohio, Pennsylvania, and Maryland. The impact and value of the penalties range from a few thousand dollars to millions of dollars based upon the respective state commission assessments of the impact to customers, mitigating circumstances, settlement, and the commission's intent to mitigate reoccurrence by the infracting EGS or other EGSs.

Ohio

- SmartEnergy - misleading and deceptive behavior
 - Assessed a \$122,000 civil penalty. Also, PUCO required the EGS to rerate customer bills from \$0.299/kWh to the utility standard offer service rate, and the EGS was only allowed to offer 1-year fixed price products for a 24-month period.
 - Civil penalty assessment is roughly based upon an \$11,000 per violation, with 11 violations listed. It is important to note that PUCO seems to assess penalties based upon violation of law/statute, not impacted customers.
 - <https://puco.ohio.gov/news/smartenergyholdings-23601>
- Ambit Northeast - customers improperly enrolled
 - Assessed a \$20,000 civil penalty, and required the EGS to implement an audit program and hold additional employee trainings.
 - Ohio Service Monitoring and Enforcement (OSME) sought a \$10,000 per incident penalty or \$40,000 in total; however, PUCO decided to impose a \$5,000 per violation penalty instead (no reasoning provided).
 - <https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=faea8146-effe-473b-b528-2dff66ce813c>

- Josco Energy - multiple issues, including recording of sales calls that did not match those received by customers, and third-party verification recordings were falsified.
 - Assessed a \$16,000 civil penalty, required EGS to implement a new compliance plan for vendor screening and quality assurance, and provide sales call scripts to PUCO for review. The EGS was also required to issue customer refunds (\$114.57 NG supply, \$3,957.40 electric supply).
 - OSME’s investigation found 8 “probably non-compliance violations”. They proposed a penalty of \$10,000 per incident or \$80,000 in total; however, PUCO ultimately asserted a \$2,000 per penalty amount.
 - <https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=3bfd26c1-5b72-4094-857e-27b67c0b02f7>

Pennsylvania

- Verde - unlawful conduct related to sales and marketing practices as a licensed EGS in PA (~9,000 violations - deceptive telemarketing, door-to-door sales, and 3,922 incidents Verde reps used confidential customer information to create and/or access customer accounts without their approval)
 - Assessed a civil penalty of \$1M, required the EGS to provide \$75,000 to the PPL Hardship fund, refund each customer identified in complaint who enrolled with Verde equivalent to first two-months of electric supply charges, refund early termination fees (and notify identified customers of potential refund of early termination fees and step required to receive refund), and provide an ongoing report to PA PUC I&E related to Verde's ongoing sales and marketing practices for two years.
 - The penalty of \$1M was based upon a ~\$100 per violation (in this case, per customer) which falls in line with some other penalties where a large number of violations/incidents occurred (e.g. Hiko Energy case).
 - <https://www.puc.pa.gov/press-release/2022/puc-approves-settlement-with-verde-energy-usa-regarding-company-s-sales-and-marketing-practices>
- National Gas & Electric - fraudulent, deceptive, and unlawful conduct related to sales and marketing practices as a licensed EGS in PA (6 informal complaints)
 - Assessed a civil penalty of \$15,250, required the EGS to modify operating procedures to safeguard against unauthorized customer

enrollments/deceptive marketing, provide refunds to each customer who was invalidly enrolled, and provide I&E monthly reports on customer complaints for one year.

- The penalty was based upon a \$1,000 per occurrence of harmed customers of which 6 customers harmed through unauthorized enrollments, \$1,000 per instance of deceptive marketing (4 were found), \$750 per occurrence where an unauthorized person was acting on behalf of a customer or where the verification process was not separated from the transaction process.
- <https://www.puc.pa.gov/press-release/2023/puc-approves-settlement-with-national-gas-electric-llc-regarding-company-s-sales-and-marketing-practices>
- <https://www.puc.pa.gov/pdocs/1770433.pdf>
- **Hiko Energy** - billed customers variable rates in excess of the discounted introductory rate it had guaranteed at the time of enrollment (to provide 1-7% savings over local EDC rate) following the Polar Vortex (2014)
 - Assessed a civil penalty of \$1,835,125, required ~\$2m in customer refunds (assuming a 3.5% savings per customer impacted, in the range, as Hiko has advertised), provide \$25,000 to EDC Hardship Funds, and modify their marketing practices.
 - Hiko challenged the PUC decision to the State Supreme Court, who upheld the decision (challenge by Hiko was that the penalty was set by PUC because they refused to settle the case)
 - The penalty was predicated upon the "violation" of 52 Pa. Code § 54.4(a) concerning billing as well as the egregious nature of the incident. The penalty was set at \$125 for each harmed customer, of which there were 14,689. PA PUC I&E recommended \$1,000 per incident/violation or \$14.689M aggregate civil penalty; however, the PUC found that \$1.8M penalty was sufficient to affect the impact (coupled with the associated customer refunds).
 - <https://www.puc.pa.gov/press-release/2015/puc-finalizes-penalties-for-hiko-energy-over-deceptive-marketing-and-billing-practices>

Maryland

- **Smart One Energy** - unfair and deceptive marketing practices (enrollment w/o contract, failing to provide contract to customers, engaging in deceptive solicitation)
 - Assessed a \$561,000 civil penalty. Limited detail provided supporting reasoning behind the actual value assessed.
 - <https://www.psc.state.md.us/wp-content/uploads/PSC-Takes-Action-Against-Smart-One-Energy.pdf>

- SunSea Energy - deceptive sales (e.g. offered lower rate electric but charged substantially higher than EDC rate)
 - Assessed a \$400,000 civil penalty, and was also required to refund impacted customers.
 - The Maryland OPC requested a fine of \$1.5M and revocation of EGS license; however, the MD Commission determined \$400,000 was enough.
 - <https://opc.maryland.gov/Portals/0/Files/Press-Releases/2021/Press%20release%20SunSea%20penalty%2008262021.pdf?ver=ueCcPgaeyRMfuduV11vvg%3d%3d>
 - https://www.eckertseamans.com/energy_litigation/public-service-commission-of-maryland-imposes-400000-civil-penalty-on-retail-supplier-for-violations-of-state-law-and-consumer-protection-regulations

Additional Misc. Utility and EGS Penalties

Violation of Mass. Renewable & Clean Energy Program (MA)

The Massachusetts Attorney General (Healey) settled with Utility Expense Reduction, LLC (UER) – the MA AG asserted that UER knowingly failed to make payments under the MA renewable and clean energy programs (violation of state False Claims Act, Consumer Protections Act, and environmental statutes) for 2018 and 2019. UER failed to pay ~\$825,000 associated with the renewable supply obligation (in lieu of providing RECs) after then leaving the MA energy market.

- Penalty assessed was \$1,650,000 (double the original payment amount) and may not operate in MA for 5 years.
- <https://www.mass.gov/news/retail-electricity-supplier-to-pay-state-more-than-165-million>
- <https://www.mass.gov/doc/6302022-final-judgment-by-consent-pursuant-to-mass-r-civ-p-58a1/download>

Failure to Comply with Rhode Island Renewable Energy Standard (RI)

- Sunwave USA Holdings failed to comply with the RI RES for CY 2021. RI PUC originally penalized Sunwave \$93,682 (double the ACP for that year) – however, Sunwave later paid the ACP for CY 2021 and CY 2022 and sought relief from the penalty imposed

(citing other mitigating circumstances). The penalty was subsequently reduced to \$10,000.

- <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-02/2232-Sunwave-Reopen-Ord24589%202-8-23.pdf>

Pennsylvania Act 129 (Energy Efficiency & Conservation Program) Penalty for Noncompliance (PA)

- PA Act 129 includes a penalty of \$1-\$20M if any utility's approved program fails to meet the required target by the end of the compliance period.
- https://www.puc.pa.gov/electric/pdf/Act129/HB2200-Act129_Bill.pdf [see page 58]

Fine for Billing Issues/Violations (PA)

- PA PUC assessed a \$1M (settled, black box) civil penalty against PPL Electric for a series of billing issues impacting hundreds of thousands of customers. PPL paid and/or would pay/refund \$1.7M to underbilled customers (not seeking recovery), and \$1M overbilled customers (these customers will be refunded), \$2.3M in voluntarily waived late fees, and additional costs and fees for which the company will not seek recover (e.g. additional bad debt, added vendor costs, unbudgeted employee overtime, etc.).
- <https://www.puc.pa.gov/pdocs/1806452.pdf>

Breach of Merger Terms (DC)

- As part of an acquisition of WGL Holdings, AltaGas agreed to develop or cause to be developed 10MW of either electric grid energy storage or Tier 1 renewable resources in Washington DC (*agreement w/ Washington DC Gov't*). AltaGas failed to do so in the specified time (only building 2.4MW). Following back and forth, the Washington DC PSC required parties to negotiate a penalty – parties were unable to do so; however, AltaGas provided a unilateral penalty proposal of ~\$489,000 if the remainder is built by 12/2024, or ~\$635,000 if built after 12/2024. Resolution is still pending before the PSC.