



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 • www.riag.ri.gov

Peter F. Neronha
Attorney General

February 23, 2023

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

***In Re: The Narragansett Electric Company d/b/a Rhode Island Energy Electric Infrastructure,
Safety and Reliability Plan FY2024 Proposal
Docket No. 22-53-EL***

Dear Ms. Massaro:

Enclosed please find for filing an original and five (5) copies of the Attorney General's Statement of Position 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

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC COMPANY :
d/b/a RHODE ISLAND ENERGY ELECTRIC :
INFRASTRUCTURE, SAFETY AND : Docket No. 22-53-EL
RELIABILITY PLAN FY 2024 PROPOSAL :**

**THE ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND’S
STATEMENT OF POSITION**

NOW COMES Peter F. Neronha, Attorney General of the State of Rhode Island (“Attorney General”), and hereby provides the following statement of position in the above-captioned docket.

I. INTRODUCTION

The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company” or “RIE”) seeks approval of, on an effectively shortened timeline, its twelve-month Electric Infrastructure, Safety, and Reliability (“ISR”) Plan, with a budget of \$176,318,000 in expenditures slated for this time period. *See* Supplemental Budget for April 1, 2023 through March 31, 2024 (“Supplemental Budget”), Section 2: Electric Capital Investment Plan, Attachment 1 – Supplemental, Docket No. 22-53-EL, filed January 27, 2023 (page 3 of 12). This budget is significantly higher than past years’ ISR budgets and represents a spending increase of more than \$70 million, or 70% over the prior approved budget, in a single year. *Id.* The Company claims that an average 500 kWh per month customer will see a monthly bill increase of just \$0.84 for the next twelve months, but that number does not account for the effect the proposed spending plan will have in future years. *See* Supplemental Revenue Requirement and Bill Impact for April 1, 2023 through March 31, 2024 (“Supplemental Revenue Requirement and Bill Impact”), Section 7: Bill Impacts – Supplemental, Docket No. 22-53-EL, filed February 3, 2023 (page 1 of 6).

Only investments that are “reasonably needed to maintain safe and reliable distribution service over the short and long term” should be approved under the ISR Plan. R.I. Gen. Laws § 39-1-27.7.1(d). Certainly, new investments to upgrade our electric distribution system will be required in the coming years to comply with the mandated greenhouse gas emission reductions set forth in the Act on Climate. However, while admitting that the Company “is in the early conceptual planning stages” of its grid modernization plan, it still seeks to lock-in costs for proposed investments that are under active, detailed investigation in other dockets. Proposed FY 2024 Electric Infrastructure, Safety, And Reliability (“ISR Plan”), Section 2: Electric Capital Plan at 22 of 115 (Bates 77). The Commission should not approve an ISR budget based on a plan that is not yet approved and remains appropriately under consideration.

Already, Rhode Islanders are increasingly electrifying their heating systems and vehicles, and distributed, no-emission generation is increasingly seeking to interconnect with the grid. However, the ISR process should not be where these plans are first surfaced. Alternative dockets exist specifically focused on, and equipped for, the review of long-term planning and investment strategies. Planning the future of Rhode Island’s electric distribution system requires transparency and an opportunity for critique, including an adequate opportunity for the Commission, the Division of Public Utilities and Carriers (“Division”), the Attorney General and other stakeholders to properly consider a proposed course of action. The Amended Settlement Agreement approved in the last rate case (the “ASA”) recognized this and required the Company to file a comprehensive grid modernization plan and a business case for implementation of advanced meters with the Commission. *See* ASA, Docket No. 4770 (August 16, 2018) at Art. II, Sec. C.15, C.16. In accordance with the ASA, the Company has now filed those plans, and the Commission has established dockets, separate from the ISR, to consider and approve those specific large-scale

electric investments – the Grid Modernization Plan (“GMP”) and the Advanced Metering Functionality (“AMF”) Business Case – which meet the need for input and transparency. *See generally*, Docket Nos. 22-56-EL and 22-49-EL.

Much of the Company’s proposed ISR spending presupposes approval without alteration or condition of the Grid Modernization Plan submitted by the Company and pending before the PUC in Docket No. 22-56-EL, and relies upon the assumptions that the Company’s Advanced Metering Functionality (“AMF”) Business Case - pending before the PUC in Docket No. 22-49-EL – will also be approved exactly as submitted. Importantly, these dockets have not proceeded through discovery, technical sessions, expert analysis and testimony, hearings, or opportunities for the public to comment and submit their questions and concerns.

Until the AMF Business Case and the GMP are carefully and fully considered by the Commission, with an opportunity for participation by parties to those dockets and the public, any investments contingent upon the GMP or the installation of AMF meters and technology are premature and should be denied.

II. THE COMPANY’S FAILURE TO COMPLY WITH FILING REQUIREMENTS

Pursuant to R.I. Gen. Laws § 39-1-27.7.1 (the “Revenue Decoupling Statute”), the Company must file an *annual* proposal with the Commission setting forth their intended spending plan for the coming fiscal year with respect to certain categories of spending, namely: “(1) [c]apital spending on utility infrastructure; (2) [f]or electric distribution companies, operation and maintenance expenses on vegetation management; (3) [f]or electric distribution companies, operation and maintenance expenses on system inspection, including expenses from expected resulting repairs; and (4) [a]ny other costs relating to maintaining safety and reliability that are mutually agreed upon by the [D]ivision and the [C]ompany.” *Id.* at § 39-1-27.1.1(d). However,

the statute does not require approval of that plan. *See generally, id.* Rather, the Commission retains discretion whether to approve the ISR Plan as proposed by the Company. *See id.*

At the very onset of this docket, the Company failed to file an ISR Plan compliant with the Revenue Decoupling Statute. Instead, the Company chose – unilaterally and without seeking approval from the Commission – to file a 21-month spending plan, seeking approval for investments that would include \$81.9 million in capital spending for grid modernization over less than two years, effectively implementing its GMP *before* its final approval in Commission Docket No. 22-56-EL. *See ISR Plan, Section 2: Electric Capital Plan, 37 of 115 (Bates 92).* Additionally, although the ISR Plan relies heavily on the GMP to support the Company’s claim that there is need for Grid Modernization investments, the Company did not include the GMP in its initial filing for the ISR Plan. The GMP filing was only provided on December 30, 2022, the same day as it was filed separately with the Commission. That was seven days *after* the ISR Plan was filed with the Commission, and *after* the statutory sixty (60) days afforded the Division for review of the Company’s proposal during which time the Division was also without the benefit of the GMP. *See R.I. Gen. Laws § 39-1-27.7.1(d)(4)* (requiring the company to submit its proposed plan to the division for good faith review and cooperation to agree on a proposed plan sixty (60) days prior to filing with the Commission).

The long-term nature of approved capital expenditure plans means that the Commission has a pivotal role to ensure that expenditures are in line with achieving the State’s net-zero emissions mandate over the next few decades. It is the Company’s burden to provide a timely filing with adequate information to show that infrastructure investments, including those tied to its GMP or its anticipated AMF roll-out, are reasonably needed to ensure safe and reliable service. While the GMP and AMF Business Case are pending and under investigation in other dockets, it

is premature for the Commission to conclude that investments in the Company's proposed-but-pending GMP and AMF Business Case are reasonably needed to ensure safe and reliable service. As such, the Company cannot meet the prudent investment standard and those expenditures under the Electric ISR Plan must be denied. In addition, the portions of the ISR Plan reliant on the GMP and its supporting testimony were not timely filed as required for approval under the Revenue Decoupling Statute. To the extent the Company finds it must undertake certain grid modernization or related work that is not included in an approved ISR Plan, the Company will be free to seek recovery of any prudently incurred expenses at a later time, or, to the extent necessary, the Commission can address any gaps in the GMP or AMF dockets.

III. THE COMPANY'S FAILURE TO FILE A STATUTORILY COMPLIANT ISR PLAN MEANS THE COMMISSION MAY EXTEND ITS DECISION-MAKING PROCESS IF NECESSARY.

As a result of the Company's unorthodox 21-month filing, the Commission and the Division were forced to spend time focusing on a separate question as to whether the filing was in fact consistent with R.I. Gen Laws § 39-1-27.7.1. This question was presented to the parties by the Commission on January 3, 2023, and the issue was briefed by the Company and the Division by January 17, 2023 (25 days after the ISR Plan filing date). At an Open Meeting held on January 20, 2023, the Commission determined that the Company is required to file annually and must use the Company's fiscal year contemplated at the last rate case, not the fiscal year of its new corporate parent. As a result, the Company was required to provide supplemental filings by January 27, 2023 and February 3, 2023 (which it submitted on the latest possible dates). Through these filings, the Company provided updated budgeting and bill impact analysis for the appropriate fiscal year. Given the delay occasioned by the Company's original filing choice (as well as the absence of the GMP in the original filing), it would be inequitable for the Company to rely on the December 23, 2022 filing date and demand a decision from the Commission within the same 90-day period

contemplated for review of a typical single fiscal year ISR Plan. Data requests (including those issued by the Company) remain outstanding, and the parties are still developing a full understanding of the Company's ISR Plan and its potential short- and long-term impacts on Rhode Island customers.

Further, it is unclear from the information available which of the Company's proposed investments in Grid Modernization are reliant upon blanket approval of the GMP and the AMF Business Case. The Company proposed \$81.9 million of investment in Grid Modernization to occur over the next 21 months. *See* ISR Plan, Section 2: Electric Capital Plan, 37 of 115 (Bates 92). The Company's January 27, 2023 supplemental filing reveals that the Company expects some \$46 million of that to be spent over the next fiscal year, including almost \$23 million in advanced reclosers. *See* Supplemental Budget, Section 2: Electric Capital Investment Plan: Attachment 2 – Supplemental. In fact, Grid Modernization accounts for more than half of the Company's proposed "non-discretionary" spending. *See id.* at Chart 18 – Supplemental. However, when asked to justify those expenditures and to provide insight into the location of the 280 to 300 reclosers planned for installation in the coming 12 months, the Company posited that only "roughly half" of the recloser sites for the Mainline Reclosure Enhancement Project had been identified and that "Advanced Recloser specific sites are being actively selected and are not available at this time." *See* Response to PUC 1-11. It is difficult to conceive of how an investment could be determined prudent when the Company cannot even articulate where it is to take place.

Given the delay caused by the Company's filing decisions, the Commission should calculate its decision timeline according to the date the supplemental filings were entered. The Commission is not bound by the Company's failure to file a statutorily compliant ISR Plan, with the

provision of essential supplemental data as late as forty-two (42) days into the Commission’s review. Any risk associated with extending extra time should fall solely upon the Company.

IV. THE COMMISSION MUST DENY REQUESTS FOR ALL GRID MODERNIZATION SPENDING IN THE ISR PLAN AT THIS TIME, BECAUSE OF THE PENDENCY OF THE GRID MODERNIZATION PLAN AND ADVANCED METER FUNCTIONALITY DOCKETS

Not only did the Company’s ISR Plan fail to comply with the statutory requirements, but it came without agreement from the Division, even after the sixty-day period during which the Company and the Division were required to make good faith efforts to agree on the ISR Plan. *See* R.I. Gen Laws § 39-1-27.7.1(d). In instances where the Company files its ISR Plan without securing agreement from the Division, the burden of proof is shifted, and the Commission must separately assure itself that all proposed expenditures are “reasonably needed to maintain safe and reliable distribution service over the short and long term” before granting approval. *Id.* Accordingly, only those spending items that are needed *for safe and reliable service* in light of the established – and not proposed – short and long term needs of the system should be approved. As explained below, the Company’s proposed ISR Plan fails to distinguish investments that are reasonably needed in the coming fiscal year, and therefore must not be approved as submitted. This is especially true in light of the Commission’s continued consideration of the GMP and the AMF Business case in separate dockets.

A. The Act on Climate Requires Careful Consideration of What is Reasonably Needed to Maintain Safe and Reliable Service.

The 2021 Act on Climate set aggressive decarbonization goals for the state, including a 45% reduction in greenhouse gas emissions from 1995 levels by 2030, and requires all state agencies to conduct their regular business with achievement of these goals in mind. *See* R.I. Gen. Laws § 42-6.2-8. In less than three decades, Rhode Island must reach net zero. *See* R.I. Gen. Laws

§ 42-6.2-9. Meeting these goals is essential in the State’s fight against climate change and its disparate effects. Moreover, pursuant to the Act on Climate, the Commission is obligated to consider the State’s mandated greenhouse gas emission reduction requirements when making any decision. *See* R.I. Gen. Laws § 42-6.2-8. This obligation extends to the Commission’s authority to deny or approve recovery related to any spending under the ISR Plan that is not reasonably needed to ensure safe and reliable service.

Because of these statutory mandates, the “reasonably needed to maintain safe and reliable distribution service” language requires considerations not previously included in analysis of ISR expenditures. The Commission’s (and the Division’s) duty to protect the public interests via utility regulation is a key component of making progress towards Rhode Island’s planned environmental future as set forth in the Act on Climate. In fulfilling that duty, the Commission must ensure that public and ratepayer resources are efficiently dedicated to the considerable investments that will be needed to meet climate adaptation and emissions reduction mandates.

In order to facilitate the electric grid of the future, there is no question that some level of investment will be needed to facilitate electrification of home heating, charging of vehicles, and increased connectivity with distributed generation. Moreover, those investments stand to create a cleaner and more efficient energy landscape throughout the State. However, compliance with the Act on Climate requires surgical implementation of carefully selected improvements through a transparent process. As noted by the Executive Climate Change Coordinating Council (EC4) in its 2022 Climate Update, “[s]afely, reliable, and affordably building out the electric grid will require electric distribution companies to make *strategic investments* in technologies for a twenty-first century electric grid.” EC4, Rhode Island 2022 Climate Change Update (“2022 Update”) at 4, December 15, 2022, (available at

<https://climatechange.ri.gov/media/1221/download?language=en>) (emphasis added). Absent such an approach, the risk of needless spending is too great. The Company's current ISR Plan seeks to skirt the framework the Commission created to ensure that needed improvements to the electric infrastructure are achieved at least cost to ratepayers. As a result, the Commission should not approve any spending dependent upon considerations yet to be made in the AMF and GMP dockets.

B. The ISR Plan Fails to Carefully Consider Alternatives and Falls Far Short of the “Reasonably Needed” Standard to Justify Approval, Especially Approval of Grid Modernization Investments as “Non-Discretionary”

As noted above, the Commission is being asked by the Company to blindly accept its assertions that its particular proposed infrastructure investments are reasonably needed to maintain safety and reliability. This is done without full consideration of the range of potential outcomes in the GMP and AMF dockets pending before the Commission, including the possibility that the Commission will not necessarily arrive at a wholesale adoption of the Company's plans. The GMP itself falls far short of proving the necessity of each portion of the Company's plan and provides most discussions and analysis only in terms of a “Grid Modernization” or “No Grid Modernization.” *See e.g.* GMP, Castro, Constable and Reder Test. 49, 11:16 (explaining that the Company's Distribution Study supports investment in grid modernization that “provides superior adaptability and agility in the face of all possible Climate Mandates futures” but only in comparison to the status quo). Through the GMP docket, the Company's assumptions will be appropriately explored by participants, including providing the opportunity to surface and consider other viable alternatives. While rapid action is required to address the climate future Rhode Islanders face, it is important that a thoughtfully developed foundation for prudent investment in electric infrastructure transformation be established at the initial stages.

Moreover, due to several inconsistencies in the Company's various submissions to the Commission in different dockets, it is impossible to determine that Grid Modernization must in fact be started this fiscal year. In the Company's AMF Business Case, Rhode Island Energy President David Bonenberger made clear that AMF would have value, even if the Company's grid modernization plan was not implemented:

The granular information that AMF provides is both foundational to and enhances many of the GMP functionalities. As a result, **it makes sense to move forward with AMF first.** Simply put, AMF is necessary and valuable independent of the GMP, and **grid modernization cannot be fully realized without AMF, making AMF a prerequisite for, and foundational to, the GMP.**

AMF Business Case, Docket No. 22-49-EL, Bonenberger Test. 16 :1-10. (emphasis added). This argument for proceeding first with AMF is consistent with the Company's assertion that its plans for AMF and Grid Modernization are integrated. *See e.g. ISR Plan*, Section 2:Electric Capital Plan at 22 of 115 (Bates 77) (noting that AMF "meters and associated systems (filed in a Separate Docket) are foundational investments for grid modernization.") Thus, it appears essential that the AMF Business Case be considered first, as suggested by the Company in that docket, so that the long-term grid modernization plan can be adopted in a manner designed to strategically ensure that only required investments are made. To the extent a decision in the AMF or the GMP Dockets is inconsistent with the Company's proposal, it stands to reason that customers could end up reimbursing the Company for unneeded infrastructure. To be sure, much of the Grid Modernization investment proposed in the ISR is supported by claims that it will be necessary to move forward with the GMP and AMF meters. *See e.g. ISR Plan*, Begnal, Rooney, Castri, Constable and Reder Test. at 34: 5-10 (Bates 46) (explaining that fiber investments will replace leased cellular services with a fiber cabling network to "accommodate" the GMP and AMF). As

such, any Grid Modernization spending justified based on the assumption that a particular GMP and AMF plan will be approved should be deferred until later ISR Plan approvals.

Capital expenditure burdens ratepayers for years into the future and costs far more than the initial investment numbers suggest. Investments approved now will continue to burden ratepayers in years to come, narrowing the capacity of ratepayers to afford future alternate investments. While the Company's ISR Plan proposes rapidly increasing expenditure, it excludes any consideration of the cost associated with AMF. *See generally, Supplemental Budget.* AMF will also require considerable investment by ratepayers. *See AMF Business Case, Docket No. 22-49-EL, Bonenberger Test. 20, 13:14* (estimating that the cost of the Company's AMF Business Case will be \$188 million). The Company is currently proposing to collect those costs via "the creation of an AMF Factor." *See id.* at 21, 2:3. These costs must be considered together in order to understand when and whether Rhode Islanders can reasonably be expected to pay for these proposed improvements.

Additionally, it cannot be overlooked that these significant capital expenses are being proposed at a time when ratepayers are subject to unstable electric supply prices, especially in the winter. For example, this past winter rate period, the electric supply rate created a monthly increase of \$51.95 for the average residential customer receiving Last Resort Service. *See Docket No. 4978, Oliveira and Ruebenacker Test. 8, 1:5. (July 21, 2022)* (the effect of this increase was mitigated through monies secured by the Attorney General in settlement from PPL and deferral of customer charges – neither of which can be relied upon in the future). In light of this reality and the growing difficulties presented by inflation, the Commission must ensure that every dollar spent on Grid Modernization is reasonable and necessary *at this time*, and if it appears that the investment could ultimately be a mismatch with future plans, it should be deferred.

Not only is the Company's proposal for Grid Modernization spending in this ISR premature, but characterization of those investments – some \$45,785,000 in the next fiscal year – as “non-discretionary” does not appear appropriate. Per the Infrastructure, Safety, and Reliability Provision, the Company's tariff allows for full recovery of *actual* expenses incurred once the Company's Grid Modernization work is completed if it is non-discretionary, as opposed to discretionary capital spending which would be limited to the Commission's approved level of spending. *See* ISR Plan, Attachment PRB-1, RIPUC No. 2264 (Bates 290). At the same time, the Company notes in the ISR Plan that: “GMP estimates are just that, estimates that will evolve and become increasingly accurate as the planning and engineering process proceeds.” ISR Plan, Section 2: Electric Capital Plan at 22-23 of 115 (Bates 77-78). While it may be the case that post-approval GMP investments could be non-discretionary, there is no way to categorize pre-approval Grid Modernization investments as non-discretionary.

The significant costs associated with AMF and Grid Modernization will be an expense borne by ratepayers for years to come. If Grid Modernization costs were approved as non-discretionary, any risk of overspend falls on electric customers, who would be responsible for reimbursing the Company for its actual expenses in implementing its GMP should it turn out that the Company has underestimated the costs in its proposal. Additionally, the proposed benefits of Grid Modernization and the Company's spending related thereto is impossible to separate from AMF or GMP approval. The Company makes these types of characterizations itself, describing AMF as a “foundational and enabling platform” and part of the base level of the Company's “Grid Modernization Pyramid.” *See* GMP, Section 1.7, 19 of 209 (Bates 19).

V. THE COMMISSION MUST DENY ANY PROPOSED EXPENDITURES THAT THE COMPANY FAILS TO PROVE ARE REASONABLY NEEDED FOR SAFE AND RELIABLE SERVICE AND SHOULD ATTEMPT TO LIMIT SPENDING TO ALIGN WITH PRIOR YEARS

The Company has proposed increased expenditures before consideration of its GMP and AMF Business Case. This request is fundamentally imprudent. The Company is seemingly rushing to increase its infrastructure efforts prematurely while revenue mechanisms guarantee significant ratepayer-funded profits. The Commission must not allow the Company's current profit-motives to drive its decision making in already announced and long-planned-for administrative proceedings to examine the exact investments the Company appears to prematurely propose in this ISR Plan.

It is essential that the Commission hold the Company to a reasonable budget to avoid unnecessary financial burden on ratepayers before a clear plan has been approved. This means, at minimum, denying any Grid Modernization spending and any investments that assume approval of the Company's GMP and AMF Business Case. The Commission must also carefully look to limit ISR spending wherever practicable, in acknowledgment that there will be significant future expenses arising out of the need to bring Rhode Island's electric distribution system up to date. Only those proposals that are clearly shown to be reasonably needed in the short-term to ensure safe and reliable gas service should be approved.

Respectfully submitted,

PETER F. NERONHA
ATTORNEY GENERAL OF THE
STATE OF RHODE ISLAND

By his Attorney,

/s/ Nicholas M. Vaz
Nicholas M. Vaz (#9501)
Special Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903
nvaz@riag.ri.gov
(401) 274-4400 x 2297

Dated: February 23, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February 2023, the original and five hard copies of this document were sent, via electronic mail and first-class mail, to Luly Massaro, Clerk of the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of the within were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas M. Vaz