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Peter F. Neronha
Attorney General

February 14, 2023

Luly Massaro, Clerk
Division of Public Utilities and Carriers
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Luly.massaro@puc.ri.gov

***In Re: The Narragansett Electric Company d/b/a Rhode Island Energy Gas Infrastructure,
Safety and Reliability Plan FY2024 Proposal***

Docket No. 22-54-NG

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 :
GAS INFRASTRUCTURE, SAFETY AND : **Docket No. 22-54-NG**
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, on an effectively shortened timeline, of a twelve-month plan that significantly increases spending on gas infrastructure to be paid for by Rhode Island rate payers, a plan that falls short of meeting the Company’s burden to seek approval of only what is reasonable and necessary because it does not take into account the transformation of the State’s thermal sector necessitated by the Act on Climate and its mandates. Given the risk of rate payers assuming the cost of what will become useless infrastructure, the Attorney General urges the Public Utilities Commission (the “Commission”) to deny approval of the proposed Plan at least until the Company has demonstrated that each proposed investment in its system meets the statutory requirement of being reasonable and necessary both at this time and for the State’s future in light of the Act on Climate. Moreover, to the extent the Commission requires additional time to ensure its full consideration of the plan, the Commission should extend the timeline for review beginning from the supplemental submission. A prudent investment requires no less.

The submission of an Infrastructure, Safety, and Reliability (“ISR”) Plan is a statutory requirement for electric and gas distribution providers serving more than 100,000 customers, including The Narragansett Electric Company d/b/a Rhode Island Energy. *See* R.I. Gen Laws § 39-1-27.7.1. However, the statute does not require approval of that plan. *See id.* Rather, the Public Utilities Commission (the “Commission”) retains broad discretion in considering its approval of the ISR Plan proposed by the Company. *See id.* Like all state agencies, the Commission must incorporate the net-zero emissions mandate of the Act on Climate when using that discretion. *See* R.I. Gen. Laws § 42-6.2-8. 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, for the gas utility company: “(1) [c]apital spending on utility infrastructure; . . . 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 § 39-1-27.2-1(d). The long-term nature of approving capital expenditure plans means that the Commission has an exceedingly important role to play in achieving the State’s net-zero emissions mandate over the next few decades.

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 – without seeking approval from the Commission – to unilaterally file a 21-month spending plan seeking approval for investments that would increase the average gas customer’s annual bill by \$113.88 in less than two years. Per the Company’s own filing, that would cause a 6.6% increase in the average annual bill *over and above* the potential spikes in consumer cost resulting from increasingly unstable gas supply pricing. By way of example, for the period from November 1, 2022 to October 31, 2023 the average annual bill rose some 15%, costing the average ratepayer an additional \$227.23. *See e.g.* Commission

Order 24562 (approving Distribution Adjustment Charge and Gas Cost Recovery, the effect of which 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). These skyrocketing costs, which do not even include the transition costs to a zero net emissions economy, are an unacceptable burden on Rhode Islanders, particularly during a time when inflation and skyrocketing natural gas and electric supply costs are threatening the ability of many to keep up with the costs of basic essentials.

The Company's proposal on its face includes expenditures that are clearly neither reasonable nor necessary to ensure safe and reliable gas service. Accordingly, the Commission must conduct an exacting review of whether these expenses, and the corresponding profit the Company will receive, are truly reasonable and needed over the course of the next fiscal year. Moreover, this analysis must take into active account factors that can reasonably be expected to impact the utility company in order for Rhode Island to comply with Act on Climate mandates, such as new investment in required projects that have not yet been scoped or identified, a declining customer base to pay for infrastructure costs, or both. Increasing investment of any kind in a system that is currently under examination for rapid transformation in a separate docket, Commission Docket No. 22-01-NG, cannot meet the prudent investment standard. In fact, it is possible that the Commission may find that decreased levels of investment are necessary, either this year or in coming years. Nothing in the utility company's filing supports a 3% (for the next year) or 6.6% (over 21 months) increase in investment in the gas utility infrastructure at this time.

II. 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 of Public Utilities and Carriers (the "Division") were forced to spend time focusing on a

separate question of 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 (26 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, it would be inequitable for the Company to rely on its December 22, 2022 filing date to 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 remain outstanding, and the parties are still developing a full understanding of the Company's Plan and its potential short- and long-term impacts on Rhode Island customers. The Company proposed \$388.53 million of investment to occur over the next 21 months. *Kocon & Hunt Test.*, 10. The Company's February 3, 2023 supplemental filing reveals that the Company expects ratepayers to shoulder a nearly \$18 million increase in revenue requirement when compared to last fiscal year. That incremental increase represents nearly a third of the total revenue requirement under the Company's ISR Plan, which includes amounts ratepayers are already obligated to fund for past years' spending. See Supplemental Revenue Requirement, Rate, and Bill Impacts for April 1, 2023 through March 31, 2024. This increase is just a fraction of the total costs the Company plans to incur, and the rest of the bills for this year's spending will be due years from now, as discussed further below. Asking the Commission to grant approval of such a large

increase on a shortened timeline is inequitable and contrary to meaningful transparency of process. To the extent the Commission requires additional time to review the various parties' presentations regarding the ISR Plan or to gather any information needed to evaluate objections to the Plan, or any portions thereof, the Commission should calculate its decision timeline according to the date the supplemental filing was entered. The Commission is not bound the Company's failure to file a statutorily compliant ISR Plan, with the provision of essential supplemental data as late as 43 days into the Commission's review. Any risk associated with extending extra time should fall solely upon the Company.

III. FAILURE OF THE COMPANY TO REACH CONSENSUS WITH THE DIVISION HEIGHTENS THE LEVEL OF REQUIRED SCRUTINY AND FURTHER EMPOWERS THE COMMISSION TO DENY REQUESTS FOR UNNECESSARY SPENDING, ESPECIALLY IN LIGHT OF THE ACT ON CLIMATE AND GENERAL UNCERTAINTY CONCERNING GAS' FUTURE USE

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(4). In instances where the Company files its ISR Plan without securing agreement from the Division, the Commission's discretionary powers are heightened. The language in the Revenue Decoupling Statute shifts the standard for approval under these circumstances:

If the company and the division cannot agree on a plan, the company shall file a proposed plan with the commission and the commission shall review and, if the investments and spending are found to be *reasonably needed* to maintain safe and reliable distribution service over the short and long term, approve the plan within ninety (90) days.

R.I. Gen Laws § 39-1-27.7.1(d)(4) (*emphasis added*). Accordingly, only those spending items that are needed *for safe and reliable service* in light of the *known* short and long term needs of the system should be approved. As explained below, the Company's proposed ISR Plan reaches far

beyond what is reasonably needed in the coming fiscal year, especially in light of the State's ongoing efforts to determine the role, if any, natural gas will play in its energy future.

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

Successfully combatting the climate change that is threatening Rhode Island's resources and people requires careful consideration of any significant and long-term investments in fossil fuels (including natural gas). 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. 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.

In light of these statutory mandates, the "reasonably needed to maintain safe and reliable distribution service" language contained in the Revenue Decoupling Statute requires considerations that it did not in the past. 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 can also protect the public from excessive investment in infrastructure that may prove to be a financial liability in the future. As the State moves to meet the requirements of the Act on Climate, there are risks that utility spending on infrastructure investments that may need to be abandoned in the mid-term (or possibly even near term) could create stranded costs and

regulatory assets that ratepayers will be stuck paying for well into the future. Assumptions that current investments in gas infrastructure assets will yield a long useful life of infrastructure and facilities must be considered with skepticism, and the possibility that these investments in the gas system may well be inconsistent with the State's environmental and energy policies cannot be ignored when determining the reasonableness of mid- and long-term investments.

PPL's current ISR proposal does not appear to take into account the realities that past plans for gas infrastructure improvement may no longer be prudent. But it should. PPL has agreed that the Company must present its long-term strategy for the gas distribution system in light of the Act on Climate. *See* Settlement Agreement dated May 19, 2022 at 2(a)(i). And the Commission has opened the Investigation into the Future of the Regulated Gas Distribution Business in Rhode Island in Light of the Act on Climate (Commission Docket No. 22-01-NG) to consider these questions. The scope of that docket includes careful consideration of many essential questions that stand to change how the State views improvement and expansion of the natural gas system. These questions include, but are not limited to: "What are the economic risks associated with investment in the gas system and who bears those risks?"; "Can the PUC employ alternate ratemaking to align RIE's business model with the Act?"; "Can the PUC alter other underlying revenue requirement factors, like capital structure and depreciation schedules and rules, in light of the Act?"; and, tellingly, "What profit motives drive investment in the system?" *See* Docket 22-01-NG, Proceeding Scope, 4-5. These questions remain unanswered, and the Company has not provided full analysis of its long-term plans for the gas distribution system in light of the Act on Climate. Despite this, the Company seeks approval of the *increased* spending proposed for the next twelve months. The Company must be held accountable for clearly showing that each and every investment in the future of its system, especially capital investments, are reasonably needed *at this*

time. Further, any proposed investments that can be reasonably delayed until there is more certainty must be denied in light of the risks that imminent regulatory change could render them useless.

B. The ISR Plan Contains Massive Increased Spending that Fails to Meet the “Reasonably Needed” Standard, Approval of Which Could Harm Rhode Islanders for Decades to Come

As noted above, the Commission is being asked by the Company to blindly accept its proposed non-essential and proactive spending without understanding how the Company expects to adjust its operations going into the future. This creates the potential for mistakes that could cost the people of Rhode Island for decades. Already, capital expenditure burdens ratepayers for years into the future and costs far more than the initial investment numbers suggest, and if the Company’s plan is approved, this trend will merely accelerate. As is exemplified in the Company’s filing at *Section 3 Supplemental: Attachment 1*, \$29,176,178 of the revenue requirement in Fiscal Year 2023 came from Incremental Capital from FY 2018-2022 that is included in the rate base, amounts that must now be paid by ratepayers for past expenditures. This year, the Incremental Capital from those same years will cost ratepayers even more, with a revenue requirement of \$33,392,340. Moreover, based on forecasted revenue requirements, the revenue requirement expected from Fiscal Year 2023 Capital Investments was \$6,439,207. The revenue requirement for 2023’s investment is expected to almost double to \$12,827,683 in Fiscal Year 2024. This highlights the fact that investments approved now will continue to burden ratepayers in years to come, narrowing the capacity of ratepayers to afford future alternate investments.

The Office of the People’s Counsel for the State of Maryland (“MD OPC”) recently conducted a study looking into this very issue.¹ In that study, the MD OPC examined the state’s

¹ The full results of this study can be viewed at: https://opc.maryland.gov/Portals/0/Files/Publications/Reports/Report%20on%20GasUtilitySpending%2010-5-22%20Final.pdf?ver=YmuLxscCifs4_S5Oryfwqg%3d%3d

infrastructure replacement program and determined that, because of regulatory revenue structures, by the year 2100, \$34.5 billion in capital investment would have cost ratepayers \$125 billion. While a similar study replicated in Rhode Island would have different outcomes, our ISR structure similarly relies on future ratepayers bearing costs of present investments. Given the potential abandonment, reduction, or transformation of the distribution system (and its customer base) over the near- to mid-term, as it appears will be necessary to comply with the Act on Climate, it is irresponsible to continue approving ISR expenses in the same manner as before.

Despite the growing understanding that investing in infrastructure in the normal course has the potential to derail future adaptations to the system required to address climate change, the ISR Plan presented by the Company is full of proposed upgrades, purchases expected to increase inventories, expansion projects, and proactive pipe replacements. The Company's February 8, 2023 responses to the Commission's first set of Data Requests highlight just a few examples.² For instance, the Company has proposed a rapidly increasing "Discretionary Reliability" budget, far exceeding proposed budgets and actual spends in this category in recent years. *See* PUC 1-3. In response to questions about this proposed increase of \$18.63 million compared to FY 2022 (which would become the responsibility of ratepayers), the Company has indicated that "the Company has expanded its volume of work (and resulting budgets and actual spending) in the Reliability section to upgrade and enhance Gas Infrastructure, Safety, and Reliability for Rhode Island ("RI") gas customers." *See* Response to PUC 1-3. The Company cites several catastrophic events, including several that impacted Rhode Island, to support the need for investment in reliability. Those events were obviously unacceptable, and the need to ensure safe and reliable service is undisputed.

² Although separate from this discussion of discretionary spending, the Commission may also wish to consider its ability to review its prior orders concerning non-discretionary spending, which also accounts for tens of millions of dollars in ISR spending. *See* Table 1b Supplemental (January 27, 2023).

However, the Company’s claim that “larger projects are intended to improve overall system safety and reliability consistent with the long-term interest of the gas system and the customers it serves” is insufficient—only specific projects with specific and sufficient safety justifications fully explained to the Commission should be approved. *See id.*

Similarly, it is unclear how investment in the purchase of equipment, that has typically been rented under National Grid ownership, for LNG facilities is needed in the coming fiscal year. This is especially true with respect to the Old Mill Lane LNG Facility, the application for which remains under consideration by the Energy Facility Siting Board. *See id.*; *see also* Energy Facility Siting Board Docket No. SB-2021-04. The Company justifies this decision, without evidentiary support, by alleging that “portable LNG operations are scalable or could even be sold off in the future if portable LNG is no longer needed to ensure reliable satisfaction of customer demand on Aquidneck Island.” *See* Response to PUC 1-3. Here, as is the case in multiple portions of the ISR Plan, it appears that the cart is being put before the horse in an effort to ramp up capital investments to previously unseen levels. This lightly-justified increase in spending just prior to the development of a realistic plan for the future of the gas distribution system in light of the State’s climate and energy policies is not the path of prudent investment. Meanwhile, the risk of this immediate investment, and responsibility for the Company’s guaranteed profits, is placed on current and future ratepayers.

The Company is also proposing to build an \$11.27 million weld shop intended to allow the company to take on larger ISR projects itself, rather than outsourcing that work as it currently does. *See* Response to PUC 1-5, 1-7. The Company claims that the weld shop would also house trainings currently held elsewhere in the region. *See* Response to PUC 1-5. The Company is asking for approval of this expensive facility without any written alternatives analysis, and relied

on “an informal BCA” comparing the cost of one new facility to the current costs of the two existing facilities it is expected to replace. See Response to PUC 1-8. As with the other examples highlighted above, this proposed expenditure clearly falls far short of a showing that it is “reasonably needed to maintain safe and reliable distribution service.” See R.I. Gen Laws § 39-1-27.7.1(d)(4).

Even claims that line replacements are consistent with the Act on Climate do not necessarily support large-scale investment in pipe replacement. When calculating the reduction in methane, the Company indicates that it expected to reduce methane by roughly 37,000 MCF over 21 months. See Response to Division 1-2. However, the Plan also contemplated a proactive main replacement budget of \$166,950,000 and a service replacement budget of \$1,080,000. See ISR Plan at Section 2, page 3. While these may not be a perfect comparison, it is clear that the cost of pipe replacement is quite high for each avoided MCF. At the same time, a fully abandoned pipe would emit zero methane and incur \$0 in replacement costs. Moreover, there is a limit to how many MCFs could possibly be avoided through leak-prone pipe replacement. As the recent report submitted by the Rhode Island Executive Climate Change Coordinating Council (“EC4”) concluded, “[g]as mains that are replaced through this program have an expected lifespan between 50-100 years, locking in gas infrastructure well beyond the target date for an emissions-free state.” EC4, Rhode Island 2022 Climate Change Update (“2022 Update”), EC4 at 8, December 15, 2022, (available at <https://climatechange.ri.gov/media/1221/download?language=en>). In fact, the MCF savings from leak prone pipe replacement were ignored by the EC4 consultants altogether “because the level of uncertainty surrounding EPA’s per mile emission factors is too high.” *Id.* at 70. Therefore, Rhode Island’s current plan to meet the 2030 mandate does not rely on the continuation of this program and it may be halted without derailing the current 2030 plans. As

EC4 succinctly concluded, “[i]t would be imprudent to continue to reinforce and expand gas infrastructure that could not be easily and affordably decarbonized by 2050.” Report, 91. The Commission has a duty to halt any expansion of the program and to slow any expenditures under the program as much as possible as the details of non-pipe alternatives can be fully explored in the Future of Gas and other companion documents. In fact, the Company also seems to recognize this future shift, and has formed a working group to explore potential non-pipe alternatives to expansion and enforcing of the fossil gas network. *See id.* Rhode Island agencies have already recognized that this pipe replacement program may not continue under the Act on Climate mandates, and therefore it would be imprudent to remain on the path of past expansion rather than immediately working to slow or halt this investment. The Commission may not await the conclusions of other dockets before acting on this important insight, which will require reduction of the proposed investment in this ISR plan.

IV. 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 Avoid Any Increase in the Average Annual Bill

The Company has proposed increased expenditures while the State considers how to transform the gas distribution system, a request that at bottom is inherently imprudent. The Company is seemingly racing to increase its infrastructure efforts while revenue mechanisms guarantee its profits on the backs of ratepayers, perhaps predicting that those revenue mechanisms may also be transformed to meet Act on Climate mandates. The Commission must not allow the Company to profit off of investments that will, in hindsight, appear unreasonably risky in light of the transformative change to the gas distribution system that will be needed in the near future.

In the coming years, we will be asking Rhode Islanders on a budget to choose investments in air source heat-pumps, needed roof repair, and installing insulation to meet climate resiliency

goals over other preferred housing updates like a bathroom remodel, and we must ask the Company to shift its investments and save for future years in the same manner. It is essential that the Commission hold the Company to a reasonable budget to avoid unnecessary financial burden on ratepayers that will outlast the current gas distribution system. This means, at minimum, denying any increase in ISR spending, and perhaps decreasing the spending, where the Commission is able to determine that spending is not necessary for immediate maintenance of safe and reliable service. Certainly, no increase in the average annual bill due to ISR should be approved until there is some clarity about what investments will be needed to make the future of the natural gas distribution system a reality that meets the mandates of the Act on Climate, and the Commission should consider whether reductions are appropriate. Each upgrade, expansion, equipment purchase, facility, and other future-looking investment must be viewed through a critical lens, and 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
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Dated: February 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 14th 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 Motion were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas M. Vaz