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Peter F. Neronha
Attorney General

June 27, 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 Co. d/b/a Rhode Island Energy's Advanced Metering Functionality Business Case

Docket No. 22-49-EL

Dear Ms. Massaro:

Enclosed please find an original and nine (9) copies of the Attorney General's Surrebuttal Statement of Position for filing 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
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Enclosures

Copy to: Service List

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: THE NARRAGANSETT ELECTRIC CO.	**:**	
d/b/a RHODE ISLAND ENERGY'S ADVANCED	**:**	**Docket No. 22-49-EL**
METERING FUNCTIONALITY BUSINESS CASE	**:**	

THE ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND'S SURREBUTTAL STATEMENT OF POSITION

NOW COMES Peter F. Neronha, Attorney General of the State of Rhode Island ("Attorney General"), and hereby provides the following Surrebuttal Statement of Position to supplement his previously-filed Statement of Position ("RIAG Position Statement") in the above-referenced docket, which is currently pending before the Public Utilities Commission ("Commission").

I. Introduction

On November 18, 2022, The Narragansett Electric Company d/b/a Rhode Island Energy ("Rhode Island Energy" or the "Company") filed a Business Case with the Commission concerning its plan for full-scale deployment of Advanced Metering Functionality ("AMF") across the State. The Company has indicated that its filing is being made pursuant to Article II, Section C.16.a of the Amended Settlement Agreement (the "ASA") approved by the Commission at its Open Meeting on August 24, 2018 in Docket Nos. 4770 and 4780.

Additionally, pursuant to the May 19, 2022 Settlement Agreement by and between PPL Corporation, PPL Rhode Island Holdings, LLC and Peter F. Neronha, Attorney General of the State of Rhode Island ("PPL Settlement"), the Company promised it would "not file for a change in base distribution rates before three years after the Transaction's closing," or until certain other conditions, not relevant at the moment, were met. The Company further agreed that it would "not

seek recovery through any cost recovery mechanism of the incremental costs of these Additional Commitments, and will hold customers harmless from those incremental costs, both now and in the future." Moreover, as part of the PPL Settlement, PPL also committed the Company to the following:

> PPL will include in its plan for deployment of Advanced Meter Functionality ("AMF"):
>
> > i. costs that are no more than the estimated costs in total as proposed by Narragansett in Docket No. 5113, and Narragansett will not seek to recover from customers costs in excess of that amount, which costs shall remain subject to regulatory review and approval; and
> >
> > ii. a cost-benefit analysis that is at least as positive as the cost-benefit analysis included in the current Docket No. 5113, and bear the risk of lesser actual realized benefits.

As noted in the RIAG Position Statement, this private agreement speaks for itself, and the Company is required to honor its contractual obligations. While the PPL Settlement Agreement "is not intended to supersede the Commission's exclusive jurisdiction and authority to set just and reasonable rates [,]" the PPL Settlement remains enforceable outside of the context of this docket. *See* Response to PUC 2-1(a); *see also* RIAG Position Statement at 7.

In general, the Attorney General remains supportive of the Company's desire to implement AMF technology and to unlock the potential of benefits such as Time of Use Rates ("TOU") and Time Variable Rates ("TVR"). As explained in the Attorney General's Position Statement, these advances in technology will be extremely helpful as Rhode Island works to increase its clean energy portfolio and to comply with the greenhouse gas emission mandates under the Act on Climate. *See* RIAG Position Statement at 2-5. The Company must be held to a clear timeline for proposed TOU and TVR as part of the current review process, with clearly established dates by which the Company must submit proposals to the Commission.

Despite considerable testimony and responses to data requests posed by the various parties in this docket, the Company's plan remains deficient, particularly in two key areas affected by the May 19, 2022 Settlement; namely: (1) the Company's proposed recovery mechanism; and (2) the Company's alleged Benefits Cost Analysis ("BCA"). The Commission's pending data requests, which have not yet been answered, may shed additional light on these issues. *See e.g.* PUC Data Requests 7-10; and 8-1 to 8-4. The Commission must hold the Company accountable for delivering on its promises in the BCA should the Business Case be approved, and the risk of its failure to do so must be held by the Company and not the people of Rhode Island, and therefore an appropriate cost recovery mechanism is of utmost import. Simple approval of recovery regardless of ability to control costs and to ensure that promised benefits are realized must be avoided and guarded against.

II. Any Rate Mechanism Must Comply With Rhode Island Energy's Commitments in the PPL Settlement and the Company Should Not Recover Additional Operations and Maintenance Costs Resulting from This Business Case Until the Next Rate Case

As noted above, the Company has made certain commitments to the Attorney General which were designed to protect Rhode Islanders from risks associated with PPL's purchase of the Company. As explained in his Position Statement, the Attorney General is concerned that the Company's proposed rate recovery mechanism, referred to as its "AMF Factor" is an attempted end around of the Company's commitments in the PPL Settlement. *See* RIAG Position Statement at 6. Rather than file for a rate case (which the Company cannot do at this time) the Company has instead proposed a special factor to ensure immediate recovery of any investments associated with AMF. This factor is entirely outside of the Commission's normal rate structures, which are appropriately organized to deal with ongoing operations and maintenance and capital investment projects, like advanced meter functionality. Moreover, the Company's claims concerning the

"Reopener" under the ASA are misplaced. As outlined in the RIAG Position Statement, the Reopener contemplated by the ASA is precluded by the Company's commitments and the PPL Settlement, as the Company has promised that it "will not file for a change in base distribution rates." The clear language of this commitment precludes any change in base rates, not any change in base rates except a reopening of the last rate case through a mechanism not mentioned or contemplated in the agreement.[1]

As pointed out by the Division, there is no need for a special AMF Factor to allow the Company to recover its capital investments in its AMF implementation plan. *See* Watson & Blanton Test. at 34 of 45: 13-19 (outlining how current rules and regulations already allow for cost recovery for AMF). Absent the proposed special factor, the Company could still propose portions of its AMF plan during the yearly Infrastructure Safety and Reliability ("ISR") Plan process. Then, if the investments are deemed reasonably needed in that year, the Company will be able to recover the capital costs of its investment, plus any relevant revenue requirement. *See id.*; *see also* Response to PUC 1-31 (noting that "AMF capital investments can be included in the annual [ISR] Plan[… and reconciliation process.]) The normal ISR process provides an opportunity for yearly reviews of the Company's progress and for review and approval of any changes prior to recovery by the Company. Moreover, as outlined by the Division, the ISR approach provides an opportunity for the Commission, the Division, and other interested parties to perform "assessment and tracking of how well the Company has met its promises of the benefits of AMF metering." Watson & Blanton Test. at 35: 8-9. This is more in line with past Commission practice, as "historically all

[1] Additionally, the reopener language in the ASA specifically references a re-opening for costs incurred "during the MRP" which is defined as the three (3) year period from September 1, 2018 through August 31, 2021. *See* ASA at 55, Article II Section 16(c); see also ASA at 13 Article I Section C(1). Therefore, the ability to file for a re-opener after August 31, 2021 was not contemplated by the ASA. *Contrast* Response to RIAG Position Statement at 6.

metering capital costs were captured under the ISR Plan[.]" *Id.* at 21: 20-21. It also avoids many of the risks associated with the Company's complicated rate recovery proposal.

Additionally, the proposed AMF Factor and its expedited bi-annual review process would include recovery for both capital investments and operation and maintenance ("O&M") costs. *See* Response to PUC 1-3 (noting that under the Company's proposed recovery mechanism "all O&M costs incurred for the AMF program proposed in this filing would be included for cost recovery.") However, O&M recovery is part of base distribution rates—exactly those rates the Company has promised to keep level. As explained above, recovery for capital expenditures in upgrading the distribution system and replacing meters is properly approved through the ISR process. As noted by the Company, O&M is traditionally treated differently. During base rate cases, "the Company must forecast the level of rate base and operation and maintenance during the relevant rate years. That price remains fixed until the Company comes in for another base distribution rate case." Briggs & Johnson Rebuttal Test. at 12 of 16: 20-22. Therefore, the estimated operations and maintenance costs as forecasted in 2018 are already included in base rates pursuant to the ASA. Those base rates have been held steady pursuant to the Company's commitments as memorialized in the PPL Settlement. Without a full base rate case it is not possible to ensure ratepayers would not be responsible for double-recovery of O&M—there is not a full accounting of current O&M on the table now, and therefore there is no comparison to ensure that the proposed increased O&M from the AMF proposal is truly incremental.[2] In agreeing to stay out of a base rate case, the Company agreed that the amount of allowable O&M would remain constant until the next base rate case. Additionally, the Attorney General joins the Division in objection to the Company's

[2] The Company's response to PUC 1-30 evidences that the Company is proposing to continue using the full and unadjusted O&M allowance from the last base rate case, while additionally collecting certain AMF-related O&M. This approach benefits the Company at the expense of ratepayers.

proposal to return a portion of O&M benefits to customers under its proposed recovery plan, while retaining some twenty percent (20%) of those benefits as some sort of incentive reward payment for properly managing itself. The Company has not explained why it needs to be incentivized to manage itself properly and 100% of the benefits from O&M should be offset against the Company's costs incurred for AMF. *See* Watson & Blanton Test. at 37: 13-17.

III. Costs Must be Capped and The Company Should Be Held Accountable for Any Risk of Not Realizing at Least a 2.4 Benefit to Cost Ratio

As noted above, the Company made certain commitments in the PPL Settlement concerning its cost-benefit analysis and its overall costs for AMF. The RIAG Position Statement notes several concerns about the Company's interpretation of these commitments. *See e.g.* RIAG Position Statement at 5-8. These concerns are only heightened by additional information received as this docket progresses. In its filing letter for the AMF Business Case, the Company claimed: "[O]n a NPV basis, Rhode Island Energy's benefit-cost ratio is 3.9 versus National Grid's benefit cost ratio of 2.4. The only restriction on the Company's ability to recover costs for AMF was the restriction to 'not seek to recover from customers costs in excess' of the total costs proposed by National Grid in Docket No. 5113 (i.e., $192.6 million). Rhode Island Energy has, therefore, satisfied this commitment." However, this overlooks the commitments requirements to "not seek to recover from customers costs in excess [of $192.6 million]" and to "bear the risk of the lesser *actual realized* benefits." (emphasis added.) Despite the Company's assertions to the contrary, the commitments made require more than simply providing a plan that claims to present costs and benefits in line with what it has promised.

It is particularly troubling that the Company has continued to highlight (or rather, bold, underline, and italicize) that its commitments included the words "include in its plan for

deployment" as though simply stating that it would meet its obligations would absolve any requirement to keep its word. *See* Response to RIAG Position Statement at 6-7 (noting that the Company had a commitment "only to submit an AMF implementation proposal *that included* those elements, and not to seek recovery of costs from customers in excess of that amount *as part of that proposal*." (emphasis in original)). Despite having promised that "Narragansett will not seek to recover from customers costs in excess of [the estimated costs in total as proposed by Narragansett in Docket No. 5113]" the Company continues to insist that recovery of higher costs is acceptable. It blinks reality to read its commitments to allow the Company's position that "if the regulatory review process mandates changes to the implementation proposal that will result in additional costs," it is somehow absolved of its promise and may seek "recovery for additional costs driven by those mandated changes." Response to RIAG Position Statement at 7. Thus, it remains important to cap costs for this project at or below the Company's estimated costs in Docket 5113, and to continually track actual costs incurred to ensure compliance with the Company's capped expenses. *See* RIAG Position Statement at 7-8. The Company should hold the risk associated with failing to comply with its budget, not ratepayers.

Similarly, the Company seemingly believes that simply claiming a high BCA in its proposal is sufficient to satisfy the Company's commitment. *See* Response to PUC 2-1(d). However, a true value for the Company's BCA must be established. The Division has opined that the true benefit to cost ratio for the implementation of AMF is 1.4. That represents nearly a 2/3 reduction of the Company's claimed 3.9 BCA. *See* Watson & Blanton Test. at 22-34, Section V (analyzing the Company's BCA); *see also* Business Case at Book II, 135; Figure 11.4 (comparing claimed 3.9 BCA Ratio to Docket 5113's 2.4 BCA Ratio using NPV). The Company's claim that it has satisfied its commitment to include "a cost-benefit analysis that is at least as positive as the

cost-benefit analysis included in the current Docket No. 5113 and bear the risk of lesser actual realized benefits" may be false—the Commission must determine what benefits and costs are appropriately counted, and realized benefits cannot yet be known. The Company's proposal that it will not allow a BCA of less than 1.0 is not sufficient to fulfill its commitment to "bear[] the risk of lesser actual realized benefits." *See* Company Response to PUC2-1(d). Instead, the Company should be responsible for failing to realize an actual BCA ratio less than 2.4. To that end, the Division's position that a method for tracking and analyzing costs and benefits "in a manner that allows the PUC and stakeholders to compare the plan to actual results" is well-taken and the Commission should implement it.[3] Failure to realize at least a BCA ratio of 2.4 should result in a reduction in the Company's allowable recovery and a credit for customers to compensate for the Company's failure to deliver on its promises.

IV. Conclusion

The issues raised here, in the RIAG Position Statement, and through current and future testimony, position statements, and data responses provided in this docket must be carefully considered by the Commission and the Attorney General looks forward to continued participation in these proceedings. As outlined in the RIAG Position Statement, the Attorney General supports AMF in light of its great potential to increase customer information, improve energy efficiency methods, and increase production and use of local renewable energy. At the same time, it is important that the Company be held accountable to provide cost savings and benefits as promised.

It is essential that the Commission carefully weighs the short and long-term impacts of the project and creates enforceable spending limits and a required benefit to cost ratio attainment. To

[3] Further clarity on this issue and potential methods of tracking and holding the Company accountable will hopefully be provided as a result of the Commission's recently-issued data requests, including Set 8.

that end, there must be a clear method for tracking and analyzing costs on a set timeline to ensure that Rhode Islanders receive the benefits they have been promised. The Company has a mechanism to recover for capital expenses associated with AMF via the traditional ISR review process. However, O&M expenses are properly addressed at the next rate case. Additionally, the Company should bear the financial risk associated with failure to attain at least a 2.4 BCA ratio through its implementation and enablement of AMF.

Respectfully submitted,

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

By his Attorney,

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Dated: June 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June 2023, the original and nine hard copies of this Motion were sent via in hand-delivery to Luly Massaro, Clerk of the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of the Motion were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas M. Vaz