



STATE OF RHODE ISLAND
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Peter F. Neronha
Attorney General

August 12, 2022

Luly Massaro, Clerk
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, RI 02888
Luly.massaro@puc.ri.gov

***RE: IN RE: THE NARRAGANSETT ELECTRIC COMPANY D/B/A RHODE ISLAND
ENERGY PETITION FOR AUTHORITY TO FORGIVE CERTAIN ARREARAGES
FOR LOW-INCOME AND PROTECTED CUSTOMERS
DOCKET NO. 22-08-GE***

Dear Ms. Massaro:

Enclosed please find for filing an original and nine (9) copies of the Attorney General's Memorandum Supporting Forgiveness of Arrearages for Low-Income and Protected Customers, in the above-referenced docket.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Nicholas Vaz

Special Assistant Attorney General
nvaz@riag.ri.gov

Enclosures

Copy to: Service List

I. The \$43.5 million in arrearage forgiveness will help Rhode Island avoid a looming problem made worse by the difficulties of Covid-19 and which is unlikely to improve given current price spikes and inflation.

First and foremost, the \$43.5 million in arrearage forgiveness secured in the Settlement Agreement will provide relief to Rhode Islanders who have struggled to pay their utility bills. The amount of utility arrearages has skyrocketed in recent years, in part due to the difficulties created by the Covid-19 pandemic. Those struggling are now faced with even higher gas and electric prices because of market conditions outside of their control, along with general inflation that is increasing the cost of daily life. As a result, absent the Settlement Agreement and this forgiveness, a majority of the \$43.5 million of uncollected charges would likely remain unpaid, potentially affecting future rates for all Rhode Island customers, harming credit, and burdening Rhode Islanders who are struggling to pay their obligations on a going-forward basis. Thus, approval of this \$43.5 million in arrearage forgiveness would provide relief to low-income and protected customers, while also benefitting the public as a whole.

As noted in RIE's response to Data Request PUC 1-2, the company "will make adjustments as necessary such that [the arrearage forgiveness] does not impact any rate reconciliation mechanisms and does not impact the earnings sharing mechanisms." Additionally, RIE "will not recover [the arrearages] from customers in any way." See *Data Request PUC 1-3; Response*. Thus, this forgiveness helps some of the state's most vulnerable customers while also avoiding potential negative impacts for other customers. The arrearage forgiveness is a mechanism for RIE to share the benefits it realized from the transaction and to demonstrate its commitment to Rhode Island. Accordingly, the arrearage forgiveness should be approved.

II. Forgiveness of arrearages for low-income and protected customers is not undue rate discrimination under R.I. Gen. Laws § 39-2-2 or an unreasonable prejudice or preference under R.I. Gen. Laws § 39-2-3.

As noted by RIE in its Petition and further explained in responses to Data Requests PUC 1-12 through 1-16, the proposed arrearage forgiveness does not run afoul of Rhode Island’s rate anti-discrimination laws. Per R.I. Gen. Laws § 39-2-2(a):

If any public utility [] shall directly or indirectly by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting, or relating to the transportation of persons or property between points within this state, the distribution of electricity [] than it charges, demands, collects, or receives from any other person, firm or corporation for a like and contemporaneous service, *under substantially similar circumstances and conditions*, the public utility shall be guilty of unjust discrimination[.] (Emphasis added.)

Additionally, R.I. Gen. Laws § 39-2-3(a) states:

If any public utility shall make or give *any undue or unreasonable preference or advantage* to any particular person, firm, or corporation, or shall subject any particular person, firm, or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, the public utility shall be guilty of a misdemeanor. (Emphasis added.)

In analyzing these provisions, the Rhode Island Supreme Court has stated that this authority “merely prohibit[s] varying rates for a like and contemporaneous service provided under substantially similar circumstances or rates that confer an undue or unreasonable preference or advantage upon a customer group.” *Energy Council of Rhode Island v. Pub. Utilities Comm'n*, 773 A.2d 853, 862 (R.I. 2001). In exercising its authority under these provisions, the Commission has broad discretion when determining whether arrearage forgiveness for the identified low-income and protected customers is discriminatory. “An order or judgment of the commission made in the exercise of administrative discretion shall not be reversed unless the commission

exceeded its authority or acted illegally, arbitrarily, or unreasonably.” *Id.* at 860 (quoting R.I. Gen Laws § 39-5-3).

The forgiveness negotiated in the Settlement Agreement is applicable to two previously identified subsets of utility customers for whom the Commission has already approved differentiated rate mechanisms. Low-income and protected customers have already been identified by the Commission as customers who can reasonably be treated differently than other differently-situated residential customers. This is evidenced by the fact that low-income customers are allowed to receive reduced rates for electric and natural gas distribution service. See *Petition* at ¶ 22. Additionally, low-income and protected customers (as defined in the Commission regulations at 810-RICR-10-00-1.2) receive special protections with respect to collections and terminations. See *Petition* at ¶ 23; see also e.g., 810-RICR-10-00-1.4(G). These protections and special requirements evidence an accepted need and responsibility to provide assistance for identified low-income and protected customers. Thus, it is reasonable for the Commission to allow relief for these customers in accordance with the Settlement Agreement.

Under the negotiated terms of the Settlement Agreement, the arrearage forgiveness is to be applied only within an identified group similarly situated ratepayers. Low-income and protected customers with arrearages over 90 days past due are, by definition, facing substantially different circumstances and conditions than other residential customers; the length of the arrearage further impedes the ability of the low-income or protected customer to cure it. Accordingly, it is appropriate and reasonable to treat them differently than customers with shorter arrearage durations. This is especially true where, as is the case here, there will be no unreasonable prejudice or disadvantage to other ratepayers.

III. Arrearage forgiveness as contemplated in the Settlement necessarily requires forgiveness of a set amount determined at a fixed point in time, which is not unreasonably prejudicial.

The Commission's Data Requests 1-12 through 1-16 requested RIE to address several questions concerning the March 31, 2022 cutoff date. As explained by RIE in response to Data Request PUC 1-4, at the time when the Settlement Agreement was being negotiated, The Narragansett Electric Company's most recent Low Income Monthly Report was updated through the March 31, 2022 date. As a result of settlement negotiations, the \$43.5 million in arrearage forgiveness for low-income and protected residential customers was determined. As noted by RIE in response to PUC 1-16, any complications arising in measuring arrearages are unavoidable to some extent because a snapshot of the amount of arrearages and who owes them differs on a daily basis. Determining a cutoff date is reasonable in order to effectively implement forgiveness of arrearages on this large multi-million dollar scale.

At the time the Settlement Agreement was reached, the hope was that the arrearages would be forgiven in short order. It is understandable why RIE wishes to forgive arrearages via a credit to all low-income and protected customers as of March 31, 2022 regardless of their current repayment status. To be sure, those are the very individuals who would likely have been eligible at the time the Settlement Agreement was reached. However, to the extent that the Commission sees fit to alter this payment plan in some other non-discriminatory plan to ensure \$43.5 million in arrearage forgiveness for low-income and protected customers, the Attorney General – while reserving the right to comment on any proposed plan - notes that the overriding concern should be distribution of the full \$43.5 million in forgiveness secured in the Settlement Agreement without unreasonable delay in implementation. It should be noted that RIE has also expressed that it would not object to a different arrearage forgiveness plan, so long as the forgiveness did not exceed \$43.5 million. See Response to PUC 1-16(d).

IV. Conclusion

Based on the Commission's own regulations and the unique characteristics of, and circumstances faced by, low-income and protected customers, there is ample evidence to support a finding by the Commission that forgiving arrearages for these groups is reasonable and non-discriminatory. The Attorney General requests that the Commission approve the \$43.5 million in arrearage forgiveness for low-income and protected customers in accordance with the Settlement Agreement and determine that it does not violate R.I. Gen. Laws §§ 39-2-2 or 39-2-3.

Respectfully submitted,

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ATTORNEY GENERAL OF THE
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By his Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2022, the original and nine hard copies of this Memorandum were sent via in hand-delivery to Luly Massaro, Clerk of the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies were served via electronic mail on the service list for this Docket on August 12, 2022.

/s/ Ellen Golde