

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC COMPANY :
d/b/a RHODE ISLAND ENERGY'S :
PROPOSED FY 2025 ELECTRIC :
INFRASTRUCTURE, SAFETY AND : Docket No. 23-48-EL
RELIABILITY PLAN :**

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

NOW COMES Peter F. Neronha, Attorney General of the State of Rhode Island (“Attorney General”), and hereby provides the following statement of position in the above-captioned docket currently pending before the Public Utilities Commission (“Commission”).

I. INTRODUCTION

The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company” or “RIE”) seeks approval of its annual Electric Infrastructure, Safety, and Reliability (“ISR”) Plan, with a Fiscal Year 2025 budget of over \$192.6 million in total capital expenditure. *See* FY25 ISR Plan, Commission Docket No. 23-48-EL, Electric ISR Panel Testimony, *Proposed Capital Investment by Key Driver Category*, 19 of 28. The Company is proposing spending of \$140.9 million for capital investment (approved FY 2024 was \$112.3 million); \$13.1 million of vegetation management operations and maintenance (“O&M”) spending (approved FY 2024 was \$13.95 million); and \$1.1 million of Other O&M spending (approved FY 2024 was \$1.16 million). FY25 ISR Plan, Commission Docket No. 23-48-EL, *Company Filing Letter* (December 21, 2023), 1. The Company claims that an average 500 kWh per month Last Resort Service customer will see a monthly bill decrease of \$0.16 (-0.1%) for the next twelve months, but that number is misleading in that it does not account for the effect the proposed spending plan will have in future years. *See* FY25 ISR Plan, Commission Docket No. 23-48-EL, Section 5: Attachment 1, *Annual Revenue Requirement*

Summary, Bates 237-274. The Company is also proposing to spend \$51,725,000 on Advanced Metering Functionality (“AMF”), although, as a result of conditions placed on approval of that program, there will be no impact on rates this year related to that category of expenditure. *See FY25 ISR Plan*, Commission Docket No. 23-48-EL, Section 2: Chart 3, *Capital Spending by Category FY 2012- FY 2025*, Bates 50; *see also id.*, Shields Testimony, Bates 330 (explaining that net capital revenue requirement related to AMF for this fiscal year is zero).

Only investments that are “reasonably needed to maintain safe and reliable distribution service over the short and long term” should be approved under the ISR Plan. R.I. Gen. Laws § 39-1-27.7.1(d). Certainly, new investments to upgrade our electric distribution system will be required in the coming years to comply with the mandated greenhouse gas emission reductions set forth in the Act on Climate. Some of that work is set to begin as the Company moves forward with its AMF Plan, which the Company has committed to implement in accordance with conditional approval from the Commission in its Docket No. 22-49-EL. Already, Rhode Islanders are increasingly electrifying their heating systems and vehicles, and distributed, no-emission generation is increasingly seeking to interconnect with the grid. That increase in electric usage must continue in order for the State to meet the greenhouse gas emission reduction mandates of the 2021 Act on Climate, while it also requires certain up-front costs and investments to be borne by ratepayers as they upgrade their homes and businesses. To that end, planning the future of Rhode Island’s electric distribution system requires a coordinated effort, including an adequate opportunity for the Commission, the Division of Public Utilities and Carriers (“Division”), the Attorney General, and other stakeholders to properly consider the Company’s proposed course of action to make sure that the transition is achieved, and that it is achieved in an efficient and fiscally responsible manner. This process must include careful consideration for potential changes in

traditional ratemaking, as the State continues to focus on important fairness, equity, and environmental justice concerns.

II. THE COMPANY’S FAILURE TO REACH FULL AGREEMENT WITH THE DIVISION ALLOWS FOR GREATER COMMISSION DISCRETION

Pursuant to R.I. Gen. Laws § 39-1-27.7.1 (the “Revenue Decoupling Statute”), the Company must file an annual proposal with the Commission setting forth their intended spending plan for the coming fiscal year with respect to certain categories of spending, namely: “(1) [c]apital spending on utility infrastructure; (2) [f]or electric distribution companies, operation and maintenance expenses on vegetation management; (3) [f]or electric distribution companies, operation and maintenance expenses on system inspection, including expenses from expected resulting repairs; and (4) [a]ny other costs relating to maintaining safety and reliability that are mutually agreed upon by the [D]ivision and the [C]ompany.” *Id.* at § 39-1-27.1.1(d). However, the statute does not require approval of the plan submitted by the Company. *See generally, id.* Rather, the Commission retains discretion whether to approve the proposed ISR Plan. *See id.*

The Company has outlined areas of agreement with the Division, and has represented that the “Division has indicated general concurrence with the [] Electric ISR Plan.” FY25 ISR Plan, Commission Docket No. 23-48-EL, *Company Filing Letter* (December 21, 2023), 1; *see also id.* at Electric ISR Panel Testimony, *Proposed Capital Investment by Key Driver Category*, 15 – 16 of 28 (outlining that there was agreement between the Division and the Company with respect to certain items such as reporting prior to specific recloser installations). However, ‘general concurrence’ is not complete consensus, and therefore the Company’s ISR Plan was ultimately filed without agreement from the Division.

Under these circumstances, the language in the Revenue Decoupling Statute shifts the

standard for approval:

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

R.I. Gen Laws § 39-1-27.7.1(d)(4) (emphasis added). In instances where the Company files its ISR Plan without securing agreement from the Division, the burden of proof is shifted, and the Commission must separately assure itself that all proposed expenditures are “reasonably needed to maintain safe and reliable distribution service over the short and long term” before granting approval. *Id.* Accordingly, only those spending items that are needed *for safe and reliable service* in light of the established short- and long-term needs of the system should be approved.

III. THE COMMISSION’S REVIEW OF THE ELECTRIC ISR PLAN MUST ACCOUNT FOR THE ACT ON CLIMATE, WHICH REQUIRES A NEW ANALYSIS OF WHAT IS REASONABLY NECESSARY TO MAINTAIN SAFE AND RELIABLE SERVICE.

The long-term impacts of approved capital expenditure plans means that the Commission has a pivotal role to ensure that expenditures are in line with achieving the State’s net-zero emissions mandate over the next few decades. The 2021 Act on Climate set aggressive decarbonization goals for the state, including a 45% reduction in greenhouse gas emissions from 1995 levels by 2030, and requires all state agencies to conduct their regular business with achievement of these goals in mind. *See* R.I. Gen. Laws § 42-6.2-8. In less than three decades, Rhode Island must reach net zero. *See id.* at § 42-6.2-9. Meeting these goals is essential in the State’s fight against climate change and its disparate effects. Moreover, pursuant to the Act on Climate, the Commission is obligated to consider the State’s mandated greenhouse gas emission reduction requirements when making any decision. *See id.* at § 42-6.2-8. This obligation extends

to the Commission’s authority to deny or approve recovery related to any spending under the ISR Plan that is not reasonably needed to ensure safe and reliable service.

Because of these statutory mandates, the “reasonably needed to maintain safe and reliable distribution service” language in the Revenue Decoupling Statute requires considerations not previously included in analysis of ISR expenditures. The Commission’s (and the Division’s) duty to protect the public interests via utility regulation is a key component of making progress towards Rhode Island’s planned environmental future as set forth in the Act on Climate. In fulfilling that duty, the Commission must ensure that public and ratepayer resources are efficiently committed to the considerable investments that will be needed to meet climate adaptation and emissions reduction mandates.

To facilitate the electric grid of the future, there is no question that some level of investment will be needed to allow for electrification of home heating, charging of vehicles, and increased connectivity with distributed generation. To be sure, those investments stand to create a cleaner and more efficient energy landscape throughout the State. However, compliance with the Act on Climate requires surgical implementation of carefully selected improvements through a transparent process. As noted by the Executive Climate Change Coordinating Council (“EC4”) in its 2022 Climate Update, “[s]afely, reliab[ly], and affordably building out the electric grid will require electric distribution companies to make strategic investments in technologies for a twenty-first century electric grid.” EC4, Rhode Island 2022 Climate Change Update (“2022 Update”) at 4, December 15, 2022, (available at <https://climatechange.ri.gov/media/1221/download?language=en>) (emphasis added)). Absent such an approach, the risk of needless spending is great.

IV. THE COMPANY MUST SUPPORT ANY INVESTMENTS, INCLUDING GRID MODERNIZATION INVESTMENTS, ON THEIR OWN MERITS.

While rapid action is required to address the climate future Rhode Islanders face, it is important that a thoughtfully developed foundation for prudent investment in electric infrastructure transformation be established. The Attorney General maintains that a known, well-vetted long-term plan is required to ensure appropriate implementation of necessary grid upgrades. Toward that end, the Amended Settlement Agreement approved in the last rate case (the “ASA”) required the Company to file a comprehensive grid modernization plan and a business case for implementation of advanced meters with the Commission. *See* ASA, Commission Docket No. 4770 (August 16, 2018) at Art. II, Sec. C.15, C.16. In accordance with that requirement, the Company filed a plan, and the Commission has established a docket, separate from the ISR, to consider the Grid Modernization Plan (“GMP”) with an opportunity for input and transparency. *See generally*, Docket No. 22-56-EL. The Company has also filed Supplemental Testimony to clarify its position on the GMP, which it considers to be a “validation for its *investment strategy*, which will result in different *investment proposals*, such as in future ISR Plans.” *Supplemental Testimony*, Commission Docket No. 22-56-EL, 6: 7-8 (emphasis in original). To that end, the Company has specifically indicated that it “is not proposing any specific investments or cost recovery within the GMP” and that “the Company will submit refined investment proposals in targeted areas to address specific electric distribution system issues through appropriate regulatory avenues for further review and oversight.” *Id.* at 19:6-9. In response, the Attorney General has provided comments to the Commission agreeing that the Company’s proposal to consider individual investments as they arise would be consistent with historic use of the ISR. *See generally*, RIAG Reply Comments, Commission Docket No. 22-56-EL (October 10, 2023). At

the same time, the GMP should not be allowed to go stale and should be updated as the Company continues to implement grid modernization expenditures. *Id.* at 2.

Capital expenditure burdens ratepayers for years into the future and costs far more than the initial investment numbers. In addition, investments approved now will impact ratepayers in years to come, narrowing capacity to afford future alternate investments. Further, it cannot be overlooked that these significant capital expenses are being proposed at a time when ratepayers are subject to unstable electric supply prices, especially in the winter. For example, this past winter rate period, the electric supply rate created a monthly increase of \$32.29 for the average 500 kWh residential customer receiving Last Resort Service. *See* Docket No. 23-01-EL, Order 24834 at 7 (outlining the 24.1% increase caused by fluctuating seasonal supply costs). In light of this reality and the growing difficulties presented by inflation, the Commission must ensure that every dollar spent on electric infrastructure is reasonable and necessary *at this time*, and if it appears that the investment could ultimately be a mismatch with future plans, it should be either be deferred or completed by the Company outside of the ISR to be considered for recovery at the next base rate case.

Last year, the Commission carefully vetted several of the Company's claims for needed improvement and found that:

the evidence [did] not support the Company's contentions that: (1) there [was] a downward trend in reliability; (2) that there [was] a near term need for the proposed Grid Modernization investments related to visibility and control of DER; nor (3) that Grid Modernization investments [were] needed to meet the Act on Climate or Renewable Energy Standard.

Order 24873 at 18. As a result, the Commission found that "the evidence did not support an urgent need to approve funding through ISR of investments in the Grid Modernization category prior to consideration of a Grid Modernization plan." *Id.* The GMP review process is still underway and,

accordingly, the Commission should again look to the Company's proposals with a discerning eye to make sure only investments reasonably needed in the coming year are allowed recovery through the ISR. Notably, the Company has alleged an "upward trend" in System Average Interruption Duration Index ("SAIDI") and System Average Interruption Frequency Index ("SAIFI") to support need for "course correction" via investments designed to reach an "internal goal of achieving [] better performance than required under PUC's performance threshold[.]" *FY25 ISR Plan*, Electric ISR Panel Testimony, Commission Docket No. 23-48-EL, 14:14 - 15:4. At the same time, it should be expected that certain improvements in outage duration and frequency will result from the implementation of AMF. *See e.g. AMF Business Case*, Commission Docket No. 22-49-EL, Bonenberger Testimony, 11:15-16 (AMF "minimizes the impact that outages have on customers and improves power quality."). Where investments are supported by a need to achieve the Company's internal, but not mandated goals, caution should be employed to ensure that the investments are in fact *needed* within this year's ISR. There are many investments that will be needed to meet State mandates, and expenditures must be chosen carefully.

V. THE COMPANY MUST BE HELD TO ITS COMMITMENTS REGARDING ADVANCED METERING FUNCTIONALITY.

As noted above, the Company's implementation of AMF was conditionally approved in Commission Docket 22-49-EL, and the Company has since committed to implement the program in conformance with that approval. *See generally* Docket No. 22-49-EL. Accordingly, the Company is not required to prove a need for AMF as part of its ISR proposal. Still, the ISR contains nearly \$52 million of spending related to AMF, and that investment must be carefully reviewed and monitored. Among other things, the Commission's approval required the Company to agree to cost caps related to expenditures for AMF. Throughout the multi-year process of AMF deployment, the Company must be held to that cap, and the Commission must ensure that recovery

for any expenditures beyond the cap is disallowed. Additionally, it will be essential to hold the Company to the other commitments it has made, including commitments to realize certain levels of performance and to enable certain functionalities that have been promised to Rhode Islanders. *See Open Meeting Motions and Votes*, Commission Docket No. 22-49-EL (September 27, 2023).

VI. APPROPRIATE BUDGETING IS NECESSARY WITHIN THE ISR.

The Commission previously opened Docket No. 23-34-EL in an attempt to explore the possibility of an ISR Budgeting and Planning framework to ensure that the Company adheres to the ISR Plan as approved and that customer funding is being directed as presented during the ISR review process each year. *See generally*, Commission Docket No. 23-34-EL. In its ISR Plan proposal, the Company has suggested a budgetary framework that remains generally aligned with the Commission's suggestions presented in that docket. *See FY25 ISR Plan*, Electric ISR Panel Testimony, Exhibit 2, Commission Docket No. 23-48-EL, Bates 299-301. There is great value in holding the Company accountable for overspending in individual areas, rather than vetting a full plan to simply provide the Company complete discretion within a cap that was originally determined based on specific proposals that were subsequently not followed. To that end, any potential overspending must be accounted for, even where overall the investments fall within any overspending tolerance set by the Commission. If the expenditure was not reasonably needed, disallowance of recovery for one or more years as determined by the Commission, is not only reasonable but proper. Similarly, failure to comply with budgetary constraints must carry consequences. Any suggestion that amounts outside of the approved budget could potentially be allowed recovery in the ISR Reconciliation, seemingly undermine the purpose of a clear budget. *See e.g. id.* at Bates 300 (“If the Company identifies a specific need that will cause the budgets to exceed the 2.5% threshold, the Company will discuss with the Division the potential to include it in the current ISR reconciliation.”).

Additional testimony and explanation may help refine and fully vet the budgetary framework proposed by the Company, and whether certain projects should be considered discretionary or non-discretionary. This is especially important in the context of an Electric ISR, where non-discretionary expenditures are allowed recovery of *actual costs*, and the Company has suggested that it should not be held to a cap with respect to non-discretionary expenditures. *See id.* at Bates 200; *see also* Electric ISR Panel Testimony, *Proposed Capital Investment by Key Driver Category*, Docket No. 23-48-EL, 26 of 28:1-4 (noting that the Company proposes non-discretionary spend should be treated separately and subject only to prudence review). It may be that, following further vetting of the Company's ability to project non-discretionary costs, an appropriate budgetary constraint could actually be set for non-discretionary work, and that possibility should be explored.

It is essential that the Commission hold the Company to a reasonable budget to avoid unnecessary financial burden on ratepayers before a clear plan has been approved. This means, at minimum, ensuring that the timing of investments is reasonable and appropriate in light of the Act on Climate and ensuring coordination of long-term improvements to the electric distribution system. The Commission must also carefully look to limit ISR spending wherever practicable, in acknowledgment that there will be significant future expenses arising out of the need to bring Rhode Island's electric distribution system up to date. This includes limitations realized through enforceable budgetary caps on Company recovery. Only those proposals that are clearly shown to be reasonably needed to ensure safe and reliable electric service should be approved under the ISR (although the Company may continue to make prudent investments that improve its distribution system and seek recovery elsewhere at the appropriate time). Additionally, where capital expenditure is required, the same should be done with an eye to the future to ensure avoidance of

spend on technologies that will need to be replaced before the end of their useful life to realize the grid of the future.

Respectfully submitted,

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ATTORNEY GENERAL OF THE
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By his Attorney,

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Dated: February 20, 2024

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February 2024, the original and five hard copies of this document were sent, via electronic mail and courier, to Luly Massaro, Clerk of the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of the document were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas Vaz