

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

The Narragansett Electric Co. d/b/a Rhode Island Energy's  
Proposed FY 2025 Electric Infrastructure, Safety and  
Reliability Plan

Docket 23-48-EL

**CONSERVATION LAW FOUNDATION'S STATEMENT OF POSITION**

**Now comes** the Conservation Law Foundation ("CLF") and provides this Statement of Position in the above-referenced docket.

**I. Introduction**

On December 21, 2023, Narragansett Electric, d/b/a Rhode Island Energy, ("the Company") filed its fiscal year 2025 Electric Infrastructure, Safety, and Reliability ("ISR") Plan, which proposes a series of investments in the electric distribution system from April 1, 2025, through March 31, 2026. This plan was revised based upon input and review by the Division of Public Utilities and Carriers ("DPUC" or "Division") and included the reproduction of a series of data requests from the DPUC to the Company that were answered prior to filing the plan with the Public Utilities Commission ("Commission").

On January 22, 2024, CLF filed an unopposed motion to intervene.

**II. Standard of Review**

**A. Infrastructure, safety, and reliability plan requirements.**

Electric distribution companies are statutorily required to submit an ISR plan each year for the following fiscal year, which should include operation and maintenance and expected repair expenses. *See* R.I. Gen. Laws § 39-1-27.7.1(d). Before filing the ISR plan with the Commission,

the Company is to consult with the DPUC and, after good faith negotiation, file the plan indicating mutual agreement or that agreement was not reached. *Id.*

The Commission is then required to review the distribution company’s plan to ensure that the plan will enable the company to “maintain reasonable and adequate service-quality standards.” R.I. Gen. Laws § 39-1-27.7.1(e)(3). Essentially, it is the Commission’s responsibility to make sure that the company’s proposed investments will continue to deliver safe and reliable service to ratepayers.

The Commission has stated that the ISR “is an exception to the normal ratemaking methodology and needs to be applied judiciously to ensure a reasonable pace of investment necessary to achieve safe and reliable service.” R.I. PUC Ord. No. 24873, Docket No. 22-53-EL, Bates page 16. This is a logical policy development to allow the Company to recover the costs of necessary investments between regular revisions to distribution rates that are due to changing circumstances or a change in law. However, utilizing the ISR process should be undertaken with great care, as it does not have the same procedural protections and robust participation that accompanies a proposed change to base distribution rates.<sup>1</sup>

### **B. Compliance with new law.**

The Commission also has a general obligation to act lawfully, which includes taking new laws into account when making its decisions. Specifically, the Act on Climate directs agencies, including the Commission, to “exercise among its purposes in the exercise of its existing authority, the purposes set forth in this chapter pertaining to climate change mitigation, adaptation, and

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<sup>1</sup> This docket, in which the Company proposes to increase its spending by \$192.6 million, has included only four parties: the Company, Division, the Attorney General, and CLF. Statutorily, it must be decided in ninety (90) days. Compare this with Docket 4770, the last proposed change to base distribution rates, which proposed a spending increase of \$41.3 million in the electric distribution system, included twelve intervenors in addition to the government agencies and resolutions of both chambers of the General Assembly, and took nine (9) months to reach settlement. CLF recognizes that a lesser amount of \$54.2 million of the instant proposal would be subject to recovery.

resilience in so far as climate change affects its mission, duties, responsibilities, projects, or programs.” R.I. Gen. Laws § 42-6.2-8. Moreover, the Rhode Island Superior Court recently discussed the need for agencies to consider climate change as part of their decision-making process. *See Neronha v. R.I. Div. of Pub. Utils. & Carriers*, No. PC-2022-01095, 2022 R.I. Super. LEXIS 29 \*1, \*17 n. 7 (R.I. Super. Ct. Apr. 1, 2022). The court noted that the Act on Climate sets out specific decarbonization goals, and “requires all state agencies, including quasi-public agencies, to conduct their regular business with achievement of these goals in mind.” *Id.* The court found that failing to consider the impact of a decision on the State’s ability to meet the Act’s goals could provide a basis to challenge an agency’s decision. *Id.* Though the court made this determination in the relatively narrow context of evaluating an emergency motion to stay, it clearly signals that agencies cannot ignore the Act’s mandate. Thus, the Commission, in reviewing the Company’s plan, must be able to analyze the plan with an eye towards compliance with the Act on Climate.

### **III. Analysis**

In general, the size and scope of the ISR investment proposals raise an immediate question as to whether this is an appropriate shifting of financial risk to ratepayers and away from the Company. The ISR allows the Company to recover ratepayer funds **prior** to investments being made and ratepayers accrue any benefit, as this factor would be included in rates to go into effect April 1, 2024. *See Shields Test.* at Bates page 329. The standard for the Commission to apply to an ISR proposal is to “maintain safe and reliable service.” R.I. Gen. Laws § 39-1-27.7.1(e)(3). Any proposal that goes beyond this standard, and not otherwise specifically reviewed and approved for inclusion, should be the risk of the Company subject to future recovery upon a determination that the investment was a clear benefit to ratepayers. Overreliance on the ISR process abrogates the standard ratemaking process and compels ratepayers to provide a financial safety net for

potentially costly system improvements whose benefits to ratepayers are hypothetical while being direct and immediate financial value to the Company in the form of new capital on which it earns a return on equity.

**A. Advanced meter implementation.**

The inclusion of the advanced meter investments is appropriate in this ISR. R.I. PUC Open Meeting Motions and Votes, Docket No. 22-49-EL. While CLF takes no position with respect to individual line items contained within the Company’s ISR proposal, a determination was made, through a contested proceeding, that the replacement of automated meter reading technology with new meters utilizing advanced metering functionality (“AMF”) is necessary to maintain a safe and reliable system given the evolving demands on the electricity grid. *Id.* at Mot. 3a. CLF notes that the proceeding that made this determination was inclusive of multiple stakeholders and had sufficient time for alternative perspectives and expert witnesses to challenge assertions by the Company of benefits and functionality. Such a process engenders trust that a final decision is considerate of the financial demands on ratepayers balanced against the evaluation of technological advancements and evolving needs that may redefine what it means for the grid to be safe and reliable.

**B. Grid modernization investments.**

The inclusion of grid modernization investments must meet an appropriate standard for the Commission to approve ratepayer recovery. In Docket No. 22-56-EL, the Company proposed a “grid modernization investment strategy, which will result in different investment proposals, such as in future ISR Plans.” Suppl. Test. 6:7-8. The stated intention of the Company is to “right-size, right-time, and right-locate solutions derived from a grid modernization investment strategy through its annual planning process with appropriate regulatory oversight.” *Id.* at 40:11-13. In

reviewing its previous Grid Modernization investment proposals in the Company’s FY 2024 ISR, 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.” R.I. PUC Ord. No. 24873, Docket No. 22-53-EL, Bates page 18. Unfortunately, unlike the AMF proceedings discussed above, the Company did not request a ruling on its Grid Modernization Plan (“GMP”), and the Commission has not conducted a thorough investigation of the proposal. While the GMP, more accurately termed an investment strategy by the Company, has been filed, it contains no procedural schedule, no opportunity for input from expert witnesses, no formal discussions with stakeholders and intervenors, no opportunity for cross-examination of witnesses, and no ultimate determination by the Commission that investment proposals consistent with the plan are necessary to maintain safe and reliable service, the standard for approval of cost recovery through the ISR.

In light of the procedural shortcomings of Docket No. 22-53-EL, parties to the ISR are left with no new standard of review, and no matter how much the investment strategy outlined in the Company’s Grid Modernization plan may serve to improve the electric distribution system, ISR is not an appropriate vehicle to secure cost recovery from ratepayers for grid improvement investments.

The Commission should only approve Grid Modernization investments in this ISR plan if it can find that they are necessary to maintain safe and reliable service. In its response to a question from the Division, the Company has delineated \$15,380,000 in expenditures that it classifies as being associated with the implementation of its Grid Modernization Plan (“GMP”). Resp. to Division Req. 1-14. Only \$200,000 of this is solely in furtherance of its GMP, covering investments in “fiber infrastructure” for the purpose of “complet[ing] a study which will refine

scope, prioritization, and inform deployment and implementation of fiber infrastructure.” *Id.* The Company expects to use the study to refine spending in future years. *Id.* CLF agrees that this type of expenditure poses a high likelihood of improving the distribution system and creating a better communication network necessary to activate advanced meter functionalities and integrate distributed energy resources. However, these are system improvements, and their benefit to ratepayers is still hypothetical. As such, it would be inappropriate for the Company to receive ratepayer funds for these costs until they are proven to be beneficial to ratepayers.

The Company describes the additional \$15,180,000 as “projects advancing technology to address immediate needs.”<sup>2</sup> *Id.* In the FY 2025 proposal, instead of highlighting expenditures as being consistent with their GMP, they are incorporated and entangled into other line items that are more closely tied to the purposes of ISR to rebuild or replace failing or damaged infrastructure. As such, CLF is unable to disentangle the multiplicity of purposes with respect to these expenditures. CLF highlights them as worthy of additional interrogation so the Commission can make a sound determination that the financial risk for these expenditures is properly allocated between the Company and ratepayers based on whether they are necessary for immediate safety and reliability purposes or are intended for future system improvement.

### **C. Consistency with Act on Climate.**

CLF believes that in addition to maintaining safe and reliable service, it is appropriate for the Company to propose investments that are necessary to maintain compliance with existing law, especially those laws enacted since the previous distribution rate case. Here, the most recent

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<sup>2</sup> As an aside, in comparing the structure of the FY 2025 ISR to that of the FY 2024 ISR, the Company has made a strategic decision not to specifically itemize its GMP proposals, as those investments were specifically denied in the Commission’s 2023 decision due to a failure to prove they were needed to meet short-term safety and reliability measures or that they were necessary to meet foreseeable long-term needs. R.I. PUC Ord. No. 24873, Docket No. 22-53-EL at 18.

distribution rate case was decided in 2018. *See* R.I. PUC Docket No. 4770. The General Assembly enacted the Act on Climate in 2021, and its mandates may necessitate changes to the electric distribution system. R.I. Gen. Laws § 42-6.2-8. In furtherance of this goal, the Company asserts that it “has assessed that approval of this ISR Plan promotes the Act on climate mandates by preparing the electric distribution grid to integrate greater renewable energy generation.” ISR Plan, Book 1 at Bates page 47-48. When asked to clarify this assertion, the Company refers to its analysis in the GMP in conjunction with a “qualitative assessment based on [the Company’s] customers’ growing reliance on the electric distribution system.” Resp. to CLF Req. 1-1(a).

First, reference to the GMP as evidence of furthering the goals of the Act on Climate is inadequate. In its previous decision, the Commission rejected Company proposals indicating that to meet its burden of proof, “[the Company] needs to present realistic forecasts of what is likely to happen on the system.” R.I. PUC Ord. No. 24873, Docket No. 22-53-EL, Bates page 19. In review of the supplemental testimony in Docket No. 22-56-EL, the Company indicates that the upper bounds of its forecast, whereby the State electrifies its thermal and transportation networks, is a “scenario - not a forecast – to model a state of the world with the most electric distribution system issues.” Suppl. Test., Docket No. 22-56-EL, at Bates page 25. Based on this testimony, it appears that the Company continues to indicate that potential future states of operation will require investment; however, it fails to connect the proposed ISR investments to specific and articulated failings, vulnerabilities, or long-term needs to be compliant with the Act on Climate.

Second, the qualitative analysis provided by the Company does not definitively support that the proposed investments are needed to meet the Act on Climate mandates. In response to CLF’s data request on this issue, the Company provides an example where “a conversion project from a 4 kilovolt system to a 15 kilovolt system will provide additional generation hosting capacity

in addition to the projects primary goals of addressing asset issues, load capacity, or reliability.” Resp. to CLF Req. 1-1(a). This example begs the question as to whether there is an immediate need or a long-term forecast indicating that a particular system needs to be upgraded from 4 to 15 kilovolts. If so, it may be appropriate to fund the conversion in the ISR, but that approval is not based on compliance with Act on Climate. If compliance with Act on Climate was the justification, it seems that there should be evidence indicating an immediate demand for that hosting capacity. Hypothetical or future scenarios where the investment is needed if or when subsequent events occur, such as a new housing development or consumer decisions to install solar generation capacity demand, falls squarely outside the purpose of the ISR. Thus, financial risk properly falls on the Company.

CLF’s opinion is that the Company has not shown that the investments in this ISR proposal are necessary to facilities the state to meet its Act on Climate mandates. At this point, all parties are stuck with no agreed upon way to determine how a proposal intersects with the Act on Climate mandates. The current, convoluted record and process does not serve the Company, the Commission, intervenors, the State, or the public. The analysis CLF has provided here required the ability to sort through multiple dockets, Commission orders, and multiple witness testimonies to pull together even a haphazard understanding of what analysis and thinking has gone into a generic statement by the Company that it “has assessed that approval of this ISR Plan promotes the Act on Climate mandates.” ISR Plan at Bates page 47-48.

Though it is outside the scope of this docket, CLF believes that the Commission would be well served to standardize its methodology for evaluating claims by the Company, and by any other party in other dockets, that a proposed action and/or investment is consistent with the Act on Climate and necessary to meet its greenhouse gas emissions reductions mandates. The Act on



Climate statute, as noted above, gives the Commission the authority to “exercise among its purposes in the exercise of its existing authority, the purposes set forth in this chapter pertaining to climate change mitigation, adaptation, and resilience in so far as climate change affects its mission, duties, responsibilities, projects, or programs.” R.I. Gen. Laws § 42-6.2-8. The statute continues to indicate that “[e]ach agency shall have the authority to promulgate rules and regulations necessary to meet the greenhouse gas emission reduction mandates established by § 42-6.2-9.” *Id.* Given that the State is responsible for meeting these mandates, the Commission, as an arm of the State, has the authority to establish, for example, new filing requirements to achieve these purposes. It is essential to develop an appropriate record regarding Act on Climate analysis, as the Commission also holds the potential liability if it fails to consider these mandates in its review of specific proposals. *See Neronha*, 2022 R.I. Super. LEXIS 29.

#### **IV. Conclusion**

WHEREFORE, CLF respectfully requests that the Commission:

- (1) Approve the expenditure of funds as proposed for the installation of advanced meters;
- (2) Deny ratepayer recovery for any investments that are not justified to meet immediate safety and reliability concerns or foreseeable long-term needs in the on-going absence of a vetted and approved Grid Modernization plan; and
- (3) Deny ratepayer recovery of proposals associated with meeting Act on Climate mandates unless evidence is provided showing the connection between an investment and emissions reductions.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the original and five copies of this Statement of Position were sent via First Class Mail to the Public Utilities Commission. In addition, a PDF version of this was served electronically on the most recent service list, dated 1/25/2024.

/s/ James Rhodes

**Docket No. 23-48-EL – RI Energy’s Electric ISR Plan FY 2025  
Service List as of 1/25/2024**

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## List of Exhibits:

- CLF 1-1: RI Public Utilities Commission, Order Number 24873, Docket 22-53-EL, “Infrastructure, Safety, and Reliability Plan, FY 2024.” Effective April 1, 2023.
- CLF 1-2: RI Public Utilities Commission, Open Meeting Motions and Votes, Docket 22-49-EL, “Advanced Metering Functionality Business Case and Cost Recovery Proposal. September 27, 2023.
- CLF 1-3: RI Energy, Supplemental Testimony of Kathy Castro, Ryan Constable, and Carrie Gill, Docket 22-56-EL, “Grid Modernization Plan.” August 11, 2023.
- CLF 1-4: RI Energy, Responses to CLF Data Requests, Docket 23-48-EL. February 9, 2024.