

August 12, 2022

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Memorandum of the George Wiley Center in Support of the Petition for Authority to Forgive Certain Arrearage Balances for Low-Income and Protected Customers

Dear Ms. Massaro:

Enclosed by hand delivery are (10 copies) are the Rhode Island Center for Justice's Memorandum on behalf of the George Wiley Center and low-income utility customers directly affected by Docket 22-08-GE – Petition for Authority to Forgive Certain Arrearage Balances for Low-Income and Protected.

Please note that an electronic copy of this memorandum has been provided to the current service list in Docket 22-08-GE.

Thank you for your attention to this matter.

Respectfully submitted,



Jennifer L. Wood
Executive Director

c: Service list Docket 22-08-GE as of August 12, 2022

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: PETITION FOR AUTHORITY TO FORGIVE :
CERTAIN ARREARAGE BALANCES FOR : **DOCKET NO. 22-08-GE**
LOW-INCOME AND PROTECTED CUSTOMERS :

**MEMORANDUM OF THE GEORGE WILEY CENTER IN SUPPORT OF THE
PETITION FOR AUTHORITY TO FORGIVE CERTAIN ARREARAGE BALANCES
FOR LOW-INCOME AND PROTECTED CUSTOMERS**

I. Introduction

The George Wiley Center is a grassroots, community-based organization comprised of low-income consumers and focused on advocacy for social and economic justice in our state. The George Wiley Center works in partnership with its counsel, the R.I. Center for Justice, a nonprofit public interest law center, to provide legal assistance to low-income individuals and families across the State relating to their rights as consumers. The George Wiley Center has been a leading voice advocating for the interests of low-income consumers in Rhode Island for more than forty years. On behalf of George Wiley Center members and additional low-income utility consumers, the R.I. Center for Justice represents the plaintiffs in *Bennett et al. v. DPUC, et al.*, PC-2015-4214 (hereafter “*Bennett*”), asserting due process rights in protection from utility termination for low-income, seriously ill and disabled utility consumers with bill arrearages, all of whom will be directly impacted by the arrearage forgiveness at issue in Docket 22-08-GE.

The petition for authority to forgive certain arrearages has its genesis in the late May settlement of *Neronha v. Rhode Island DPUC; National Grid USA; Narragansett Electric; PPL Corporation; and PPL Rhode Island Holdings, LLC*, C.A. No. PC-2022-01095, resulting in additional commitments agreed to by the parties in the sale of National Grid’s Narragansett

Electric Company to PPL Corporation. The Settlement Agreement in that matter (hereafter “Settlement Agreement”) specifically provides:

Customer Arrearage Forgiveness. Within 30 days of closing, PPL shall seek PUC approval to forgive \$43.5 million in arrearages for low-income and protected residential customers, which represents 100% of the arrearages of over 90 days for those customers as of March 31, 2022.

Consistent with the terms of the Settlement Agreement, on June 24, 2022, the Narragansett Electric Company d/b/a Rhode Island Energy filed its Petition for Authority to Forgive Certain Arrearage Balances for Low-Income and Protected Customers resulting in the instant Docket 22-08-GE. This docket requests that the PUC approve the forgiveness of certain arrearage balances that directly impact low-income and protected customers, including but not limited to the low-income, seriously ill and disabled protected customers who are plaintiffs in *Bennett* and on whose behalf the George Wiley Center and R.I. Center for Justice request the PUC to approve the RI Energy petition. The PUC has instructed the parties to Docket 22-08-GE to provide memoranda “on the requested finding that the proposal does not constitute a violation of R.I. Gen. Laws §§ 39-2-2 or 39-2-3, taking into consideration the Commission’s data requests and Rhode Island Energy’s responses to PUC 1-12 through PUC 1-16.” This memorandum is provided to *support* PUC approval of the proposed arrearage forgiveness.

II. Discussion

A. The proposed arrearage forgiveness falls under a statutory exception to anti-discrimination provisions

It is appropriate to provide arrearage forgiveness to specifically identified “protected customers” for defined arrearages that fall within the specific timeframe in the Settlement Agreement (arrears that were over 90 days in arrears on March 31, 2022) under R.I. Gen. Laws 39-2-5(2) “Exceptions to anti-discrimination provisions,” which provides that “any public

utility . . . may impose, or grant special rates therefor . . . to any special class or classes of persons, not otherwise referred to in this section, in cases where the same shall seem to the division just and reasonable, or required in the interests of the public, and not unjustly discriminatory.”

Providing arrearage forgiveness to protected customers, who are already defined by the utility and by the Commission as vulnerable and in need of support as compared to standard residential customers, is “just and reasonable,” “in the public interest,” and “not unjustly discriminatory”—the exact scenario envisioned by the statute. Customers affected by the proposed arrearage forgiveness would be elderly, people with disabilities, seriously ill customers who have provided medical documentation to the utility, and customers who have provided evidence of low-income and financial hardship status. Because their circumstances are not the same as customers who are *not* elderly, disabled, seriously ill or facing financial hardship, they are not living “under substantially similar circumstances” (R.I. Gen. Laws § 39-2-2) as standard customers and thus different treatment and protections for these customers, including the pending arrearage forgiveness, is appropriate under the statutory scheme when §§ 39-2-2, 39-2-3, and 39-2-5 are read together as a comprehensive whole. *See Such v. State*, 950 A.2d 1150, 1156 (R.I. 2008) (statutes related in subject matter and enacted by the same jurisdiction are considered in *pari materia* and should “be read in relation to each other”); *State v. St. Pierre*, 371 A.2d 1048, 1051 (R.I. 1977) (“statutes in *pari materia* should be considered together in order that they may be in harmony with each other and consistent with their general scope and purpose.”)

(a) Granting arrearage forgiveness to the defined category of protected utility customers is “just and reasonable”

Rhode Island law permits the consideration of customer “circumstances and conditions” when determining residential consumer rates. R.I. Gen. Laws § 39-2-2. Focusing arrearage

forgiveness on already defined vulnerable subgroups of consumers that have been recognized as having special circumstances by both the PUC and the Rhode Island General Assembly is reasonable and entirely consistent with this framework. Additionally, defining the subgroup who will benefit with a time limitation (those who were eligible for protected status at the time of the Settlement Agreement) is a rational approach to determining a “similarly situated” subgroup of customers who can be aided by the arrearage forgiveness. Such statutory permission can also be found in many other states that prohibit discrimination but authorize a utility company to consider the circumstances of certain categories of consumers when setting differential rates. *See* Alaska Stat. § 42.05.391 (prohibiting preferential rates “except such as are extended or applied to all customers under like circumstances”); Conn. Gen. Stat. § 16-24(a) (establishing a procedure to provide discounted rates to certain “low-income” customers).

(b) Approval of the proposed arrearage forgiveness is “in the public interest”

In 2021, Congress recognized the importance of stabilizing the housing of low-income utility customers by providing ARPA funding for utility arrearages for low-income renters and homeowners and for expanding the reach of the Low Income Home Energy Assistance Program (LIHEAP). The American Rescue Plan acknowledged that utility termination is a direct cause of eviction, that access to utility service is a critical public health and hygiene protection,¹ and that financial aid should be targeted to the same vulnerable customers who are the beneficiaries of this proposed arrearage forgiveness. The same public policy that caused Congress to allocate billions of dollars for emergency utility arrearage pandemic payments supports the approval of the arrearage forgiveness program in the Settlement Agreement.

¹ “Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.” *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18, 1978.

Rhode Island has an additional, independent interest in ensuring access to life-sustaining utility services, which will be fulfilled by approval of the proposed arrearage forgiveness program. The George Wiley Center advocates for and works with low-income consumers, all of whom will be directly affected by the proposed arrearage forgiveness in this docket. Many of the customers in the *Bennett* class, who have already been identified by the utility as in need of heightened shutoff protections compared to typical customers, will never be able to resolve the arrearages that have accumulated during the litigation and pandemic without financial assistance. Without the proposed arrearage forgiveness program, they face a potential future of permanent lack of access to life-sustaining utility service. Based on data in Attachment B of the Rhode Island Energy petition, over 19,000 low-income and protected Rhode Islanders face potentially unresolvable arrearages if the relief sought in this docket is not granted. It is contrary to the public interest to consign these customers to what may be a permanent bar to utility access. It is *in the public interest* to approve this once-in-a-generation solution which is only made possible by the unique circumstance of a sale of the utility to a new owner, opening an opportunity for specific economic commitments made by the utility but *not passed along to the standard ratepayers in any future rate case or docket*. (Rhode Island Energy Response to PUC 1-1, 1-2, 1-3).

(c) The proposed arrearage forgiveness is not unjustly discriminatory to customers who will not receive arrearage forgiveness under the proposal

A cornerstone of social safety net and economic assistance programs is the differentiation between “protecting” the lives and livelihoods of vulnerable community members, as opposed to “discriminating” against those who do not need assistance. This distinction is inextricably built into our laws and policies, not just in the realm of utilities (providing shutoff protections and financial relief based on medical status and income) but in every other facet of our lives:

education (supportive services for children with disabilities; free lunches); the courts (waived fees for indigent parties; eligibility for public defenders); healthcare (ACA subsidies, Medicare and Medicaid); food (SNAP); the workplace (TDI, Social Security), etc. These forms of financial support promote *equity* in access to necessary services, and do so by targeting assistance on the basis of income, age, disability, and medical needs. If provided to a subgroup defined by common characteristics of vulnerability, these programs are not “discriminatory” but rather are remedial of existing inequities and beneficial to the broader community, even those who do not directly benefit, by protecting against more adverse outcomes for the vulnerable subgroup accessing the support and the attendant societal costs of those adverse outcomes.

Indeed, in contrast to the above programs—which are funded by taxpayers—Rhode Island Energy has explicitly stated that “the Company will not recover [forgiven arrearages] from customers in any way.” (Rhode Island Energy Response to PUC 1-3) In short, non-vulnerable utility consumers will not pay any additional costs as a result of this forgiveness, and they will not be “discriminated against” through any higher prices caused by the arrearage forgiveness.

B. Protections for low-income and vulnerable utility consumers are explicitly authorized under state statute

Chapter 39-2 of the Rhode Island General Laws contains multiple statutory authorizations for disparate treatment of consumers in the public interest. For example, a utility company is permitted to charge elderly residential consumers preferential rates as compared to non-elderly residential consumers. R.I. Gen. Laws § 39-2-2(b). Notably, § 39-2-5(10) and § 39-2-1(d) explicitly authorize utility companies to forgive arrearages of low-income (LIHEAP-eligible) consumers for every month that a customer is able to pay according to an Arrearage Management Program (AMP) payment plan.

As noted by Rhode Island Energy in their response to PUC 1-16, the Rhode Island Supreme Court in *The Energy Council of Rhode Island v. Public Utilities Com'n*, 773 A.2d 853, 861-62 (R.I. 2001) recognized the PUC's authority to approve rates, discounts or arrearage forgiveness that treat discrete groups separately as long as those subgroups of customers have circumstances that are different from standard customers, even if there is no cost differential to the utility to provide the service to the two sets of customers. The same principle was affirmed in *In re A&R Marine Corp.*, 199 A.3d 533 (R.I. 2019); in that case, the Rhode Island Supreme Court ruled that although the PUC cannot sua sponte *require* a utility to provide differing economic arrangements to groups with different circumstances (like elderly customers), they can *approve* such an arrangement without violating the non-discrimination provisions of the statute if the differential treatment, based on differing circumstances of the particular group, is proposed by the utility—as has been done in the pending petition. This authority has also been previously recognized by the Commission in approving low-income discounts proposed by utilities in prior rate setting dockets.²

C. States with similar anti-discrimination provisions authorize lower rates and heightened protections for low-income and medically vulnerable consumers

Rhode Island law outlining how utility companies are permitted to charge residential customers for usage is substantially similar to the majority of other states' laws that regulate utility providers, by requiring that rates for residential customers be "just and reasonable." R.I. Gen. Laws. § 39-2-1, *Compare* Alaska Stat. § 42.42.05; Colo. Rev. Stat. § 40-3-102; Conn. Gen. Stat. § 16-21; Fla. Stat. § 366.041 (2021); HI Rev. Stat. § 296-16 (2021); Idaho Code § 61-301; ME Stat. tit. 35-A, § 301; Miss. Code § 77-3-33; Mo. Rev. Stat. § 393-130. These statutes do not restrict the ability of states to require, and utility carriers to offer, different rates and

² See Commission Decision in Docket 3943 at p. 75; Commission approval of tiered discount in Docket 4770.

heightened protections for low-income and medically vulnerable consumers. For example, while Colorado’s nondiscrimination statute requires that a utility not “unjustly discriminate between or among . . . customers,” the Colorado Public Utilities Commission requires that utilities offer a Percentage of Income Payment Program (PIPP) to make utility service more affordable for low-income residents. Similarly, Ohio Stat. § 4905.33 prohibits public utilities from “directly or indirectly,” including “by any special rate,” charging or collecting from any person “a greater or lesser compensation” than from any other person, but the state has a robust PIPP program that applies to all large utilities and is administered by the Ohio Development Services Agency, providing an alternative payment plan for low-income customers that is distinct from the rates for all other residential customers. Antidiscrimination statutes have also been found to be consistent with arrearage management programs, offered by utilities in at least 10 states, including Rhode Island.³

D. Excess funds can support non-protected customers through the Arrearage Management Program

In its Query No. 1-16, the PUC inquired about customers who would have been eligible for arrearage forgiveness but did not identify themselves to the utility as “protected” during the timeframe set forth in the Settlement Agreement. As noted by Rhode Island Energy in its response, it is typical to define the beneficiaries of a particular remedy, for example in class action litigation, both by their characteristics (advanced age, disability, serious illness, economic hardship) and by a timeframe during which a remedy is made available. In order to define the dollar amount of a remedy in the resolution of litigation, the parties to an agreement must use a rational approach to determining a time boundary for when the benefit begins and ends. In doing so, the Settlement Agreement defines the remedy of arrearage forgiveness based

³ New DC Study Shows How Arrearage Management Programs are a Win-Win for Companies and Customers Alike, National Consumer Law Center Utilities and Telecom Blog, 2021.

on two conditions: documentation that the customer is within a protected subgroup, and timeframe through March 31, 2022. These classifications treat those who are similarly situated the same and necessarily exclude other customers who fail to fall into both of the defining circumstances. Similar to class action litigation, potential plaintiffs who could have been eligible for a benefit but failed to identify themselves and perfect their claim within a defined period will find their access to that benefit extinguished.

That said, low-income utility consumers not included in the Settlement Agreement arrearage forgiveness will remain eligible for arrearage forgiveness under the terms of the Henry Shelton Act, § 39-2-1(d), which provides a mechanism (AMP) for reinstating or continuing utility access and forgiving a portion of a customer's arrearage every month if they make an initial payment down payment toward their unpaid balance and make at least 10 of 12 agreed upon monthly payments in each twelve month period of their enrollment in the AMP.

According to the Rent Relief RI data dashboard, over 8,400 low-income customers have received over \$21 million in ARPA-funded utility arrearage payments through the program since April 2020,⁴ no more than \$12.7 million of which is thus far accounted for in Rhode Island Energy's response to PUC 1-10, which reported on this amount as of July 13, 2022, and thus is understandably less than the Rent Relief RI data dashboard amounts published this week. This leaves potentially between \$8 million and \$21 million that could be applied as an offset to the \$43.5 million Settlement Agreement arrearage fund. As described in Rhode Island Energy's responses to PUC 1-12 and 1-13, the current plan would utilize Settlement Agreement arrearage funds (the \$43.5 million) to apply a credit to eligible customer accounts, even if those accounts have been paid in whole or in part by ARPA funds administered by Rent Relief RI. As ARPA fund payments are confirmed to be credited to Settlement Agreement arrearage

⁴ [Rent Relief RI Data Dashboard](#), accessed August 11, 2022.

forgiveness eligible customers' accounts through the manual verification process described in the Rhode Island Energy response to PUC 1-10, those funds could be offset from the \$43.5 million Settlement Agreement arrearage forgiveness fund. The portion of the \$43.5 million that is thus conserved by the offset could be made available for AMP down payments for the hypothetical Customer B profile discussed in PUC 1-16: those who would have been eligible for Settlement Agreement arrearage forgiveness had they documented their protected status prior to March 31, 2022. These consumers would not be eligible for full arrearage forgiveness, but they would nonetheless be supported in a pathway, consistent with state statute, towards forgiveness through the AMP. The company has indicated its willingness to consider using the available funds identified in the Settlement Agreement to assist these additional customers in Section (d) of its response to PUC 1-16.

III. Conclusion

Forgiving the arrearages of low-income, medically vulnerable and elderly utility customers is 1) consistent with state statute, 2) in the public interest, and 3) in line with practices of other states.

WHEREFORE, the George Wiley Center, through its counsel the R.I. Center for Justice, requests that the Commission approve petition 22-08-GE and authorize Rhode Island Energy to proceed to implement the arrearage forgiveness to protected and low-income customers set forth in the Settlement Agreement.

Respectfully submitted,
The George Wiley Center

By its counsel,
/s/ Jennifer L. Wood

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Dated: August 12, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2022, I sent a true copy of this document by electronic mail to the parties in the Docket 22-08-GE Service Lists as of August 12, 2022.