STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE:	**THE NARRAGANSETT ELECTRIC COMPANY d/b/a RHODE ISLAND ENERGY GAS INFRASTRUCTURE, SAFETY, AND RELIABILITY PLAN FY 2024 PLAN**	:	**DOCKET NO. 22-54-NG**

REPORT AND ORDER

R.I. Gen. Laws §39-1-27.7.1(d) requires the gas distribution company to file with the Commission an annual infrastructure, safety, and reliability annual plan for its anticipated capital spending forecasted for the next applicable fiscal year.[1] On December 22, 2022 and pursuant to R.I. Gen. Laws § 39-1-27.7.1(d), the Narragansett Electric Company d/b/a Rhode Island Energy (RIE or Company) filed its gas infrastructure, safety, and reliability plan for fiscal year 2024 (Plan or FY 2024 Plan).[2] The Plan is designed to protect and improve the gas distribution system through: 1) proactively replacing leak-prone pipe; 2) upgrading the system's custody transfer stations, pressure regulating facilities, and peak shaving plants; 3) responding to emergency leak situations; and 4) addressing infrastructure conflicts that arise out of state, municipal, and third party construction projects, among other investments. The Plan also includes a forecast of projects going into service and proposes a rate adjustment to recover the applicable incremental revenue requirement.[3]

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[1] The statute also provides for a filing for the electric distribution business.
[2] All filings in this docket are available at the PUC offices located at 89 Jefferson Boulevard, Warwick, Rhode Island or https://ripuc.ri.gov/Docket-22-54-NG.
[3] The Division is a party by statutory requirement. The Office of Energy Resources (OER) also has a statutory right to intervene and filed a timely notice of intervention on January 9, 2023. On January 13, 2023, the Rhode Island Attorney General (Attorney General) filed a motion to intervene. There were no objections filed to the Attorney General's motion.

I. SUMMARY OF FILING

The annual ISR filings have typically followed a regular pattern. However, this year, there were two significant differences compared to past annual filings. In the past, the Company has reached agreement with the Division on its spending plan and filed an uncontested plan. However, for this annual filing, the Company and the Division were unable to reach an agreement on the Plan.[4] Second, in the past, the gas distribution Company has historically – without exception – made a filing which assumed a 12-month fiscal year spending plan from April 1 through March 31, a practice which was consistent with the prevailing tariff language applicable to the ISR. However, the FY 2024 Plan filed by RIE in this annual filing proposed a 21-Month plan.

The 21-month plan consisted of an investment period, split between a 9-month spending segment in calendar year 2023 which covered the period April 1, 2023-December 31, 2023 (CY 2023), followed by a 12-month spending segment for calendar year 2024 which covered the period January 1, 2024-December 31, 2024 (CY 2024).[5] The Company maintained that a 21-Month planning period with two spending segments would allow the Company to transition the ISR planning process to align with the Company's US GAAP fiscal year going forward on a calendar year basis. In effect, the Company's filing assumed that it would be changing the ISR fiscal year to a calendar year and, therefore, the Company proposed a 21-month transition to carry out the change. Subsequently, under the Company's proposal, the "FY 2025 Plan" would later align with RIE's fiscal year on a calendar year basis – January 2025 through December 2025.

The filing identified a revenue requirement for CY 2023 of $46,984,604 or an incremental amount of $4,547,633 over what is currently being billed, and a revenue requirement for CY 2024 of $75,244,391 or an incremental amount of $28,259,788 over CY 2023. This results in an

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[4], Kocon/Hunt Test. at 7 (Dec. 22, 2022).

[5] This order uses the letters "FY" to refer to the term fiscal year, and "CY" to refer to the term calendar year.

incremental amount of $32,807,421 over what customers were currently billed.[6] The forecasted bill impact for an average residential heating customer using 845 therms annually was an annual bill increase of $113.88 or 6.6 percent.[7] The filing also included a proposal to modify tariff language relating to the ISR to change the definition of fiscal year to match the first 9-month spending segment from April 2023 through December 2023.[8]

II. THREHOLD ISSUE RELATING TO THE ISR FISCAL YEAR

A. The Statutory and Tariff Language Relating to "Fiscal Year"

R.I. Gen. Laws §39-1-27.7.1(d) requires each gas and electric distribution company prior to the beginning of the fiscal year to consult with the Division of Utilities and Carriers (Division) regarding its ISR spending plan for the following fiscal year. Specifically,

> (d) Prior to the beginning of *each fiscal year*, gas and electric distribution companies shall consult with the division of public utilities and carriers regarding their infrastructure, safety, and reliability spending plan for the *following fiscal year*…. (emphasis added).

Fiscal year is not defined in the statute, nor does the statute require that the fiscal year be that of the distribution company. Prior to the current year, when The Narragansett Electric Company was owned by National Grid, the annual plan was filed in December and requested rates for effect April 1 through March 31. This coincided with the US GAAP fiscal year of National Grid and was consistent with the tariff, RIPUC NG-GAS No. 101, §3.2.1 which states

> 3.2.1 Infrastructure, Safety, and Reliability Plan:
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> In compliance with R.I.G.L. Section 39-1-27.7.1, no later than January 1 of each year, the Company shall submit to the PUC a Gas Infrastructure, Safety, and Reliability Plan (Gas ISR Plan) for the ***upcoming fiscal year (April to March)*** for review and approval within 90 days. The Gas ISR Plan shall include the upcoming fiscal year's forecasted capital investment

[6] Proposed FY2024 Gas Infrastructure, Safety, and Reliability Plan, Sec. 3, Att. 1 at 1 (Dec.22, 2022).
[7] Blazunas Test. at 5 (Dec. 22, 2022).
[8] *Id.* at Att. 1. The Company indicated that it would file another proposal to modify the definition of fiscal year to cover January to December for 2024 when it files its annual reconciliation in August 2023. Blazunas Test. at 6.

> on its gas distribution system infrastructure and may include any other costs relating to maintaining safety and reliability that have been mutually agreed upon by the Division and Company. (emphasis added)

In May of 2022, PPL acquired Narragansett Electric and began doing business as "Rhode Island Energy" or "RIE". Unlike National Grid's fiscal year which ran from April 1 through March 31, RIE's US GAAP fiscal year coincides with the calendar year, consistent with the financial accounting schedule utilized by its parent Company – PPL.

B. Commission Request for Briefing on Fiscal Year Issue

On January 3, 2023, the Commission directed the Company and the Division to provide legal briefs in both this docket and Docket No. 22-53-EL (Electric ISR) addressing the following issue:

> How are the Proposed 21-month plans that span two fiscal years (FY 2023 and FY 2024) filed as the FY 2024 Proposed Electric Infrastructure Safety and Reliability Plan and the Proposed FY 2024 Gas Infrastructure Safety and Reliability Plan made by Rhode island Energy on December 22, 2022 consistent with the statutory requirement to file a spending plan for the following fiscal year?

The Company's brief argued that the extended fiscal year (21 months) was consistent with the statute and appropriate for a number of reasons. First, it asserted that fiscal year is not defined by statute and is flexible. It argued that it is common when there has been a change in company control to use an extended fiscal year, and that a company can define its own fiscal year. Next it argued that there is no requirement in the statute that mandates that the ISR Plan cover a period of twelve months. It maintained that the statutory language focuses on the contents of the ISR Plans more than the time period they cover. It further argued that because of the dates in the approved FY 2023 ISR Plan filed by its predecessor, National Grid, cover the April 2023 to March 31, 2024

period, it proposed the 21-Month Plan to align with the RIE fiscal year and believed that to be appropriate.[9]

The Company argued that its proposed 21-Month fiscal year will not interfere with the annual reconciliation filings it plans to file in August of 2023 in relation to the FY 2023 Plan and in 2025 following the end of RIE's FY 2024 Plan period. It maintained that while the section of the statute addressing revenue decoupling specifies an "applicable twelve-month period", the section related to the ISR Plan merely states "fiscal year". It argued that this is evidence that the legislature did not intend that the term "fiscal year" be limited to a 12-month period.[10]

Finally, the Company argued that being required to submit two ISR Plans for the 21-Month period would be unduly burdensome, unnecessary, and not in the best interest of customers. Because it would require two plans to be submitted within only a "few months", the Company alleged that the Division, the Commission, and other interested parties will be required to engage in additional review to an already "congested regulatory calendar." Moreover, the Company argued that it is unnecessary because the Company's submission of two plans with shorter time periods would not change the content of what was proposed in the 21-Month Plan but would result in a double review of the Plan and a doubling of the parties' and the Commission's the time and effort. RIE asserted that requiring multiple filings with shorter periods may also have a negative impact on customers. It provided that collecting the revenue over a period of 21 months would offer greater rate stability than if the Company was required to file a 9-Month and a 12-Month plan. Lastly, it noted that its proposal to extend the fiscal year is a one-time occurrence.[11]

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[9] RIE Brief at 5-9 (Jan. 17, 2023).
[10] *Id.* at 9-11.
[11] *Id.* at 11-13.

The Division brief stated that since the inception of the ISR, it has never consulted with the Company on a plan or budget other than for a 12-month fiscal year. The Division argued that the language of the statute is clear and the word "each" before "fiscal year" is a clear indication that the consultation process engaged in by the Division with the Company occur each and every year. The Division asserted that the phrases "following fiscal year" and "prospective fiscal year" in the statute best align with the April 2023 through December 2023 period and dovetails with the annual nature of the rate reconciliation preapproved budget. The Division maintained that it lacks authority to skip the consultation process, to reach an agreement on multiple fiscal year ISR budgets or investments made in multiple fiscal years, to review and approve an ISR plan for a year beyond the fiscal year, or to set an ISR factor beyond the 12-month period of the "prospective fiscal year."[12]

The Division asserted that RIPUC NG-GAS No. 101, § 3.2.1, which identifies the upcoming fiscal year as April to March, provides further evidence that the Company's proposed extended fiscal year is inconsistent with the tariff as well as with the statute. Finally, the Division argued that setting an ISR gas rate based on multiple fiscal years will improperly require customers to pay for projects prematurely.[13] In addition to its legal arguments, the Division recommended that the Commission only review and set factors for the proposed 9-Month budget, that it require the Company to file an updated CY 2024 ISR Plan by September 1, 2023, that it establish a procedural schedule, and that a CY 2024 budget only be established after review of the filing and the Division recommendations.[14]

[12] Division Brief at 3-5 (Jan. 17, 2023).
[13] *Id.* at 5-7.
[14] *Id.* at 7-8.

C. Open Meeting Decision Regarding Fiscal Year Definition

At an Open Meeting on January 20, 2023, the Commission considered the arguments made by the Company and the Division.[15] The Commission noted that the term "fiscal year" is not defined in the statute, nor does the statute specify that "fiscal year" has to be the fiscal year of the Company. For more than ten years and since the inception of the law, the Narragansett Electric Company has used an April 1 through March 31 fiscal year which is set forth in the Company's approved tariffs. Coinciding with a fiscal year that commenced on April 1 was beneficial for several reasons. Construction on the gas distribution system usually commences after the winter season ends. Another benefit was that the Commission's review of the ISR budget would occur during the first quarter of the year as opposed to the last quarter when the Commission has a number of complex matters and annual filings before it both from the Company and other regulated utilities. From the Company's financial accounting perspective, the alignment of an ISR fiscal year to the Company's US GAAP fiscal year also was convenient and efficient to National Grid.

The Commission noted that at no time prior to submitting the 21-Month Plan to the Division on October 21, 2022 or prior to filing it with the Commission on December 22, 2022, did the Company request a change to or waiver from the time period set forth in its current tariff. Instead, it chose to propose a tariff change in the December 22nd filing, requesting a change from a fiscal year spanning April through March, to a 9-month period of April through December. This presupposed the Commission would approve the request to change the tariff, even though the Company was aware of the Division's objection to the 21-Month fiscal year prior to the time that it filed the 21-Month Plan with the Commission.

[15] Neither OER nor the Attorney General took a position on the issue.

As the Company acknowledged, "fiscal year" is not defined by the statute. Moreover, the statute does not refer to "fiscal year" as "the Company's fiscal year". It only specifies "each fiscal year" and "the prospective fiscal year". Nor is "fiscal year" associated with or limited to a company's financial reporting requirements within the statute. In fact, the Company recognized the lack of limitations in its brief when it argued:

> [t]he plain language of [the statute] focuses on the *contents* of the ISR plans more than the specific timeline they cover. The reference to "fiscal year" provides a framework for the Company to ensure it:
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> (a) regularly plans for necessary safety and reliability investments;
> (b) consults with the Division about these proposed investment expenditures; and
> (c) has a deadline by which to file its ISR plans.

While it may be convenient for RIE to have the ISR fiscal year match its US GAAP accounting fiscal year on a calendar basis, it is not a legal requirement under the law – a point which was effectively conceded by the Company when it proposed a 21-month period as its 2024 fiscal year and proposed a tariff change that specified a spending segment of only 9 months.

This Commission has broad authority to define the ratemaking rules and the processes for evaluating proposals that impact rates provided that the result is fair and reasonable. In that regard, it is reasonable for the Commission to consider administrative efficiency, resource constraints, the timing of when rate increases that go into effect, and how the timing would affect ratepayers. In that regard, changing the ISR fiscal year to match the RIE calendar year would not be inconsequential to the regulatory process and the Commission's ability to properly review the filing. The Commission has a number of complex matters before it during the fourth quarter of the calendar year which is when the ISR Plan would need to be filed and reviewed if the ISR fiscal year was shifted to a calendar year.[16] Changing the ISR fiscal year to what has been proposed

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[16] R.I. Gen. Laws §39-1-27.7.1(d)(4) states "[i]f 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 investments and spending are

would disrupt the administrative efficiencies built into the current framework and disrupt the regulatory process.[17] Moreover, it would adversely impact the review process of not only the Company's ISR Plan but of other matters before the Commission by diverting necessary time spent reviewing those matters to the ISR Plan. Moving to a calendar year also would result in an additional rate increase being imposed on ratepayers in the middle of the heating season – a time when heating customers are often facing increases from the annual winter cost of supply.

The Commission has a duty to both the utility and ratepayers to assure review of the proposed spending levels are scheduled in a manner that is conducive to a thoughtful and complete review and that is not rushed by the challenges of end-of-the-year requirements. The Commission also has the authority to consider timing that affects the size of rate increases. In contrast, while it might be more convenient for the Company to be able to align its capital budget plan with the financial review that the Company performs each year at its parent level at PPL, such convenience does not outweigh the detriment to the regulatory process caused by a shift to a calendar year review. There is no financial loss to the Company and the Company retains a reasonable opportunity to recover all of the costs relevant to the applicable capital spending plan if the current fiscal year is retained.

Finally, the Commission made a finding that the Company failed to comply with the terms of its own tariff. Thus, the filing was deficient. As a result of the tariff non-compliance and the other considerations identified above, the Company was ordered to make supplementary filings of

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found to be reasonable needed to maintain safe and reliable distribution service over the short and long term, approve the plan within ninety (90) days."

[17] It is worth noting that the Company made an argument based on administrative efficiencies when it proposed one 21-month planning period instead of two, arguing that it was unduly burdensome on the parties and customers. RIE Brief at 11 (Jan. 17, 2023).

its schedules and budgets to align with the tariff condition presently in effect – April 1 through March 31.

While this decision was ultimately founded upon a finding that the Company's filing was inconsistent with the tariff, the Commission emphasizes that the decision was not driven merely by a tariff-based technicality. The Commission's decision also is founded upon the reasonableness of leaving the current ISR fiscal year in place for the practical reasons given above, notwithstanding the fact that the Company's US GAAP fiscal year is based on the calendar year.[18] This was not a decision by the Commission which directed the Company to change its financial accounting fiscal year for purposes of US GAAP. Rather, it was a decision that was limited to specifying the period over which the Commission will define the review period over proposed capital spending plans under the ISR which will ultimately result in rate changes. The Company's actual fiscal year for financial reporting that was chosen by the Company for US GAAP purposes remains unchanged.

III. THE PRE-FILED TESTIMONY

On January 27, 2023, the Company filed supplemental schedules updating the budget as ordered. On February 3, 2023, the Company filed a supplemental revenue requirement, rates, and bill impacts for the period April 1, 2023 through March 31, 2024 as ordered by the Commission.

[18] The Commission notes that this same reasoning relating to the definition of the fiscal year equally applies to the electric ISR which was decided and considered in Docket No. 22-53-EL at the same time that the decision was made in this docket.

A. Company Witnesses' Pre-filed Testimony[19]

In support of the Plan, RIE submitted the pre-filed testimony of Michele V. Leone to provide an overview of the objectives of the Plan and relevant context for the Plan in supporting the Company's vision, joint testimony of Nathan Kocon and Laeyeng Hunt to describe the Plan and its components, joint testimony of Stephanie A. Briggs, Jeffrey D. Oliveira, Andrew W. Elmore, and Natalie Hawk to describe the revenue requirement, and testimony of Peter R. Blazunas to discuss the rate design, calculation of the Gas ISR Factors, and the bill impacts.[20]

Ms. Leone provided testimony about the characteristics of the current distribution system and the Plan's inclusion of investments to replace leak-prone pipe, upgrade low-pressure distribution systems to high pressure distribution systems, and to enhance the operations of the Company's liquified natural gas (LNG) and gas regulation facilities. She noted that in addition to proposing accelerating the elimination of leak-prone pipe from 15 to 10 years, the Company was piloting an approach that balances the segment priority for pipeline replacement which would allow it to integrate alternative solutions, like decarbonized fuels and electric heat. She explained that upgrading the low pressure distribution systems reduces the need to balance between the two systems and minimizes operational issues. She described the LNG program as an important strategy for the Company by providing a balanced approach for maintaining and enhancing system

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[19] Figures in the testimony related to the originally proposed 9-Month and 12-Month Plans, budget, and revenue requirement are not included in this Order as the Commission found the proposed Plan inconsistent with the terms of the Company's tariff. The Order replaces the figures provided in the original testimony with the supplemental figures and schedules provided subsequently and in accord with the Commission's Open Meeting decision on January 20, 2023.

[20] Ms. Leone, Mr. Kocon, and Ms. Hunt are employed by The Narragansett Electric Company d/b/a Rhode Island Energy. Ms. Leone is Vice President-Gas. Mr. Kocon is the Principal Regulatory Analyst within the Resource and Investment Planning Group for the Rhode Island Gas Division, and Ms. Hunt is the Director of Engineering and Asset Management. Ms. Briggs, Mr. Oliveira, Mr. Elmore, and Ms. Hawk are employed by PPL Services Corporation which provides administrative and support services to PPL and its subsidiaries which include The Narragansett Electric Company d/b/a Rhode Island Energy. Mr. Blazunas is employed by Concentric Energy Advisors, Inc, a management consulting firm and is testifying on behalf of The Narragansett Electric Company d/b/a Rhode Island Energy.

reliability. Ms. Leone maintained that safety and reliability are paramount to RIE's vision, and the capital investment plan is focused on maintaining a system that is safe and reliable as well as contributing toward achieving the goals of the Act on Climate.[21]

Mr. Kocon and Ms. Hunt provided testimony to describe the proposed Plan noting that it is designed to meet state and federal safety and reliability requirements and to maintain and upgrade the system so that it is safe and reliable. They noted that although the Plan was submitted to the Division on October 21, 2022 and despite meetings on November 1 and 2, 2022, the Company and the Division were unable to reach an agreement on the Plan. They provided that while the Plan is designed to maintain the gas distribution system, it is also designed to proactively address issues before they arise. In addition to filing the Plan, the Company filed a five-year capital plan forecast. Since the main installation portion of the Southern Rhode Island Gas Expansion Project will be complete by the end of FY 2023, the Company requested approval to move it into the Discretionary – Reliability category to simplify reporting.[22]

Mr. Kocon and Ms. Hunt set forth the categories and spending amounts for each category that comprise the $186.47 million the Company proposed to invest in 2024. Those categories are: 1) Non-Discretionary - $49.57 million; and 2) Discretionary - $136.90 million. Within the Non-Discretionary and Discretionary categories are a number of programs designed to maintain the safety and reliability of the gas distribution system. The Non-Discretionary programs consist of work required by legal, regulatory code and/or agreement, or a result of damage or failure with limited exceptions. The Discretionary programs consist of work not required by legal, regulatory code and/or agreement.[23]

[21] Leone Test. at 4-9 (Dec. 22, 2022).
[22] Kocon/Hunt Test. at 5-9 (Dec. 22, 2022).
[23] Id. at 10-11 (Dec. 22, 2022); Table 1a Supp. (Jan. 27, 2023).

The Non-Discretionary category programs include $23.93 million net investment for Public Works programs, $25.62 million for Mandated Programs, and $25,000 for Damage Failure Programs. The Discretionary category programs include $85.12 million for the Proactive Main Replacement and Rehabilitation Program which includes Proactive Main Replacement, Large Diameter, and the Atwells Avenue project, $0.56 million for Proactive Service Replacement, $47.52 million for Gas System Reliability, and $3,700 for the Southern Rhode Island Gas Expansion Project. The witnesses represented that RIE proposed no operation and maintenance costs for 2024.[24]

Mr. Kocon and Ms. Hunt explained that the Plan includes the elimination or rehabilitation of 70.2 miles of leak-prone pipe, 54 miles will be proactive, 14 miles will be public works, 1.5 miles will be reliability work, and 0.7 miles will be reinforcement work. Reiterating Ms. Leone's testimony, they stated that RIE is exploring strategies to accelerate the elimination of leak-prone pipe from the current forecast of 15 years to 10 years.[25]

The Company proposed spending $109.06 million to abandon, install and rehabilitate leak-prone pipe in FY 2024 which includes $85.12 million for Proactive Main Replacement and $23.94 million for the Public Works program. For 2024, it increased its abandonment of cast iron main, which represents 67% of the Company's total leak-prone inventory, percentage from 70% to 76%. The witnesses noted that since the inception of the ISR programs through FY 2022, the Company has abandoned a total of 605 miles of leak-prone pipe which has contributed to reducing the number of gas leaks by about 1,658. In addition to the planned increase in abandonments, RIE is evaluating whether to expand the scope of the Public Works program to include leak-prone pipes.[26]

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[24] *Id.* at 11-12; Table 1a Supp. (Jan. 27, 2023).
[25] *Id.* at 12-14; Table 4 Supp.
[26] Id. at 15-18; Table 1a Supp.

Ms. Briggs, Mr. Oliveira, Mr. Elmore, and Ms. Hawk (Revenue Requirement Panel) provided testimony to describe the calculation of the revenue requirement which was based on the amount of proposed spending for FY 2024. They noted the FY 2024 Plan revenue requirement as $60.3 million or an incremental $17,844,669 over the amount of the FY 2023 Gas ISR Plan revenue requirement and what is currently being billed for the Plan. The components of the revenue requirement are: 1) $7,182,996 for the Company's return, taxes and depreciation expense associated with the FY 2024 proposed non-growth ISR incremental capital investment in gas utility infrastructure of $168,421,519 2) $46,220,023 for the FY 2024 revenue requirement on incremental non-growth ISR capital investment for FY 2018 through FY 2023; 3) $11,378,583 for FY 2024 property tax expense; and 4) a $4,499,963 reduction in the revenue requirement for a Hold Harmless adjustment.[27]

The Revenue Requirement Panel explained the reasons for the increase in the revenue requirement compared to FY 2023. They noted that the impacts of the sale of the Company to PPL resulted in the recognition of all book and tax timing differences and the reversal of related deferred tax assets and liabilities in FY 2023. The reversal of the deferred tax assets and liabilities increased the ISR rate base in the vintage revenue requirement calculations which resulted in an increase to the return on rate base recoverable through the ISR mechanism. They maintained that PPL was committed to hold Rhode Island customers harmless from any changes to Accumulated Deferred Income Taxes (ADIT) as a result of PPL's acquisition of the Company. Regarding capitalization expenditures and their effect on the revenue requirement or rate impacts, the panel represented that the Company will continue to capitalize to the same thresholds as when National

[27] Rev. Req. Panel Test. at 8-10 (Dec. 22, 2022); Sec 3 Supp: Att. 1 at 1, 21 (Feb. 3, 2023).

Grid owned the Company until it determines whether changes to the thresholds should be made. It will determine this by the end of CY 2023.[28]

The purpose of Mr. Blazunas's testimony was to describe the calculation of the proposed factors and bill impacts. He stated that the FY 2024 rate design is based on the revenue requirement of cumulative incremental capital investment in excess of capital investment reflected in the last rate case, Docket No. 4770, and property tax expense. He explained that capital investment is allocated to each rate class based on the rate base allocator approved in Docket No. 4770. Mr. Blazunas set forth factors ranging from $0.1979 per therm to $0.0455 per therm depending on rate class. He stated that the impact on an average residential heating customer using 845 therms annually is $51.23 or 3.0%.[29]

Mr. Blazunas also discussed the proposed tariff modifications made by the Company which changed the ISR fiscal year from April 1 to March 31 to April 1 to December 31. He noted that a future proposal would be made to change the ISR fiscal year to match the Company's calendar year.[30]

B. Attorney General's Position

The Attorney General urged the Commission to deny approval of the plan unless the Company was able to establish each of the proposed investments was reasonable and necessary now and in the future in light of the Act on Climate. He maintained that without seeking prior approval, the Company's legally non-compliant 21-month plan sought to increase an average heating customer's gas bill by $113.88 in less than two years. He asserted that the expenditures are neither reasonable nor necessary to ensure safe and reliable service. He stated that the

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[28] Rev. Req. Panel Test. at 11-20.
[29] Blazunas Test. at 2-5 (Dec. 22, 2022); Sec 4 Supp. Att. 1 at 1 (Feb. 3, 2023); Sec 4 Supp. Att. 2 at 1 (Feb. 3, 2023).
[30] *Id.* at 5-6.

Commission must conduct an exacting review of the proposed expenditures and determine if they are truly reasonable and needed and that the review must take into account the mandates set forth in the Act on Climate. He noted that the Docket No. 22-01-NG proceeding may justify decreased levels of investment now and in the future.[31]

The Attorney General argued that the non-compliant filing delayed the proceedings, because the parties had to address the Commission's briefing question and that the subsequent filing of supplemental schedules justified the Commission extending the time to review beyond the 90-day period set forth in the statute. He noted that the supplemental filing seeks approval of almost $18 million more than what ratepayers are currently paying and that asking the Commission to review such a large amount in a shortened time was not equitable or transparent. Because the Company and the Division were unable to reach consensus, the Attorney General argued that a higher level of scrutiny over the Company's proposed expenditures is required. He maintained that only expenditures that are necessary for safe and reliable service in light of the known long and short term needs of the state should be approved.[32]

Referring to the Act on Climate, the Attorney General asserted that the Commission is obligated to consider the mandated greenhouse gas emissions reduction requirements when making its decisions. He asserted that it may not be prudent to proceed with prior planned improvements to the gas distribution system. He stated that the Company must submit its long-term strategy in light of the Act on Climate and that the Commission has opened a docket to investigate the future of natural gas in Rhode Island. He argued that the Company must establish that each of its proposed investments are reasonably needed at the current time and any that can

[31] AG Stmt. at 1-3 (Feb. 14, 2023). Docket No. 22-01-NG is examining the future of natural gas in Rhode Island.
[32] AG Stmt. at 3-6.

be deferred must be denied because of the risk that future decisions regarding the use of natural gas in Rhode Island could render those investments useless.[33]

The Attorney General argued that the Company is asking for almost double of what it was approved to spend in FY 2023. He maintained that approving spending that fails to meet the reasonably needed standard and without knowing how the Company will adjust its operations in the future could harm ratepayers far into the future and urged the Commission to approve only projects which can be fully explained as required for safety. He cited specifically the proposal to purchase equipment typically rented for LNG facilities as lacking evidentiary support of its need and not prudent in light of the State's climate and energy policies regarding the future of the gas distribution system in Rhode Island. He also cited the proposed weld shop expenditure that he claimed fell short of a showing that it is reasonably needed to maintain safe and reliable service.[34]

The Attorney General noted the large budgets for the proactive main and service replacement programs and questioned the cost for each avoided MCF and the limit of what will be avoided through the Company's proposed leak-prone pipe replacement. He cited the EC4 2022 report that concluded the expected life expectancy of gas infrastructure is well beyond the date established for an emissions-free state and noted that the EPA consultants did not consider the MCF savings from leak-prone pipe replacement. He maintained that the State's goals to reach net zero do not rely on continuation of the leak-prone pipe replacement program which may in fact be halted without effecting movement toward the State's goals. He argued that continuation of the

[33] *Id.* at 6-8.
[34] *Id.* at 8-11.

program at its current rate would be imprudent and urged the Commission to either slow or halt this program.[35]

Finally, the Attorney General argued that the Commission must disallow the Company from profiting off risky infrastructure investments in light of the changes that will be inevitable to the gas distribution system in the near future. He noted that ratepayers will be asked to choose investing in improvements to their homes that meet climate resiliency goals rather than others that are more preferable. He urged the Commission to ensure ratepayers will not be burdened by denying any expenses that are not necessary for the immediate maintenance of safe and reliable service.[36]

C. The Division of Public Utilities and Carriers' Position

The Division filed pre-filed testimony of Alberico Mancini describing the review the Division performed regarding the original 21-Month Plan and the updated revenue requirement and budget. It identified the nine concerns that the Division had with the Company's October 2021 filing and noted that four of those concerns were extinguished by the Commission's January 20, 2023 Open Meeting decision directing the Company to update its revenue requirements and budget to reflect an April 1 through March 31 fiscal year.[37]

Noting that the FY 2024 budget is more than $10 million higher than the FY 2023 budget, the Division expressed concern that the Company is proposing to increase its budget and accelerate work at a time when it is having difficulty moving forward with major projects as evidenced by the underspending that has occurred over the past several years. It stated that it appears supply

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[35] *Id.* at 11-12.
[36] *Id.* at 12-13.
[37] Mancini Test. at 3-8 (Feb. 14, 2023).

chain problems and labor force unavailability are the main drivers of the underspend. The Division maintained that the Company is proposing to increase spending without any evidence that the causes of the delays have been abated or are no longer present. Until such time as this is resolved, it noted customers will continue to be charged more than they should.[38]

The Division identified three categories of concerns that it had with the Company's budget, the Main Replacement program, the proposed Weld Shop, and Tools and Equipment spending. In addition to these categories, the Division expressed concern about the process that exists when the Company has to make significant mid-plan expenditures without Commission review or approval.

Regarding the FY 2024 Main Replacement budget, the Division maintained that the Company does not have the resources to increase total installation miles as the Company has proposed. It noted that for the FY 2023 Plan, it had agreed with the Company to reduce proposed installed miles to try to reduce the miles of carryover work that was still in progress which resulted in a $5 million adjustment to the Main Replacement budget. The Division maintained that the decrease in the budget did not negatively impact progress on the program and noted the underspend in main replacement categories, which totaled approximately $7.6 million was the result of resources it had available to do the work. The Division opined that the Company cannot achieve 69.5 miles of main installation in FY 2024. Its opinion is based on the complexity of projects and the limited resources. The Division represented that based on past performance, it was recommending a reduction to 60 miles and a $15 million adjustment be made across all replacement categories.[39]

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[38] *Id.* at 8-11.
[39] *Id.* at 11-16.

The Division alleged that the Weld Shop did not constitute utility infrastructure and, therefore, was not eligible for recovery in the ISR Plan. Further, while the Weld Shop may maximize efficiencies by consolidating the two existing shops into one, there was no evidence presented that the consolidation will promote safety and reliability. The Division asserted that removal of the Weld Shop expense from the ISR Plan will not prevent the Company from seeking recovery for this expense in its next base rate distribution case. The Division recommended disallowing the $8.86 million expense for the Weld Shop in the FY 2024 budget.[40]

The Division expressed concern with the Company's proposed Tools and Equipment budget which was almost double of the FY 2023 budget. It asserted that the Company's need to purchase tools and equipment because it was no longer able to borrow them from National Grid affiliates was a direct result of the sale of The Narragansett Electric Company to PPL and thus transition costs which PPL committed to forgo as part of the settlement of the sale. The Division recommended adjusting the Tools and Equipment budget to the approved FY 2023 level of $824,000.[41]

Lastly, the Division commented on the purchase of the Cumberland portable LNG equipment. It provided that prior to the sale of the Narragansett Electric Company to PPL, it was informed that the Company intended to purchase this equipment. At that time, the Division indicated that while it did not oppose the purchase, National Grid should notify the Commission of its intent and obtain whatever approvals were necessary Approximately six months later, the Division was notified that the Company would incur an approximately $7 million down payment for the equipment in FY 2023 that was not originally budgeted and that the Company had

[40] *Id.* at 17-22.
[41] *Id.* at 22-24.

performed a cost-benefit analysis which showed the purchase was in the best interest of ratepayers and that the equipment would be placed in service in FY 2024. The Division represented that it was unaware of whether the Commission was ever notified of this expense and remains concerned with the Company making mid-plan investments for a category that is not included in the approved ISR budget. The Division recommended that going forward it be notified of any mid-year plan expenditure exceeding $2 million for a new ISR category not previously reviewed by the Commission. The Division recommended approval of the proposed revenue requirement and budget conditioned on its noted adjustments.[42]

Rod Walker, a Division consultant, provided testimony discussing: 1) the overall condition of the Company's infrastructure, 2) leak trends on the Company's distribution system and the efficacy of the replacement programs to reduce leaks, and 3) the relationship between methane emission reduction and proactive pipe replacement. Mr. Walker noted that the Rhode Island natural gas system is one of the oldest in the country with a large inventory of leak-prone and deteriorating infrastructure. Although the Company has removed some of this leak-prone pipe and leaks have declined over the past five years, he found that in 2021, the number of leaks across all metrics have increased. He noted also that there are discrepancies between the Company's System Integrity and DOT Reports over the past several years. Mr. Walker made four recommendations: 1) that the Company continue to closely monitor the increase in leaks, 2) that the Company continue to evaluate the effectiveness of its replacement programs to ensure the riskiest mains and services are given priority so that metrics trend downward, 3) that the discrepancies in data concerning the quantity of leaks and leak-prone infrastructure be addressed to ensure that the Company fully understands its system to perform the integrity management functions as required

[42] *Id.* at 24-28.

by regulations, and 4) that the Company continue to invest in the removal of leak-prone pipe in its gas ISR programs.[43]

Mr. Walker explained what constitutes leak-prone pipe and identified the various materials that make up that pipe. He noted that the distribution system in Rhode Island includes cast iron, ductile iron, unprotected steel, and bare/unprotected steel mail piping with cast iron constituting 20% of the 29% of leak-prone pipe in the system. Additionally, 23% of all services on the system are not cathodically protected and are leak-prone. He stated that it is important to evaluate the leak trends on the system as this identifies the riskiest aging infrastructure to replace which reduces the risk of a gas incident and increases safety. He expressed concern with the increase in leaks identified in the 2021 System Integrity Report and with the large number of leak-prone services that are old, the closest asset to customers and the general public, and continue to pose a significant risk.[44]

Mr. Walker stressed the necessity of removing leak-prone pipe from the system noting the 38% increase in Grade 1/Type 1 hazardous leaks as reported in the System Integrity Report. He addressed other leak criteria noting the increase in 2021. He also noted the discrepancy between the System Integrity Report showing a 6.4% reduction in leaks over the last five years and the DOT/PHMSA Report indicating a 6% reduction for the same period. Regarding lost and unaccounted for gas, Mr. Walker maintained that over the past five years, the Company's percentage of lost gas has increased by a half a percent to 2.7% which he noted was in addition to gas lost due to leaks. He provided a table establishing that there is a direct correlation between the removal of leak-prone pipe, total leaks, and emissions reductions. Based on this relationship, he

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[43] Walker Test. at 3-5 (Feb. 14, 2023).
[44] *Id.* at 6-10.

concluded that the Company should continue to remove leak-prone pipe as part of its current and future gas ISR programs.[45]

D. The Company's Rebuttal

Mr. Kocon and Ms. Hunt filed rebuttal testimony on behalf of the Company and counsel filed a legal memorandum in response to the Position of the Attorney General.

Mr. Kocon and Ms. Hunt presented the Company position on each of the issues raised by the Division, specifically, the Proactive Main Replacement Program, Tools and Equipment, the Weld Shop, the process for new ISR categories, and leak-prone pipe. The Company addressed the approximate $11 million increase over the FY 2023 budget as being the result of the rising overall cost to replace leak-prone pipe. The witnesses noted that the Company had agreed to eliminate the Weld Shop proposal and to reduce the Tools and Equipment expense by a total of about $583,000 million. This resulted in a proposed budget of $177.023 million which they noted was $1.37 million more than the FY 2023 approved budget. They also represented that the Company was in agreement with Mr. Walker on the need to prioritize the riskiest leak-prone pipe, to closely monitor its leak activity, and to continue to invest in replacing leak-prone pipe.[46]

The witnesses disagreed with the Division's conclusion that it will not be able to install and abandon 69.5 miles of main noting that since COVID it has reduced the carryover work that accumulated during the first few months of the pandemic. They stated that the Company is currently on track to meet or exceed its 64.5 miles abandonment goal. They disagreed with and cited lack of support for the Division's assertion that limited resources will impede the Company's ability to meet its FY 2024 goals noting that it has already secured resources to ensure it meets its

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[45] *Id.* at 11-18.
[46] Kocon/Hunt Rebuttal at 4-5 (Feb. 28, 2023).

mileage goal and plans to secure additional contractors to support its efforts. There have also been improvements to internal labor resources by leasing additional equipment, entering into a labor agreement, and improving coordination across the Company's departments with field operation crews. The witnesses did not dispute that Company underspent about $7.6 million across all of its main replacement categories, but highlighted that most of the underspend was due to increase reimbursements in the Public Works category, a pause of one project, and a shift in another. They argued that the underspend could have been made up had the Company not chosen to reduce its installation miles in an attempt to reduce the number of carryover miles.[47]

Regarding Tools and Equipment, the witnesses maintained that the need for tools has outpaced the budget over time. The increase in the budget reflects the need to catch up and to obtain certain specialty equipment that will enhance safety and reliability. They described the various pieces of specialty equipment and its uses and disputed the Division's claim that need to purchase the specialty tools are transition costs related to the acquisition of the Company by PPL from National Grid. They asserted that these pieces of equipment were not borrowed from National Grid or used on the distribution system prior to the acquisition. Although the Company withdrew the Weld Shop proposal from the FY 2024 Plan, the witnesses maintained that the Weld Shop is needed and will support 99% of the capital work within the ISR Plan.[48]

The witnesses did not oppose the Division's recommendation that if mid-term capital investments exceed $2 million notice shall be provided to the Commission and the Division, but noted that this information is currently provided in its quarterly reports. It proposed including a separate section in quarterly reports that would identify mid-term capital investments.[49]

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[47] *Id.* at 5-12.
[48] *Id.* at 12-18.
[49] *Id.* at 19-20.

Regarding Mr. Walker's recommendation that it monitor the uptick in leaks and closely scrutinize any further upward trend, the witnesses suggested that the Company monitor leak receipts rather than repairs which is a better indicator of the effect that the leak-prone pipe replacement program is having on the distribution system. They noted that the Company continues to follow its established Distribution Integrity Management Program (DIMP) to prioritize the riskiest leak-prone pipe for replacement. They also provided that the Company recognized the discrepancies in leak-prone infrastructure and leak data and is working to resolve those discrepancies.[50]

In addition to providing a legal response, the rebuttal testimony also addressed the position of the Attorney General. The witnesses explained the increase in the revenue requirement was the result of using a half-year convention for the first fiscal year when investments are placed into service. They also disputed the Attorney General's assertion that the investments are not reasonably needed and maintained that it would not be prudent to halt distribution system maintenance and improvements at this time. They asserted that because of the age of its system, threats to reliability and safety are not hypothetical. Regarding the investments in LNG equipment, the witnesses explained that if the Company was not able to vaporize and inject LNG into the system, low pressure could lead to outages. They shared that an analysis revealed that the cost of entering into new rental agreements for LNG equipment will rise significantly. They concluded that in order to tailor the equipment to the system and because it would enhance the system at a lower cost, the Company should purchase the portable LNG equipment for the Cumberland facility.[51]

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[50] *Id.* at 20-23.
[51] *Id.* at 23-28.

The witnesses disputed the Attorney General's assertion that investments proposed in the Plan should be deferred noting that to do so would pose significant and unjustified risks and are critical to the safe and reliable operation of the system. They explained the importance of the proposed upgrades and stated it would be irresponsible to delay the investments given the age of the system. They argued against the claim that the proactive pipe replacement program should be either delayed or halted maintaining that to do so would compromise the safety and reliability of the gas distribution system, be inconsistent with the Act on Climate mandates, and be contrary to federal regulatory requirements. The witnesses maintained that the Attorney General failed to explain why it would be reasonable to allow leak-prone pipe to remain in neighborhood streets and cautioned that left unaddressed, it could become an overwhelming issue that the Company does not have the resources to address. Finally, they stated that the proactive main replacement program is consistent with the decarbonization goals of the Act on Climate and with decarbonization strategies like hydrogen blending.[52]

The last issue addressed in the rebuttal testimony was the Company's meter inventory. The witnesses noted the importance of maintaining an inventory because the Company is not able to predict when meters will fail or if the supply chain issues will lead to a lack of inventory. The Company's only intention is to ensure it has available meters for present need.[53]

E. Legal Memorandum in Response to Attorney General's Position

In addition to the pre-filed testimony, counsel for the Company filed a legal memoranda in response to the Attorney General's position. Counsel argued that the Attorney General's factual assertions about the future of the natural gas system and the prudency and reasonableness of the Company's decisions are unsworn opinions and not evidence. Counsel maintained that the

[52] *Id.* at 29-35.
[53] *Id.* at 35-37.

mandates in the Act on Climate do not excuse its statutory obligation to provide safe and reliable service for the short and the long term. Citing R.I. Gen. Laws § 39-1-27.7.1, they stated that the Company has a statutory obligation is to maintain the system over the short and long-term.[54]

F. Division of Public Utilities and Carriers' Surrebuttal

On March 8, 2023, the Division filed Surrebuttal indicating that it had come to an agreement with the Company resolving the outstanding issues discussed above. The Division provided that the agreed to FY 2024 budget is $170.714 million which is more than $15 million less than what the Company originally proposed and almost $5 million less than the FY2023 approved budget. Specifically, the Division and the Company agreed to reduce the total installation miles to 65 miles which the Division found to be a reasonable goal while still keeping pace with the Company's plan to abandon 65-70 miles of leak-prone pipe per year. The Division agreed with the Company's proposal to increase the Large Diameter LPCI Rehabilitation Program by 0.7 miles expressing that it was reasonable and not likely to affect the 65 miles of planned main installation. The Division also noted that it agreed to the Company's providing a separate sub-section in its quarterly reports to identify capital investments greater than $2 million made midyear that have not been previously reviewed and approved by the Commission. The Division expressed that the Company agreed to monitor its leak receipts and re-evaluate the effectiveness of its replacement programs to ensure that the riskiest infrastructure is being replaced. Lastly, the Division pointed out that the Company agreed to hold customers harmless from the effect of the ADIT elimination on the FY 2024 revenue requirement.[55]

G. The Parties Briefs Regarding Issue of Pre-Approval Requirement

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[54] RIE Response to Position of the Attorney General at 1-6 (Feb.28, 2023).
[55] Mancini Surrebuttal at 1-5 (Mar. 8, 2023).

On March 9, 2023 during the Electric ISR hearing, Docket No. 22-53-EL, the Chairman asked the parties to file legal briefs addressing the issue of whether capital projects and associated expenses occurring during a fiscal year that were not previously reviewed and approved by the Commission presented in a fiscal year filing should be allowed recovery in the associated revenue requirement. Briefs were filed.

IV. EVIDENTIARY HEARING

The Commission conducted an evidentiary hearing on March 14, 2023. At the outset of the hearing, the Company acknowledged that it would provide a hold harmless credit to its customers and that it was not contingent on other tax benefits.[56] Also presented during the hearing was the Company's agreement to remove its request for funding of a new weld shop from the Plan which it maintained was not a waiver by the Company to request recovery in a future rate case.[57]

Testimony during the hearing focused primarily on three issues: 1) Tools and Equipment, 2) mid-year projects, and 3) main replacement. Mr. Kocon testified that the tools included in the Company's FY 2024 Plan were not tools previously borrowed from National Grid.[58] Mr. Lafound explained that the tools were not part of the Company's transitional costs, because they were tools not previously available from National Grid. He testified that if tools wear out during the year, the Company will purchase them immediately if necessary to complete work in progress. He testified that the Williamson ProStopp tool and other tools identified in the Plan had nothing to do with the transition. He noted that since the ISR program began the Company had an approximate

[56] Hr'g Tr. at 54 (Mar. 14, 2023).
[57] *Id.* at 87-88.
[58] *Id.* at 57-58.

$500,000 tool budget. However, because of inflation, rising costs that have not kept up with work practices, and labor agreements, the Company determined it needed additional funds for tools.[59]

Mr. Kocon noted that the Williamson ProStopp had never before been used in Rhode Island and was much more efficient than other tools in that it cuts disruption time in half which ultimately benefits ratepayers.[60] Mr. Kocon was also questioned about the Company's decision to purchase the Williamson ProStopp tool prior to Commission approval of the Plan budget. He acknowledged that the Company assumed a level of risk proceeding in this manner but believed that the benefits associated with the tool justified the purchase.[61]

Although not included specifically under tools, Mr. Kocon was questioned regarding the approximate $7 million expense for portable LNG equipment. Acknowledging the risk to the Company, he clarified that the Company had only made a down payment on this equipment and was seeking Commission approval for the total cost as part of the FY 2024 Plan.[62]

Like the portable LNG equipment, and although not in the tools category, the Company was questioned about its budget for meters. Andrew Conlon testified about meters and the Company's plans to replace existing meters with newer technology meters. He described the two different technologies being considered but testified that what would happen to the existing meters if they were replaced before the end of their useful life was not discussed.[63]

The majority of the hearing centered around the Company's efforts to replace leak-prone pipe. Ms. Hunt testified that as of December 2021, the Company had approximately 930 miles

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[59] *Id.* at 59-62.
[60] *Id.* at 63-65.
[61] *Id.* at 163-64.
[62] *Id.* at 164-66.
[63] *Id.* at 168-76.

which is about 29% of the system, of leak-prone pipe, 550 miles of which is more than 100 years old.[64] When questioned about how the Company reviews proposed investments in light of the Act on Climate, Mr. Kocon stated that the Company looks at the system at the current time and determines what are the highest risk and priority investments needed to serve gas customers.[65] Ms. Hunt testified that the Company uses an industry standard algorithm to capture the historic behavior of each segment. She also provided that the Company is looking to replace the leak-prone pipe so it can support alternative fuels and reduce emissions. She testified that the fact that the Company is studying and evaluating alternatives has not slowed the pace of replacement because the mission of the ISR program is to provide safe, reliable, and affordable service to its customers.[66] Mr. Lafond interjected that there is no less expensive alternative to replacing leak-prone pipes. He stated that the CISBOT cast iron sealing robot cannot seal pipes smaller than 16 inches in diameter.[67]

When asked why the Company had agreed to reduce the replacement miles from 69.5 to 65, Mr. Lafond explained that this slight reduction would not impede the Company from reaching its target to replace all leak-prone pipe by 2035. He testified that even if this goal is reevaluated in the future in light of the Act on Climate, it is within industry standard to replace leak-prone pipe as quickly as practicable.[68] Mr. Kocon added that the Act on Climate does not change the immediate risk on specific pipe.[69]

[64] *Id.* at 192.
[65] *Id.* at 68.
[66] *Id.* at 68-71.
[67] *Id.* at 72-75.
[68] *Id.* at 88-90.
[69] *Id.* at 91.

Ms. Hunt explained the Company's priority scoring. Although Mr. Lafond maintained that it is the Company's intention to replace the highest priority pipe first, Ms. Hunt explained why this is not possible. She stated that the Company faces certain obstacles when scheduling replacement projects and why less risker main is added into the mix.[70] Mr. Lafond noted that, although the Company relies on data and risk assessments based on probabilities and various factors which are statistical, determining exactly what needs to be replaced each year is an impossible task.[71]

Mr. Hoag pointed out that if all of the work was based on risk ranking more than half of it would be in Providence. Ms. Hunt testified that the Company has encountered obstacles in Providence, such as obtaining permits. This is why the Company also incorporated projects with less riskier main in other municipalities into the yearly replacement schedule.[72] She also testified that while public works projects are not prioritized by the algorithm, they are much less expensive because excavation and paving are paid for by the municipality.[73]

Mr. Lafond testified that even low risk pipes are still risky, and if the Company reduces the number of miles it replaces, it will have more leaks to respond to.[74] Ms. Leone echoed this cautioning that if the delay is too lengthy, the Company will not be able to keep pace as pipes age.[75] Mr. Kocon raised another concern testifying that if the Company scales back its replacement pace, it will lose some of the contractors that have been trained and have expertise in replacement and it could takes years to rebuild that workforce.[76]

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[70] *Id.* at 91-103.
[71] *Id.* at 106-108.
[72] *Id.* at 101-103, 119-20.
[73] *Id.* at 113-14.
[74] *Id.* at 132-34.
[75] *Id.* at 137-38.
[76] *Id.* at 143-44.

Mr. Mancini and Mr. Walker testified on behalf of the Division. Mr. Mancini testified regarding the settlement position noting that the final agreement to reduce the proactive pipe replacement miles from 69.5 to 65 was a "happy medium."[77] He stated that the agreed to $170,714,000 budget was an adjustment of more than $15 million less than what the Company originally proposed and $5 million less than last year's budget. He asserted that the Division did consider the Future of Gas docket, No. 22-01-NG, and the different outcomes that could come from that docket. However, the Division's priority now is the safety and reliability of the system.[78] When asked, Mr. Mancini responded that the Division did not consider the effect on rates past FY 2024.[79] He expressed that if the Division believed that the system was not safe, it would be recommending something different.[80]

Mr. Walker testified that priority should be given to the highest risk mains. He stated that doing this would decrease risk over time. He noted also that this would be easier to adapt to decisions made about the future of gas because the Company would be getting rid of the riskiest mains and services. Noting that services are not included in the miles replaced in the main replacement programs, Mr. Walker cautioned that the risk of leaking services may become greater than the risk of leaking mains if services are not replaced. He testified that services are part of the proactive main replacement program but are not included in the mileage total for the year. He stated that the Division had discussed with the Company its concerns over replacing services and making sure that it focused on that risk. He stressed that this is why having data is necessary to prioritize the main and risk to individual services.[81]

[77] *Id.* at 210-16.
[78] *Id.* at 215, 217-18.
[79] *Id.* at 218.
[80] *Id.* at 226-27.
[81] *Id.* at 227-29.

V. DECISION[82]

The Commission notes that rate impacts on customer bills, particularly over the course of the next four years, is a significant consideration in the Commission's decision in this case. The Company's response to Record Request 3 showed a significant capital spending plan – $1 billion in incremental investments over the course of four years. While it is positive that the Company is motivated to invest in the Rhode Island system, the pace of investment is quite concerning to the Commission because of the rate impacts – especially when considered with all of the other market factors that are increasing gas rates. In balancing the interests of the Company and ratepayers, the Commission must consider these prospective impacts when deliberating and deciding on the Company's proposed budget.

The Company's current target to have more than 900 miles of leak-prone pipe replaced is set for 2035. However, the Commission is currently considering the role natural gas will play in the future in the Commission's "Future of Gas" Docket, No. 22-NG-01. Continuing to implement an aggressive strategy for main replacement ignores the possible outcomes that may arise from that review that is driven by the Act on Climate. This requires the Commission to consider whether the Company's current pace of leak-prone pipe replacement is reasonable when the outcome of the Future of Gas docket could reveal that the gas system should be repurposed or abandoned. Abandonment of segments of the gas system raises the specter of stranded costs. Any decision made by the Commission must consider minimizing stranded asset risk. In that regard, the question of who should bear the financial risk for stranded costs is pressing. Currently, the Company recovers a return of and return on its investments over a long depreciation period far exceeding the aggressive emissions reduction targets in the Act on Climate. Every dollar invested

[82] The Commission held an open meeting on March 29, 2023 to discuss and decide this matter.

by the Company in new mains increases rate base that is funded over time by ratepayers. To the extent the current ratemaking parameters remain unchanged, ratepayers may bear the risk of stranded costs. While the future of the gas system is being considered, it is appropriate for the Commission to take steps to reduce that risk and consider the extent to which the risk should be allocated between shareholders and ratepayers.

At the same time, the Company has an incentive to substantially increase its capital spending. This is reflected in recent investor materials which were informing investors of a robust investment growth strategy in Rhode Island following the PPL acquisition of Narragansett Electric.[83] To the extent that every dollar of capital invested in the gas system results in rate base growth, it is clear that investors perceive this as a positive outcome for PPL. For that reason, the Commission also is mindful of the fact that there needs to be a check and balance in the system to assure that the utility does not over-invest at the expense of ratepayers in order to rapidly grow rate base for the benefit of shareholders.

In the context of these issues, the Commission considered whether it should reduce the FY 2024 mains replacement target by reducing the number of replacement miles for those mains that do not present a significant safety risk. The Company has asserted that all of its replacement is needed for safety. The Company also asserted that it is impossible to only replace the riskiest main because of obstacles in coordinating with the municipalities. However, the Company has based its proposal on an objective to meet a target of having all leak-prone pipe replaced by 2035. As a logical consequence, the Company included mains that reflect a relatively low risk to health or safety during the fiscal year (i.e., those mains with a score of less than 8). Yet, it was apparent from the original pre-filed testimony of the Division that reducing the mileage target to 60 miles

[83] *See* Hr'g Tr. at 146-152 (March 14, 2023).

per year would not pose a significant risk to health and safety. Moreover, the Company provided testimony that mains with a risk score of 8 or lower did not pose an immediate threat to health and safety.[84] Given these factors, a reduction of 9.5 miles of the lower-risk main scheduled for replacement in FY 2024 is reasonable from a risk-factor perspective. In addition, while the replacement of leak-prone pipe has the benefit of reducing carbon emissions, the evidence from the Company's own analysis shows that reducing the mileage replacement target to 60 miles in FY 2024 results in an incremental imputed-cost of carbon emission of only $26,000 – a de minimis value.[85] For these reasons, the Commission is directing the Company to reduce its authorized main replacement miles to 60 miles for FY 2024.

Consistent with another Division recommendation, the Commission also directs the Company to continue to closely monitor the increase in leaks and closely scrutinize any trend upward, to continue to evaluate the effectiveness of its replacement programs to ensure the riskiest mains and services are given priority so that metrics trend downward. This also should address the discrepancies in data concerning the quantity of leaks and leak-prone infrastructure to ensure that the Company fully maintains sufficient knowledge of its system to perform the integrity management functions as required by regulations.

Another issue that arose in the proceedings was the Company's proposed change in its capitalization policy. Specifically, the Company proposed to alter its policy that defines when project costs should be capitalized or expensed.[86] The Company's new policy, if applied in ratemaking, would reduce the threshold for capitalizing certain projects. These changes would

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[84] *Id.* at 143.
[85] RIE Response to PUC 4-20.
[86] Rev. Req. Panel Test. at 16-20 (Dec. 22, 2022).

eventually affect the revenue requirement in rates.[87] The effect would be to move costs that are now recorded as operation and maintenance expenses that depress the Company's earnings prior to the next base distribution rate case, to a capital account which removes the earnings impact during period prior to the project being placed into service.[88] It also would allow the Company to commence depreciation and allow it to earn a return on those costs that formerly were expensed as incurred. The Commission directs the Company not to reflect in rates any impacts associated with any changes in its capitalization policy that could impact rate base, operating expenses, and/or the Company's earnings reports prior to the next base distribution rate case. Any change in capitalization policy needs to be addressed in the Company's next base distribution rate case when the Commission has complete information regarding operation and maintenance expenses, depreciation, and capital expenses that can be evaluated and considered together.[89]

Finally, it is important to note that the approval of the FY 2024 Plan as modified by the Commission in this Order addresses the spending and cost incurrence that occurs prospectively during FY 2024 (i.e., April 1, 2023 through March 31, 2024). Any spending and cost incurrence that previously occurred during FY 2023 (i.e., April 1, 2022 through March 31, 2023) which was not pre-approved in the FY 2023 plan will be addressed in the Company's FY 2023 reconciliation filing to the extent the Company seeks rate recovery of any such past costs through the FY 2023 reconciliation.

[87] *Id.* at 20.
[88] Hr'g Tr. at 305-311 (March 9, 2023)(Docket No. 22-53-EL). As stated on the record of Docket 22-54-NG on March 14, 2023, administrative notice was taken of the testimony from the electric ISR Docket evidentiary hearing of March 9. *See* Hr'g Tr. at 187-188 (March 14, 2023).
[89] This issue also is applicable to the electric ISR Docket 22-53-EL.

Accordingly, it is hereby

(24802) ORDERED:

1. The Narragansett Electric Company d/b/a Rhode Island Energy's proposed FY 2024 Gas Infrastructure Safety and Reliability Plan and budget is approved subject to the following:

   a) that the Company adjust the proactive main replacement program downward by $7,294,000 associated with 9.5 miles of main across all main replacement categories reducing the proposed installation miles to 60 miles.

   b) that the Company continue to closely monitor the increase leaks and closely scrutinize any trend upward,

   c) that the Company continue to evaluate the effectiveness of its replacement programs to ensure the riskiest mains and services are being replaced so that the metrics around leak rates trend downward, and

   d) that the discrepancies in data concerning the quantity of leaks and leak-prone infrastructure be addressed to ensure that the Company fully maintains sufficient knowledge of its system to perform the integrity management functions as required by regulations.

2. The rates are approved for usage on and after April 1, 2023 and shall be reflected in a compliance filing.

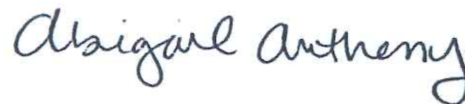
3. The proposed tariff language presented in PRB-1 is denied consistent with the Commission's previous decision at an Open Meeting on January 20, 2023.

4. Rhode Island Energy shall not reflect in any filings, any changes to its capitalization policies that would impact rate base, operating expense and/or the company's earnings reports prior to the filing of a base rate case.

EFFECTIVE AT WARWICK, RHODE ISLAND ON APRIL 1, 2023 PURSUANT TO AN OPEN MEETING DECISION ON MARCH 29, 2023. WRITTEN ORDER ISSUED AUGUST 22, 2023.

PUBLIC UTILITIES COMMISSION

Ronald T. Gerwatowski, Chairman



Abigail Anthony, Commissioner

John C. Revens, Jr., Commissioner

NOTICE OF RIGHT TO APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.