

January 29, 2024

## VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**Re: Docket No. 4295 – The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2012**  
**Docket No. 43664295 – The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2013**  
**Docket No. 4451– The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2014**  
**Docket No. 4527– The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2015**  
**Docket No. 4580 – The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2016**  
**Docket No. 4654– The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2017**  
**Docket No. 4755– The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2018**  
**Docket No. 4888– The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2019**  
**Docket No. 4979 – The Narragansett Electric Company d/b/a National Grid - Energy Efficiency Program Plan for 2020**  
**Omnibus Objection of The Narragansett Electric Company d/b/a Rhode Island Energy to Division of Public Utilities and Carriers’ January 19, 2024 Motions**

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company”), I have enclosed the Company’s Omnibus Objection to Division of Public Utilities and Carriers’ January 19, 2024 Motions to Set Aside Final Order in each of the above-referenced

# Robinson+Cole

Luly E. Massaro, Commission Clerk  
January 29, 2024  
Page 2 of 2

dockets. Please note that this single omnibus objection is being submitted in each of the referenced dockets.

Thank you for your attention to this matter. If you have any questions, please contact me at 401-709-3359.

Sincerely,



Steven J. Boyajian

Enclosure

cc: Docket No. 22-05-EE Service List

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate were electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.



Heidi J. Seddon

January 29, 2024

Date

**Docket No. 22-05-EE – PUC Investigation of Utility Misconduct or Fraud by The Narragansett Electric Co. Service list updated 11/27/2023**

<b>Name /Address</b>	<b>E-mail Distribution List</b>	<b>Phone</b>
<b>The Narragansett Electric Company d/b/a Rhode Island Energy</b> Andrew Marcaccio, Esq. 280 Melrose St. Providence, RI 02907  Steven J. Boyajian, Esq. Leticia C. Pimentel, Esq. <b>Robinson &amp; Cole LLP</b> One Financial Plaza, 14th Floor Providence, RI 02903	<a href="mailto:amarcaccio@pplweb.com">amarcaccio@pplweb.com</a> ;	401-784-4263
	<a href="mailto:cobrien@pplweb.com">cobrien@pplweb.com</a> ;	
	<a href="mailto:jhutchinson@pplweb.com">jhutchinson@pplweb.com</a> ;	
	<a href="mailto:jscanlon@pplweb.com">jscanlon@pplweb.com</a> ;	
	<a href="mailto:mocrayne@ng.rienergy.com">mocrayne@ng.rienergy.com</a> ;	
	<a href="mailto:dmoreira@rienergy.com">dmoreira@rienergy.com</a> ;	
	<a href="mailto:bsfeldman@rienergy.com">bsfeldman@rienergy.com</a> ;	
	<a href="mailto:djtukey@rienergy.com">djtukey@rienergy.com</a> ;	
	<a href="mailto:fcharlot@rienergy.com">fcharlot@rienergy.com</a> ;	
	<a href="mailto:bjpelletier@rienergy.com">bjpelletier@rienergy.com</a> ;	
<a href="mailto:SBoyajian@rc.com">SBoyajian@rc.com</a> ;		
<a href="mailto:LPimentel@rc.com">LPimentel@rc.com</a> ;		
<a href="mailto:HSeddon@rc.com">HSeddon@rc.com</a> ;		
<b>National Grid USA</b> Chery Kimball, Esq. Robert Humm Keegan Werlin LLP 99 High St., Suite 2900 Boston, MA 02110	<a href="mailto:ckimball@keeganwerlin.com">ckimball@keeganwerlin.com</a> ;	617-951-1400
	<a href="mailto:rhumh@keeganwerlin.com">rhumh@keeganwerlin.com</a> ;	
	<a href="mailto:jdunne@keeganwerlin.com">jdunne@keeganwerlin.com</a> ;	

Laura Bickel, Esq. National Grid	<a href="mailto:laura.bickel@nationalgrid.com">laura.bickel@nationalgrid.com</a> ;	
	<a href="mailto:Brooke.Skulley@nationalgrid.com">Brooke.Skulley@nationalgrid.com</a> ;	
	<a href="mailto:melissa.little@nationalgrid.com">melissa.little@nationalgrid.com</a> ;	
	<a href="mailto:Scott.McCabe@nationalgrid.com">Scott.McCabe@nationalgrid.com</a> ;	
<b>Division of Public Utilities and Carriers</b> Margaret L. Hogan, Esq.	<a href="mailto:Margaret.L.Hogan@dpuc.ri.gov">Margaret.L.Hogan@dpuc.ri.gov</a> ;	401-780-2120
	<a href="mailto:john.bell@dpuc.ri.gov">john.bell@dpuc.ri.gov</a> ;	
	<a href="mailto:Joel.munoz@dpuc.ri.gov">Joel.munoz@dpuc.ri.gov</a> ;	
	<a href="mailto:Ellen.golde@dpuc.ri.gov">Ellen.golde@dpuc.ri.gov</a> ;	
	<a href="mailto:Machaela.Seaton@dpuc.ri.gov">Machaela.Seaton@dpuc.ri.gov</a> ;	
	<a href="mailto:Paul.roberti@dpuc.ri.gov">Paul.roberti@dpuc.ri.gov</a> ;	
	<a href="mailto:Linda.george@dpuc.ri.gov">Linda.george@dpuc.ri.gov</a> ;	
Tim Woolf Jennifer Kallay Synapse Energy Economics 22 Pearl Street Cambridge, MA 02139	<a href="mailto:twoolf@synapse-energy.com">twoolf@synapse-energy.com</a> ;	
	<a href="mailto:jkallay@synapse-energy.com">jkallay@synapse-energy.com</a> ;	
<b>Rhode Island Attorney General's Office</b> Nicholas Vaz, Esq. Alison Hoffman, Esq.	<a href="mailto:nvaz@riag.ri.gov">nvaz@riag.ri.gov</a> ;	
	<a href="mailto:ahoffman@riag.ri.gov">ahoffman@riag.ri.gov</a> ;	
	<a href="mailto:mbedell@riag.ri.gov">mbedell@riag.ri.gov</a> ;	
<b>RI EERMC</b> Marisa Desautel, Esq. Desautel Browning Law 38 Bellevue Ave, Unit H Newport, RI 02840  Sam Ross, Optimal Energy	<a href="mailto:marisa@desautelbrowning.com">marisa@desautelbrowning.com</a> ;	401-477-0023
	<a href="mailto:ross@optenergy.com">ross@optenergy.com</a> ;	
<b>Office of Energy Resources (OER)</b> Albert Vitali, Esq. Dept. of Administration Division of Legal Services One Capitol Hill, 4 <sup>th</sup> Floor Providence, RI 02908	<a href="mailto:Albert.Vitali@doa.ri.gov">Albert.Vitali@doa.ri.gov</a> ;	401-222-8880
	<a href="mailto:Nancy.Russolino@doa.ri.gov">Nancy.Russolino@doa.ri.gov</a> ;	
	<a href="mailto:Christopher.Kearns@energy.ri.gov">Christopher.Kearns@energy.ri.gov</a> ;	
	<a href="mailto:Steven.Chybowski@energy.ri.gov">Steven.Chybowski@energy.ri.gov</a> ;	
	<a href="mailto:William.Owen@energy.ri.gov">William.Owen@energy.ri.gov</a> ;	
	<a href="mailto:Nathan.Cleveland@energy.ri.gov">Nathan.Cleveland@energy.ri.gov</a> ;	
<b>Original &amp; 9 copies file w/:</b> Luly E. Massaro, Commission Clerk	<a href="mailto:Luly.massaro@puc.ri.gov">Luly.massaro@puc.ri.gov</a> ;	401-780-2107
	<a href="mailto:John.Harrington@puc.ri.gov">John.Harrington@puc.ri.gov</a> ;	

John Harrington, Commission Counsel Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	<a href="mailto:Alan.nault@puc.ri.gov">Alan.nault@puc.ri.gov</a> ;	
	<a href="mailto:Todd.bianco@puc.ri.gov">Todd.bianco@puc.ri.gov</a> ;	
	<a href="mailto:Emma.Rodvien@puc.ri.gov">Emma.Rodvien@puc.ri.gov</a> ;	
<b>Interested Party/Individual</b>		
<b>RI Infrastructure Bank</b> Chris Vitale, Esq.,	<a href="mailto:cvitale@hvlawltd.com">cvitale@hvlawltd.com</a> ;	
	<a href="mailto:SUsatine@riib.org">SUsatine@riib.org</a> ;	
	<a href="mailto:Larry@massenergy.org">Larry@massenergy.org</a> ;	
<b>Acadia Center</b> Emily Koo, Director	<a href="mailto:EKoo@acadiacenter.org">EKoo@acadiacenter.org</a> ;	
<b>Green Energy Consumers Alliance</b> Larry Chretien, Executive Director	<a href="mailto:Larry@massenergy.org">Larry@massenergy.org</a> ;	

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate were electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.



Heidi J. Seddon

January 29, 2024

Date

**Docket No. 22-05-EE – PUC Investigation of Utility Misconduct or Fraud by The Narragansett Electric Co. Service list updated 11/27/2023**

<b>Name /Address</b>	<b>E-mail Distribution List</b>	<b>Phone</b>
<b>The Narragansett Electric Company d/b/a Rhode Island Energy</b> Andrew Marcaccio, Esq. 280 Melrose St. Providence, RI 02907  Steven J. Boyajian, Esq. Leticia C. Pimentel, Esq. <b>Robinson &amp; Cole LLP</b> One Financial Plaza, 14th Floor Providence, RI 02903	<a href="mailto:amarcaccio@pplweb.com">amarcaccio@pplweb.com</a> ;	401-784-4263
	<a href="mailto:cobrien@pplweb.com">cobrien@pplweb.com</a> ;	
	<a href="mailto:jhutchinson@pplweb.com">jhutchinson@pplweb.com</a> ;	
	<a href="mailto:jscanlon@pplweb.com">jscanlon@pplweb.com</a> ;	
	<a href="mailto:mocrayne@ng.rienergy.com">mocrayne@ng.rienergy.com</a> ;	
	<a href="mailto:dmoreira@rienergy.com">dmoreira@rienergy.com</a> ;	
	<a href="mailto:bsfeldman@rienergy.com">bsfeldman@rienergy.com</a> ;	
	<a href="mailto:djtukey@rienergy.com">djtukey@rienergy.com</a> ;	
	<a href="mailto:fcharlot@rienergy.com">fcharlot@rienergy.com</a> ;	
	<a href="mailto:bjpelletier@rienergy.com">bjpelletier@rienergy.com</a> ;	
<a href="mailto:SBoyajian@rc.com">SBoyajian@rc.com</a> ;		
<a href="mailto:LPimentel@rc.com">LPimentel@rc.com</a> ;		
<a href="mailto:HSeddon@rc.com">HSeddon@rc.com</a> ;		
<b>National Grid USA</b> Chery Kimball, Esq. Robert Humm Keegan Werlin LLP 99 High St., Suite 2900 Boston, MA 02110	<a href="mailto:ckimball@keeganwerlin.com">ckimball@keeganwerlin.com</a> ;	617-951-1400
	<a href="mailto:rhumh@keeganwerlin.com">rhumh@keeganwerlin.com</a> ;	
	<a href="mailto:jdunne@keeganwerlin.com">jdunne@keeganwerlin.com</a> ;	

Laura Bickel, Esq. National Grid	<a href="mailto:laura.bickel@nationalgrid.com">laura.bickel@nationalgrid.com</a> ;	
	<a href="mailto:Brooke.Skulley@nationalgrid.com">Brooke.Skulley@nationalgrid.com</a> ;	
	<a href="mailto:melissa.little@nationalgrid.com">melissa.little@nationalgrid.com</a> ;	
	<a href="mailto:Scott.McCabe@nationalgrid.com">Scott.McCabe@nationalgrid.com</a> ;	
<b>Division of Public Utilities and Carriers</b> Margaret L. Hogan, Esq.	<a href="mailto:Margaret.L.Hogan@dpuc.ri.gov">Margaret.L.Hogan@dpuc.ri.gov</a> ;	401-780-2120
	<a href="mailto:john.bell@dpuc.ri.gov">john.bell@dpuc.ri.gov</a> ;	
	<a href="mailto:Joel.munoz@dpuc.ri.gov">Joel.munoz@dpuc.ri.gov</a> ;	
	<a href="mailto:Ellen.golde@dpuc.ri.gov">Ellen.golde@dpuc.ri.gov</a> ;	
	<a href="mailto:Machaela.Seaton@dpuc.ri.gov">Machaela.Seaton@dpuc.ri.gov</a> ;	
	<a href="mailto:Paul.roberti@dpuc.ri.gov">Paul.roberti@dpuc.ri.gov</a> ;	
	<a href="mailto:Linda.george@dpuc.ri.gov">Linda.george@dpuc.ri.gov</a> ;	
Tim Woolf Jennifer Kallay Synapse Energy Economics 22 Pearl Street Cambridge, MA 02139	<a href="mailto:twoolf@synapse-energy.com">twoolf@synapse-energy.com</a> ;	
	<a href="mailto:jkallay@synapse-energy.com">jkallay@synapse-energy.com</a> ;	
<b>Rhode Island Attorney General's Office</b> Nicholas Vaz, Esq. Alison Hoffman, Esq.	<a href="mailto:nvaz@riag.ri.gov">nvaz@riag.ri.gov</a> ;	
	<a href="mailto:ahoffman@riag.ri.gov">ahoffman@riag.ri.gov</a> ;	
	<a href="mailto:mbedell@riag.ri.gov">mbedell@riag.ri.gov</a> ;	
<b>RI EERMC</b> Marisa Desautel, Esq. Desautel Browning Law 38 Bellevue Ave, Unit H Newport, RI 02840  Sam Ross, Optimal Energy	<a href="mailto:marisa@desautelbrowning.com">marisa@desautelbrowning.com</a> ;	401-477-0023
	<a href="mailto:ross@optenergy.com">ross@optenergy.com</a> ;	
<b>Office of Energy Resources (OER)</b> Albert Vitali, Esq. Dept. of Administration Division of Legal Services One Capitol Hill, 4 <sup>th</sup> Floor Providence, RI 02908	<a href="mailto:Albert.Vitali@doa.ri.gov">Albert.Vitali@doa.ri.gov</a> ;	401-222-8880
	<a href="mailto:Nancy.Russolino@doa.ri.gov">Nancy.Russolino@doa.ri.gov</a> ;	
	<a href="mailto:Christopher.Kearns@energy.ri.gov">Christopher.Kearns@energy.ri.gov</a> ;	
	<a href="mailto:Steven.Chybowski@energy.ri.gov">Steven.Chybowski@energy.ri.gov</a> ;	
	<a href="mailto:William.Owen@energy.ri.gov">William.Owen@energy.ri.gov</a> ;	
	<a href="mailto:Nathan.Cleveland@energy.ri.gov">Nathan.Cleveland@energy.ri.gov</a> ;	
<b>Original &amp; 9 copies file w/:</b> Luly E. Massaro, Commission Clerk	<a href="mailto:Luly.massaro@puc.ri.gov">Luly.massaro@puc.ri.gov</a> ;	401-780-2107
	<a href="mailto:John.Harrington@puc.ri.gov">John.Harrington@puc.ri.gov</a> ;	

John Harrington, Commission Counsel Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	<a href="mailto:Alan.nault@puc.ri.gov">Alan.nault@puc.ri.gov</a> ;	
	<a href="mailto:Todd.bianco@puc.ri.gov">Todd.bianco@puc.ri.gov</a> ;	
	<a href="mailto:Emma.Rodvien@puc.ri.gov">Emma.Rodvien@puc.ri.gov</a> ;	
<b>Interested Party/Individual</b>		
<b>RI Infrastructure Bank</b> Chris Vitale, Esq.,	<a href="mailto:cvitale@hvlawltd.com">cvitale@hvlawltd.com</a> ;	
	<a href="mailto:SUsatine@riib.org">SUsatine@riib.org</a> ;	
	<a href="mailto:Larry@massenergy.org">Larry@massenergy.org</a> ;	
<b>Acadia Center</b> Emily Koo, Director	<a href="mailto:EKoo@acadiacenter.org">EKoo@acadiacenter.org</a> ;	
<b>Green Energy Consumers Alliance</b> Larry Chretien, Executive Director	<a href="mailto:Larry@massenergy.org">Larry@massenergy.org</a> ;	



## I. INTRODUCTION

The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company” or “Rhode Island Energy”) hereby objects to the nine motions filed by the Rhode Island Division of Public Utilities and Carriers (“Division”) requesting that the Rhode Island Public Utilities Commission (“Commission”) set aside its final orders (“Orders”) approving the Company’s Energy Efficiency Program Plans (individually, an “EE Plan”) in program years 2012 through 2020 (“Division’s Motions” or “Motions”).<sup>1</sup> The Division’s Motions should be denied by this Commission for two reasons. First, as the Division itself concedes,<sup>2</sup> the one-year window to seek relief from the Orders by motion – expressly set by the Commission’s Rules of Practice and Procedure (810-RICR-00-00-1) (“Commission Rules”) – has closed; and (2) an “independent action” to investigate misconduct outside of the one-year period contemplated by the Commission Rules is already underway in Docket No. 22-05-EE (the “Investigation Docket”).

---

<sup>1</sup> On January 19, 2024, the Division filed the following motions: (1) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #20596 in Docket No. 4295 (2012 EE Plan); (2) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #20911 in Docket No. 4366 (2013 EE Plan); (3) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #21298 in Docket No. 4451 (2014 EE Plan); (4) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #21854 in Docket No. 4527 (2015 and 2015-2017 EE Plans); (5) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #22926 in Docket No. 4580 (2016 EE Plan); (6) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #23382 in Docket No. 4654 (2017 EE Plan); (7) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #23385 in Docket No. 4755 (2018 and 2018-2020 EE Plans); (8) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #23775 in Docket No. 4888 (2019 EE Plan); and (9) Motion by Division of Public Utilities and Carriers Requesting the Commission to Set Aside Commission Final Order #23937 in Docket No. 4979 (2020 EE Plan). The Division also attached each of its Motions to the memorandum that it submitted on January 19, 2024, in Docket No. 22-05-EE. The Company reserves its right to respond separately to the Division’s memorandum in Docket No. 22-05-EE.

<sup>2</sup> Division Motions at 2.

## II. DISCUSSION

### A. The Division's Motions Are Untimely.

The Orders relevant to the Division's Motions were entered by the Commission between December 22, 2011,<sup>3</sup> and October 29, 2020.<sup>4</sup> Commission Rule 1.29(D) provides that a motion seeking relief from an order "shall be made within a reasonable time not more than one (1) year after the order is entered."<sup>5</sup> Because the Division filed its Motions on January 19, 2024 – well over a decade after the entry of the first order entered and four years after the most recent order entered – as it concedes,<sup>6</sup> it cannot seek relief by motion at this time.<sup>7</sup>

### B. The Investigation Docket is the Appropriate Forum to Address the Matters Raised in the Division's Motions.

Because the Division concedes it cannot file a motion to re-open the previous EE Plan proceedings, it instead argues that the Commission should use its right to set aside its own "order and re-open a docket on the basis of fraud upon the Commission."<sup>8</sup> This argument is facially inconsistent with the Commission Rules. Commission Rule 1.29(D) not only provides that an

---

<sup>3</sup> Commission Order No. 20596 in Docket No. 4295.

<sup>4</sup> Commission Order No. 23937 in Docket No. 4979.

<sup>5</sup> 810-RICR-00-00-1.29(D) (emphasis added).

<sup>6</sup> Division Motions at 2.

<sup>7</sup> The Company first notified the Commission and the Division that it had identified 48 instances of out-of-period invoicing for program years 2012 through 2020 on June 7, 2022, through information developed in the course of National Grid USA's ("National Grid") preliminary investigation. PUC Docket No. 5189, Review of Invoices Within the Energy Efficiency Program (filed June 16, 2022). As a result, the Commission opened Docket No. 22-05-EE on July 11, 2022, to further investigate. After a more comprehensive internal investigation led by National Grid, National Grid filed its investigation report in Docket No. 22-05-EE on March 10, 2023, acknowledging that out-of-period invoicing occurred from 2012 through 2021. The Division did not file its Motions until January 19, 2024, at which time it had been aware of out-of-period invoicing for approximately eighteen months. In other words, the Division's Motions would be untimely even if the one year period set forth in Commission Rule 1.29(D) did not start to run until the Division learned of the conduct that is the subject of its Motions.

<sup>8</sup> Division Motion at 2.

order cannot be set aside by motion after a period of one year, but it also provides the procedural device through which orders older than one year may be reconsidered by the Commission. Rule 1.29(D) provides that it “does not limit the power of the Commission to entertain an independent action to relieve a party from an order or to set aside an order for fraud upon the Commission.”<sup>9</sup> The “independent action” contemplated by the Commission Rules is already underway in the Investigation Docket. Indeed, the Investigation Docket is captioned the “Investigation of Misconduct or Fraud by The Narragansett Electric Company Relating to Past Payment of Shareholder Incentive.” This is the exact conduct that the Division claims warrants reopening earlier EE Plan dockets. The Investigation Docket is an “independent action” as contemplated by Commission Rule 1.29 and is the appropriate forum for addressing the conduct that the Division asserts warrants the vacatur of nine separate orders<sup>10</sup> that date back, in some cases, more than a decade.

Commission Rule 1.29(D) mirrors Rule 60 of both the Superior Court and Federal Rules of Civil Procedure. Specifically, Rule 60(b) of Rhode Island’s Superior Court Rules of Civil Procedure lists the grounds upon which a court “may relieve a party or a party’s legal representative from a final judgment, order, or proceeding.”<sup>11</sup> After listing several grounds that are embodied in Commission Rule 1.29 (including (1) mistake, (2) newly discovered evidence and/or (3) fraud), Super. Ct. R. Civ. P. 60(b) provides that:

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one (1) year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b)

---

<sup>9</sup> 810-RICR-00-00-1.29(D) (emphasis added).

<sup>10</sup> Although the Company reported that out-of-period invoicing occurred, the question of whether that conduct constitutes “fraud” as that term is used in Commission Rule 1.29(D) is a question of fact and law that remains undetermined.

<sup>11</sup> Super. Ct. R. Civ. P. 60.

does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.<sup>12</sup>

Like the Superior Court Rules of Civil Procedure, the Commission Rules contemplate an independent action by the Commission and not the vacatur of years old final orders by motion in a previously concluded proceeding.<sup>13</sup>

While Commission Rules permit the Commission to set aside the prior orders beyond the one-year deadline contained in Rule 1.29(D)<sup>14</sup>, the Commission should not do so here because: (1) the Investigation Docket is already pending and constitutes an independent action through which the customer impact of out-of-period invoicing can be addressed, and (2) the Orders included a multitude of provisions, including the approval of Energy Efficiency and System Reliability Procurement Plans, which are unaffected by any out-of-period invoicing in prior years. Vacatur of the Orders *in toto* would unwind almost a decade of approvals of energy efficiency plans including specific measures, budgets and cost-benefit assessments. It would vacate approval of six separate System Reliability Procurement Reports. It would also vacate various Commission directives contained within the Orders resulting from lengthy annual hearings on the Company's energy efficiency plans and System Reliability Procurement Reports.

---

<sup>12</sup> Super. Ct. R. Civ. P. 60 (emphasis added); see Fed. R. Civ. P. 60(d)(1) (noting that Rule 60 does not limit a court's power to "entertain an independent action to relieve a party from a judgment, order, or proceeding") (emphasis added).

<sup>13</sup> 810-RICR-00-00-1.29(D); see Sloat v. City of Newport ex rel. Sitrin, 19 A.3d 1217, 1222 (R.I. 2011) ("Rule 60(b) of the Superior Court Rules of Civil Procedure permits a party to seek relief from a judgment by filing a separate independent action—even if it files the independent action more than one year after the entry of the judgment.") (emphasis added and internal citation omitted).

<sup>14</sup> Rule 1.29(D) provides, in part, "This rule does not limit the power of the Commission to entertain an independent action to relieve a party from an order or to set aside an order for fraud upon the Commission." As indicated in note 10, above, there has been no demonstration or admission that out-of-period invoicing constitutes fraud.

To the extent the Investigation Docket provides a forum to determine the customer impact of out-of-period invoicing without upsetting the substantive provisions of the Orders, it is a more administratively efficient, focused and reasonable means of addressing that discrete issue than vacating years old orders that included provisions far broader than the narrow issue of the customer impact of out-of-period invoicing.

### **III. CONCLUSION**

The Company respectfully requests that the Division's Motions be denied and that the Investigation Docket continue to be the forum for all issues arising from the Company's out-of-period invoicing. The alternative suggested by the Division is a procedural morass that will only compound the existing complications attendant to the issues being considered in the Investigation Docket.

[SIGNATURES ON NEXT PAGE]

Respectfully submitted,

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

By its attorneys,



---

Andrew S. Marcaccio (#8168)  
The Narragansett Electric Company  
280 Melrose Street  
Providence, RI 02907  
(401) 784-4263  
[amarcaccio@pplweb.com](mailto:amarcaccio@pplweb.com)



---

Steven J. Boyajian (#7263)  
Leticia Pimentel (#9332)  
Robinson & Cole LLP  
One Financial Plaza, 14th Floor  
Providence, RI 02903  
Tel. (401) 709-3300  
Fax. (401) 709-3399  
[sboyajian@rc.com](mailto:sboyajian@rc.com)  
[lpimentel@rc.com](mailto:lpimentel@rc.com)

Dated: January 29, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2024, I delivered a true copy of the foregoing omnibus objection via electronic mail to the parties on the Service List for Docket No. 22-05-EE.



Handwritten signature of Heidi J. Addison in blue ink, positioned above a horizontal line.