

STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION

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In re: THE NARRAGANSETT ELECTRIC )  
COMPANY d/b/a RHODE ISLAND )  
ENERGY – FISCAL YEAR 2024 ) Docket No. 22-53-EL  
ELECTRIC INFRASTRUCTURE, )  
SAFETY AND RELIABILITY PLAN )

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**RESPONSE OF THE NARRAGANSETT ELECTRIC COMPANY d/b/a RHODE ISLAND ENERGY TO POSITION STATEMENT OF ATTORNEY GENERAL PETER F. NERONHA AND TO CERTAIN LEGAL POINTS RAISED IN THE PREFILED DIRECT TESTIMONY OF GREGORY L. BOOTH AND EXHIBIT GLB-1**

**I. INTRODUCTION**

The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company”) has submitted its Fiscal Year 2024 Electric Infrastructure, Safety and Reliability (“ISR”) Plan (the “FY 2024 Electric ISR Plan”) in full compliance with all legal and regulatory requirements. Further, the Company has submitted ample record evidence<sup>1</sup> demonstrating that the proposed “investments and spending are . . . reasonably needed to maintain safe and reliable distribution service over the short and long term.” R.I. Gen. Laws § 39-1-27.7.1(d). This substantial record shows that: (1) the Company has undertaken a thorough process to determine what investments are necessary to continue to provide safe and reliable electric distribution service in the short and

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<sup>1</sup> In this docket, the Company has provided the following record evidence: (1) the Company’s FY 2024 Electric ISR Plan, (2) supporting Pre-Filed Direct Testimony of Alan T. Labarre, (3) supporting Joint Pre-Filed Direct Testimony of Nicole Begnal, Christopher Rooney, Kathy Castro, Ryan Constable and Wanda Reder, (4) supporting Joint Pre-Filed Direct Testimony of Stephanie A. Briggs, Jeffrey D. Oliveira, Andrew W. Elmore, and Natalie Hawk, (5) supporting Pre-Filed Direct Testimony of Peter R. Blazunas, (6) a Supplemental Budget for April 1, 2023 through March 31, 2024, (7) Supplemental Revenue Requirements and Bill Impacts, April 1, 2023 through March 31, 2024, (8) responses to the 160 data requests served on the Company by the Rhode Island Division of Public Utilities and Carriers (the “Division”) and the Rhode Island Public Utilities Commission (the “Commission”), (9) the Company’s Grid Modernization Plan (“GMP”), filed on December 30, 2022, and docketed as Docket No. 22-56-EL, and also expressly incorporated into the record in this docket in the Company’s supplemental response to data request Division 1-36, and (10) the Company’s pre-filed rebuttal testimony submitted contemporaneous with this Response.

long term; and (2) the bill impacts to customers are reasonable, especially in light of the benefits customers will receive over the short and long term. Each proposed investment arises from analyses performed by the Company that identified the steps the Company needs to take to deliver the electric distribution service that customers demand and deserve. None of the proposed investments, including the investments categorized as “grid modernization” investments, are contingent upon any other proposals pending in any other dockets to deliver the safety and reliability outcomes described in the FY 2024 Electric ISR Plan. Moreover, the bill impacts assessment and benefit-costs analysis for these investments reflect that these investments are reasonable from an affordability perspective. If the Company receives approval of the FY 2024 Electric ISR Plan, the resulting bill increase for the average customer will be a mere \$0.84 per month. And, the operational benefits that will flow from these investments, as well as those described for future years, will result in lower operations costs and ultimately save customers money. In short, as a legal matter, the Company’s evidentiary presentation comfortably meets its burden to demonstrate that the FY 2024 Electric ISR Plan is “reasonably needed to maintain safe and reliable distribution service over the short and long term.” R.I. Gen. Laws § 39-1-27.7.1(d).

## **II. ARGUMENT**

The legal arguments posed in The Attorney General of the State of Rhode Island’s (“AG”) Statement of Position (the “AG Position Statement”), the Pre-Filed Direct Testimony of Gregory L. Booth (“Booth Testimony”), and Exhibit GLB-1 (“Booth Report”) are either mischaracterizations of the nature of the Company’s submissions, misstatements of the legal requirements for the FY 2024 Electric ISR Plan Filing, or incorrect applications of the law. Specifically, this memorandum refutes the following: (1) the AG’s claim that the Company’s filing was legally deficient, (2) the AG’s and the Division’s claims that other regulatory

approvals are necessary before the grid modernization investments proposed in the FY 2024 Electric ISR Plan can be approved, (3) the AG’s claim that the Company cannot meet the “reasonably needed” legal standard because it did not sufficiently consider alternatives, (4) the AG’s and the Division’s arguments that the Company’s characterization of the grid modernization category of investments as non-discretionary is legally improper, and (5) the contention that it is appropriate to place a target cap on ISR plan spending to align with previous approved budgets. Additionally, the AG has declined to put forth a witness to support the factual assertions and positions in the AG Position Statement, and the Commission, therefore, should not treat those statements as evidence, but rather as the equivalent of public comment.<sup>2</sup>

**A. The Company’s Initial Filing Complied With Statutory Requirements**

The requirements for the Company to prepare and submit a proposed ISR plan flow from the Decoupling Act. Pursuant to R.I. Gen. Laws § 39-1-27.7.1(d), the Company must “consult” with the Division regarding the ISR plan spending for the following fiscal year and submit a plan to the Division. Then, the *Division* must “cooperate in good faith to reach an agreement on a proposed plan . . . within sixty (60) days.” *Id.* After that 60-day consultation period, whether there is agreement or not, the Company must file an ISR plan for Commission review and approval within 90 days. *Id.*

The Company complied with these filing obligations. As it has since the inception of the ISR plan process, and as outlined in detail in the Pre-Filed Joint Rebuttal Testimony of Nicole Begnal, Kathy Castro, and Ryan Constable [*hereinafter* Joint Rebuttal Test.] and the Pre-Filed

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<sup>2</sup> The Commission has not altered the hearing dates or procedural schedule in this matter as a result of its decision that the Company could not propose a 21-month plan. As demonstrated by the procedural schedule and as the Commission explained at the Open Meeting when it made its decision regarding the time period that the current ISR plan filing shall cover, the Commission is proceeding with its review of the FY 2024 Electric ISR Plan within the statutorily required 90-day period. Accordingly, and for the sake of brevity, this memorandum does not address the AG’s arguments regarding the propriety of the Company’s initially filed ISR plan or the suggestion that the Commission could or should extend the time to complete its review.

Rebuttal Testimony of Wanda Reder [*hereinafter* “Reder Rebuttal Test.”], the Company engaged robustly with the Division both before submitting a proposed plan and afterward. Joint Rebuttal Test. at 6:13-7:14. Importantly, the Company’s engagement with the Division included significant and substantive discussion regarding the Company’s plan to include grid modernization investments in the FY 2024 Electric ISR Plan – and the reasons for doing so. *See* Reder Rebuttal Test. at 3:11-21, 7:11-21, 9:1-10:4; Joint Rebuttal Test. at 6:13-7:14. Ultimately, the Company submitted a proposed plan to the Division on October 21, 2022, and worked to engage with the Division in an attempt to reach agreement on a plan to present to the Commission. After more than 60 days had elapsed and the Company had not reached agreement with the Division, the Company filed the FY 2024 Electric ISR Plan with the Commission on December 23, 2022 – more than 90 days prior to the date by which a decision would be necessary.<sup>3</sup> Accordingly, the Company complied with all the statutory requirements for its proposed FY 2024 Electric ISR Plan.<sup>4</sup>

The AG’s arguments to the contrary are meritless. That the Company’s initial filing proposed a 21-month spending plan instead of a 12-month spending plan is immaterial to whether the Company filed in accordance with statutory requirements. The only statutory requirement is that the Company’s proposed plan cover costs for “the prospective fiscal year.” R.I. Gen. Laws § 39-1-27.7.1(d). The Company’s FY 2024 Electric ISR Plan satisfied this requirement in two respects. First, when the Company made its initial filing, it proposed a fiscal year that covered 21 months. Thus, it was a plan for “the prospective fiscal year.” Second, even

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<sup>3</sup> Even if one was to consider the filing incomplete until the Company filed the GMP on December 30, 2022 – which it was not – the Company also made that filing 90 days before the date by which a decision is sought.

<sup>4</sup> There is no dispute that the Company’s FY 2024 Electric ISR Plan includes all the substantive requirements set forth in the statute. The AG contends that the Company may not have complied with the requirement that the proposed plan covered the correct time period. The Company addresses that contention, *infra*.

if it was necessary under the statute that the plan include the proposed costs for the specific 12-month period of April 1, 2023 through March 31, 2024, the Company's initial filing included those costs as part of the 21-month plan. Accordingly, when the Commission determined that the FY 2024 Electric ISR Plan must cover only the same April through March fiscal year period as previous plans and directed the Company to submit a Supplemental Budget for April 1, 2023 through March 31, 2024, and Supplemental Revenue Requirements and Bill Impacts, April 1, 2023 through March 31, 2024, it was not directing the Company to submit new information not already included in the Company's initial filing. Rather, to comply with that directive, the Company reorganized the investments and costs already included in its original filing to show what it proposed for the April 1, 2023 through March 31, 2024 time period. The AG's contention, therefore, that the Company did not file a statutorily compliant ISR plan until it filed the Supplemental Budget for April 1, 2023 through March 31, 2024, and Supplemental Revenue Requirements and Bill Impacts, April 1, 2023 through March 31, 2024,<sup>5</sup> is meritless.

Additionally, the Company's submission of the GMP on December 30, 2022, did not make the "portions of the ISR Plan reliant on the GMP and its supporting testimony" untimely.<sup>6</sup> The Company made the GMP filing more than 90 days before the decision date sought. Contrary to the AG's argument, the Company did not have an obligation to provide the GMP during the 60-day consultation period with the Division.<sup>7</sup> The Company's obligation is to provide a plan to the Division for consultation during the 60-day, pre-filing consultation period. *See* R.I. Gen. Laws § 39-1-27.7.1(d). There is no requirement that all supporting information for every proposed investment be provided to and available for the Division during that 60-day

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<sup>5</sup> *See* AG Position Memo at 6-7.

<sup>6</sup> *See* AG Position Memo at 5.

<sup>7</sup> *See* AG Position Memo at 4.

consultation period. Regardless, the absence of the completed and filed GMP during that 60-day consultation period did not mean that the Company did not provide the Division with any information about the basis for proposing the grid modernization-related investments in the FY 2024 Electric ISR Plan. Grid modernization has been a topic of discussion for years, and, as described in the Pre-Filed Rebuttal Testimony of Wanda Reder, the Company has been discussing its proposed grid modernization investments during the stakeholder engagement process. Reder Rebuttal Test. at 3:11-21, 7:11-21, 9:1-10:4; Joint Rebuttal Test. at 6:13-7:14. The Company has been clear that its plan and expectation was and is to propose grid modernization investments through the ISR plan process. During the pre-filing consultation process with the Division, the Company provided both the information in the FY 2024 Electric ISR Plan itself about the support for the grid modernization investments<sup>8</sup> and responded to numerous data requests from the Division about the basis for the inclusion of the grid modernization investments.<sup>9</sup> The Company's inclusion of the grid modernization investments in the FY 2024 Electric ISR Plan before filing the GMP, therefore, is consistent with the statutory requirements for preparation, Division consultation, and timely filing.

**B. Approval of the Grid Modernization Investments Does Not Require Approval of the Company's AMF Business Case and Grid Modernization Plan.**

The Company's FY 2024 Electric ISR Plan stands on its own and is not contingent on – and does not presuppose – approval of the Company's AMF Business Case in Docket No. 22-49-EL, or the GMP in Docket No. 22-56-EL. Each of the investments proposed in the FY 2024

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<sup>8</sup> See, e.g., ISR Plan, Section 2: Electric Capital Plan, 22-23 of 115 (Bates pages 77-78).

<sup>9</sup> See, e.g., the Company's responses to data requests Division 1-4, Division 1-6, Division 1-8, Division 1-10, Division 1-15, Division 1-16, Division 1-23, Division 1-27, Division 1-33, Division 1-36 (which included information provided as part of the stakeholder engagement process regarding the grid modernization investments), Division 1-37, Division 1-39, Division 1-40, and Division 1-41. This list is not exhaustive. These responses are just examples of places where the Company provided explanation and support for the grid modernization investments during the pre-filing process.

Electric ISR Plan is independently justified as reasonably necessary for safe and reliable electric distribution service in the short and long term. All the investments, including the grid modernization investments, deliver safety and reliability benefits to the operation of the electric distribution system that do not require integration with AMF-enabled meters or other investments described in the GMP. Rather, the foundational grid modernization investments proposed in the FY 2024 Electric ISR Plan reflect the Company's analysis that these investments are reasonably necessary for the provision of safe and reliable service – regardless of whether any other grid modernization investments occur or whether the Company received approval to implement AMF. *See* Resp. to Data Req. PUC 1-1(a) (“The Foundational Investments are the investments that the Company believes are reasonably necessary, prudent, and nondiscretionary, with or without AMF, that bring value on their own and are needed now to manage the emerging complexity of the system.”); Pre-Filed Testimony of Nicole Begnal, Christopher Rooney, Kathy Castro, Ryan Constable and Wanda Reder, 27:12-18 (Dec. 23, 2022) [*hereinafter* “Begnal et al. Test.”] (“The Foundational Investments are near-term solutions in the [Grid Modernization Plan] roadmap, which are generally installed by 2028 and are required to operate now, and, in the future, regardless of DER adoption rates. Without these Foundational Investments it is likely that: Safety and reliability cannot be maintained due to the lack of visibility, situational awareness, and automated control of the distribution network given the two-way power flow conditions that are now being imposed on the system with higher levels of DER penetration.”). The arguments from the AG and the Division that these investments are contingent upon these other filings and proceedings is without merit.

The Company's obligation under the statute is to demonstrate that the proposed investments in the ISR plan are “reasonably needed to maintain safe and reliable distribution

service over the short and long term.” R.I. Gen. Laws § 39-1-27.7.1(d). The Company has provided substantial evidence that all the investments proposed in the FY 2024 Electric ISR Plan meets this standard – including the grid modernization investments. The AG and the Division misinterpret information that the Company provided about how these grid modernization investments can interact with AMF and with other, future grid modernization investments expected to be proposed as described in the GMP to reach the incorrect conclusion that the currently proposed grid modernization investments *require* AMF and other investments described in the GMP to provide safety and reliability improvements. That is simply false. The Company included information about how the grid modernization investments will interact with AMF and other investments described in the GMP to *enhance* the functionality and benefits that the currently proposed grid modernization investments will provide. But, the need for the currently proposed grid modernization investments is *not contingent* on those other investments taking place.<sup>10</sup>

Accordingly, the AG’s contention that the Commission should not approve any grid modernization investments in the ISR plan until after it completes the AMF Business Case docket and the GMP docket<sup>11</sup> is baseless. The Division’s position that it is inappropriate to include grid modernization investments in the ISR plan until the GMP proceeding is complete is equally meritless.<sup>12</sup> Investments proposed in the ISR plan are subject to review under the standard established by the statute. If the Company demonstrates that those investments are

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<sup>10</sup> The AG cherry picks certain language the Company included about the interaction of the grid modernization investments in the FY 2024 Electric ISR Plan with AMF and other GMP-described investments to create an incorrect narrative that the Company has taken the position that the investments are reliant on each other. AG Position Memo at 9-12. Although these investments will interact and enhance each other if all are approved, the grid modernization investments are not contingent on approval of the AMF Business Case and the GMP. They stand on their own. *See* Resp. to Data Req. PUC 1-1(a); Begnal et al. Test. 27:12-18.

<sup>11</sup> AG Position Memo at 7-8.

<sup>12</sup> *See, e.g.,* Booth Report, Appendix 3, Page 3 of 5.



reasonably needed to maintain safe and reliable service, then the Commission should approve them. The Company has provided substantial evidence demonstrating that all the investments in the FY 2024 Electric ISR Plan meet this standard. There is no basis to impose an additional legal requirement that investments proposed in the ISR plan that relate to other investments being proposed and vetted in other dockets must wait until those other investments are vetted and approved. In fact, imposing such a requirement would be contrary to the plan language of the statute that calls for the approval of proposed investments if they meet the “reasonably needed” standard.

**C. The Company Adequately Analyzed the Grid Modernization Investments to Meet the Reasonably Needed Standard.**

As explained in part B, above, the Company has provided substantial evidence that supports the position that the grid modernization investments are “reasonably needed” for the safe and reliable operation of the electric distribution system in the short and long term. As part of that analysis, the Company has explained how these investments will contribute to safety and reliability. The only requirement for approval under the statute is a demonstration that the proposed investments are “reasonably needed.” Despite the body of evidence the Company has presented in support of this standard, the AG contends that a more robust alternatives analysis is necessary to meet the standard.<sup>13</sup>

This argument has no basis in the statute. There is no language in the statutory text that even refers to the need to present an analysis of alternative investments to demonstrate that the proposed investments are reasonably needed for safety and reliability.<sup>14</sup> The AG’s position,

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<sup>13</sup> AG Position Memo at 9.

<sup>14</sup> In contrast, for example, the Energy Facility Siting Act expressly requires an analysis of alternatives for all applications for approval of facilities. R.I. Gen. Laws § 42-98-8(a)(7). Thus, the General Assembly has demonstrated that it knows how to specifically require an alternatives analysis.

therefore, is unsupported by the language of the statute, and it would be inappropriate to graft an additional requirement that was not intended by the General Assembly.

**D. The Grid Modernization Investments proposed in the FY 2024 Electric ISR Plan should be Approved Whether Considered Non-Discretionary or Discretionary.**

The Company has categorized the grid modernization investments proposed in the FY 2024 Electric ISR Plan as non-discretionary. The AG and the Division have criticized this characterization. The AG asserts that this non-discretionary label improperly places the burden of potential overspend on the grid modernization investments on customers.<sup>15</sup> The Division asserts that the Company is taking inconsistent positions on similar investments – and in particular reclosers – as non-discretionary in some circumstances and discretionary in other circumstances. These arguments overstate the importance of these labels.

First, and critically, the Company maintains that the non-discretionary label is correct for the proposed grid modernization investments. The non-discretionary label arises from the Company’s tariff, which defines “Non-Discretionary Capital Investment” as “capital investment related to the Company’s commitment to meet statutory and/or regulatory obligations.”<sup>16</sup> The Company has provided substantial evidence that supports including with grid modernization investments within this definition.<sup>17</sup> Accordingly, the inclusion of the grid modernization investments in the non-discretionary category is appropriate.

Regardless, agreement that the grid modernization investments are appropriately categorized as non-discretionary is not required for those investments to be approved. The only requirement for approval of investments is that they meet the “reasonably needed” standard set forth in the statute. Thus, although the Company has demonstrated that the grid modernization

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<sup>15</sup> AG Position Memo at 12.

<sup>16</sup> R.I.P.U.C. No. 2255.

<sup>17</sup> See, e.g., the Company’s responses to data requests PUC 1-22, 1-23, 1-24, and 1-25.

investments fit the non-discretionary definition, the Commission can and should approve those investments even if it determines that they should instead be characterized as discretionary.<sup>18</sup> As the AG identifies, the practical impact of the distinction between the discretionary and non-discretionary investments is the input into the cost recovery mechanism. Here, the Company is seeking approval for the grid modernization investments. Although the Company stands by its categorization of these investments as non-discretionary, the Company seeks approval of these investments however they are ultimately labeled because they are reasonably needed for safe and reliable operation of the electric distribution system in the short and long term.

**E. The Statute does not Contemplate a Spending Cap on Investments that Meet the Reasonably Needed Standard.**

As discussed above, the statute requires the Company to develop a proposed investment plan and directs approval of investments that are “reasonably needed to maintain safe and reliable distribution service over the short and long term.” R.I. Gen. Laws § 39-1-27.7.1(d). There is no language in the statute that calls for the creation of a cap on spending for such investments. Nor is there any provision of the statute that proposes to require that proposed or approved ISR plan budgets should stay consistent from year to year. The focus of the statute is on ensuring that investments that are reasonably needed are proposed and approved to ensure safe and reliable service.

Despite the absence of any such statutory language, both the AG and the Division take the position that the Company and the Commission should endeavor to keep ISR plan spending

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<sup>18</sup> The Commission has previously changed the classification of proposed investments from non-discretionary to discretionary. *See* Docket No. 4995, FY 2021 Electric ISR Plan, Minutes for Open Meeting (Mar. 17, 2020) (“Commissioner Anthony moved that the PUC approve National Grid’s FY 2021 Electric Infrastructure, Safety and Reliability Plan with one modification. The \$2 million proposed for Advanced Capacitor/Regulator Controls and Feeder Monitor Sensors and Advanced Recloser Controls in the Strategic DER Program should be moved from the system capacity performance category to the non-discretionary Customer Request/Public Requirements category for cost socialization. Chairperson Curran seconded the motion and the motion was unanimously passed. Vote 3-0.”), available at <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\Minutes\439\2020\362425.pdf>.

budgets in general, and the FY 2024 Electric ISR Plan in particular, aligned to the spending levels from previous years.<sup>19</sup> Although the Company acknowledges that the cost of proposed investments is an important consideration in determining whether investments are reasonably needed, the assertion that part of the reasonably needed calculation should involve a comparison of the amount of spending in previous years is legally erroneous. In determining whether a proposed investment is reasonable, the appropriate analysis is whether the benefits that will come from a particular investment justify its costs. That is the paradigm created by the Docket 4600 analysis, and it appropriately analyzes whether a particular investment is reasonably needed. Impacts to customers matter, and affordability is critical. This type of analysis measures whether those costs to customers will deliver sufficient value to them.

In contrast, a spending cap that arbitrarily seeks to maintain levels of investment at particular levels risks rejecting or delaying investments that are reasonably needed for safety and reliability. It also ultimately risks subjecting to customers to even greater costs in the future as the Company is forced to make investments to address more severe safety and reliability issues that materialize because of the rejection or delay of the investments now. Reder Rebuttal Test. at 18:1-25:18; Joint Rebuttal Test. at 11:1-12:3, 29:1-9. The statute created the requirement for the Company to file an ISR plan to provide a means to ensure that the necessary safety and reliability investments occur. Although it is necessary to consider costs and the impact to customers to determine whether investments are reasonable, the suggestion by the AG and the Division that ISR plan budgets should remain “aligned” with amounts proposed and approved in previous years is unjustified by the statutory language and contrary to the purposes of the ISR plan.

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<sup>19</sup> See AG Position Memo at 13; Pre-Filed Testimony of Gregory L. Booth at 21:4-5 (“The maximum level the Division can support is \$111.023 million.”)

**F. The AG’s Factual Assertions Should be Given the Weight of Public Comment.**

The AG’s memorandum is replete with factual assertions that are without evidentiary basis. These conclusory opinions are not evidence, and they cannot form any part of the foundation of the factual determinations to be made by the Commission in this docket. *See Newbay Corp. v. Annarummo*, 587 A.2d 63, 66 (R.I. 1991) (noting that public comments of physicians regarding health risks were not evidence upon which an agency may rely in rulemaking); *R.I. Consumers’ Council v. Smith*, 302 A.2d 757, 774-75 (R.I. 1973) (holding that public comment “does not qualify as legal evidence”). The Administrative Procedures Act is unequivocal that “[f]indings of fact shall be based *exclusively* on the evidence and matters officially noticed.” *See* R.I. Gen. Laws § 42-35-9(g) (emphasis added); *see also R.I. Consumers’ Council*, 302 A.2d at 774-75. Thus the factual assertions in the AG’s 2023 position statement are unfounded, and the Commission should not consider them as evidence in this proceeding.

**III. CONCLUSION**

For the reasons set forth in this Response memorandum, as well as the substantial evidence set forth in the Company’s FY 2024 Electric ISR Plan, supporting pre-filed direct testimony, rebuttal testimony, supplemental filings, and responses to data requests, the Company respectfully requests that the Commission approve the FY 2024 Electric ISR Plan in its entirety.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC  
COMPANY d/b/a RHODE ISLAND ENERGY**

By its attorney,



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Andrew S. Marcaccio, Esq. (#8168)  
The Narragansett Electric Company d/b/a  
Rhode Island Energy  
280 Melrose Street  
Providence, RI 02907  
(401) 784-4263

*/s/ Adam M. Ramos*

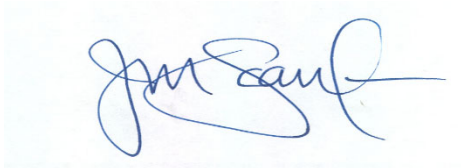
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Adam M. Ramos (#7591)  
Hinckley, Allen & Snyder LLP  
100 Westminster Street, Suite 1500  
Providence, RI 02903-2319  
(401) 457-5278  
(401) 277-9600 (fax)  
aramos@hinckleyallen.com

Dated: March 2, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2023, I sent a copy of the foregoing to the service list by electronic mail.



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Joanne M. Scanlon