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Peter F. Neronha
Attorney General

February 9, 2024

Luly Massaro, Clerk
Division of Public Utilities and Carriers
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In Re: The Narragansett Electric Company d/b/a Rhode Island Energy's Proposed FY 2025 Gas Infrastructure, Safety and Reliability Plan
Docket No. 23-49-NG

Dear Ms. Massaro:

Enclosed please find for filing an original and five (5) copies of the Attorney General's Statement of Position in the above-referenced docket.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Nicholas Vaz

Special Assistant Attorney General
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Enclosures

Copy to: Service List

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a RHODE ISLAND :
ENERGY’S PROPOSED FY 2025 GAS :
INFRASTRUCTURE, SAFETY AND :
RELIABILITY PLAN : Docket No. 23-49-NG**

**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.

I. INTRODUCTION

The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company” or “RIE”) seeks approval of a plan seeking significant spending on gas infrastructure while failing to adequately account for the transformation of the State’s thermal sector necessitated by the 2021 Act on Climate and its greenhouse gas emission reduction mandates. Given the risk of rate payers assuming the cost of what will become useless infrastructure, the Attorney General urges the Public Utilities Commission (the “Commission”) to deny approval of the proposed Plan to the extent that the Company has not demonstrated that each proposed investment in its system meets the statutory requirement of being reasonable and necessary both at this time *and* for the State’s future in light of the Act on Climate.

The submission of an Infrastructure, Safety, and Reliability (“ISR”) Plan is a statutory requirement for electric and gas distribution providers serving more than 100,000 customers, including RIE. *See* R.I. Gen Laws § 39-1-27.7.1. However, the statute does not require approval

of that plan. *See id.* Rather, the Public Utilities Commission (the “Commission”) retains broad discretion in considering its approval of the ISR Plan proposed by the Company. *See id.* Like all state agencies, the Commission must incorporate the emission reduction mandates of the Act on Climate when using that discretion. *See* R.I. Gen. Laws § 42-6.2-8. 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, for the gas utility company: “(1) [c]apital spending on utility infrastructure; . . . 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 § 39-1-27.2-1(d). The long-term nature of approving capital expenditure plans means that the Commission has an exceedingly important role to play in achieving the State’s net-zero emissions mandate over the next few decades.

The Company’s Proposed Fiscal Year 2025 Gas ISR Plan (“FY25 ISR Plan”) would cause the average gas customer in Rhode Island to incur a \$48.28 (or 2.9%) increase over the next year. FY25 ISR Plan, *Company Filing Letter*, Book 1, Page 1 (December 21, 2024). This is separate and apart from increases caused by previously approved capital investments and fluctuations in the extremely volatile natural gas supply market. These ever-increasing yearly costs, which do not even include the transition costs to a net-zero emissions economy, create an unacceptable burden for Rhode Islanders. This is particularly true where inflation and skyrocketing natural gas and electric supply costs are already threatening the ability of many to keep up with the costs of basic essentials.

Accordingly, the Commission must conduct an exacting review of whether these proposed expenses are truly reasonable and needed over the course of the next fiscal year. The

Company receives generous and guaranteed profits in connection with any and all investments in gas infrastructure. Rhode Island structured its statutes this way to ensure that the utility continues to provide safe and reliable service. Now, in the face of the many challenges of climate change, what is safe and reliable to the public includes reduced service of fossil fuels. Therefore, this analysis must take into active account factors that can reasonably be expected to impact the utility's business as Rhode Island complies with the Act on Climate, such as new investments for projects that have not yet been scoped or identified and a declining customer base of gas consumers to pay for infrastructure costs. Increasing investment in the gas system while it is currently under examination for rapid transformation in a separate docket, Commission Docket No. 22-01-NG, cannot meet the prudent investment standard. In fact, the Commission may find that decreased levels of investment are necessary.

II. FAILURE OF THE COMPANY TO REACH CONSENSUS WITH THE DIVISION HEIGHTENS THE LEVEL OF REQUIRED SCRUTINY AND FURTHER EMPOWERS THE COMMISSION TO DENY REQUESTS FOR UNNECESSARY SPENDING, ESPECIALLY IN LIGHT OF THE ACT ON CLIMATE AND GENERAL UNCERTAINTY CONCERNING GAS' FUTURE USE

In instances where the Company files its ISR Plan without securing agreement from the Division, the Commission's discretionary powers are heightened. The language in the Revenue Decoupling Statute shifts the standard for approval under these circumstances:

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*). The Company's ISR Plan was filed without agreement from the Division, even after the sixty-day period during which the Company and the Division were required to make good faith efforts to agree on the ISR Plan.

See R.I. Gen Laws § 39-1-27.7.1(4). At the time of filing, the Company stated that it was “awaiting confirmation from the Division as to its general concurrence[.]” FY25 ISR Plan, *Company Filing Letter*, Book 1, Page 1 (December 21, 2024). This is not the same as presenting a negotiated and agreed upon plan.

Accordingly, only those spending items that are needed *for safe and reliable service* in light of the *known* short *and* long-term needs of the system should be approved. Despite this, the Company’s proposed ISR Plan largely seeks to continue business as usual – asking for far more than what is reasonably needed in the coming fiscal year, which is especially concerning in light of the State’s ongoing efforts to determine what role, if any, natural gas will play in its energy future.

A. The Act on Climate Requires New Analysis of What is Reasonably Needed to Maintain Safe and Reliable Service.

Successfully combatting climate change in the Ocean State requires careful consideration of any significant and long-term investments in fossil fuels (including natural gas). 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* R.I. Gen. Laws § 42-6.2-9. 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* R.I. Gen. Laws § 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.

In light of these statutory mandates, the “reasonably needed to maintain safe and reliable

distribution service” language contained in the Revenue Decoupling Statute requires considerations that it did not prior to passage of the Act on Climate. 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 can also protect the public from excessive investment in infrastructure that may prove to be a financial liability in the future. As the State moves to meet the requirements of the Act on Climate, there are risks that utility spending on infrastructure investments that may need to be abandoned in the near or mid-term could create stranded costs and regulatory assets that ratepayers will be stuck paying for well into the future.

Assumptions that current investments in gas infrastructure assets will yield a long useful life must be considered with skepticism, and the possibility that these investments in the gas system may well be inconsistent with the State’s mandated path to a net-zero economy by 2050 cannot be ignored when determining the reasonableness of mid- and long-term investments. The Commission appropriately took this approach when it considered last year’s unagreed-to ISR Plan. *See* Docket 22-54-NG, *Order* 24802. As noted in Commission Order 24802, “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.” *Order* 24802, 33. That Docket remains ongoing and could ultimately “reveal that the gas system should be repurposed or abandoned.” *Id.*

Despite the Commission’s order last year emphasizing that the Act on Climate requires the ISR Plan to consider ways to “minimize[e] stranded asset risk,” *id.*, the Company’s current ISR proposal, again, does not appear to sufficiently respond to this serious concern. The scope of the

pending Future of Gas Docket includes careful consideration of many essential questions that stand to change how the State views the improvement and expansion of the natural gas system. These questions include, but are not limited to: “What are the economic risks associated with investment in the gas system and who bears those risks?”; “Can the PUC employ alternate ratemaking to align RIE’s business model with the Act?”; “Can the PUC alter other underlying revenue requirement factors, like capital structure and depreciation schedules and rules, in light of the Act?”; and, tellingly, “What profit motives drive investment in the system?” See Docket 22- 01-NG, *Proceeding Scope*, 4-5. The docket, which the Attorney General’s Office has been actively involved in as a member of both the general stakeholder committee and the technical working group, is reviewing several potential scenarios for Rhode Island’s energy future. Nearly all of the scenarios being contemplated call for a reduction in size of the gas distribution system and/or altered use of the gas distribution system. Even the so-called “continued use of gas” scenario contemplates a need to potentially switch to alternative low-carbon fuels in order to meet the mandates of the Act on Climate, which could require different maintenance patterns or investment, including the potential use of hydrogen.

These questions remain unanswered, and the Company has still not provided full analysis of its long-term plans for the gas distribution system in light of the Act on Climate. Despite this, the Company seeks approval of the increased spending proposed for the next twelve months, risking that investment now could be quickly abandoned. The Company must be held accountable for clearly showing that each and every investment in the future of its system, especially capital investments, are reasonably needed at this time given the risk that they will no longer be needed in short order. Further, any proposed investments that can be reasonably delayed until there is more certainty must be denied in light of the risks that imminent regulatory change could render them

useless.

B. Massachusetts is Beginning to Treat Gas Investments Differently and Rhode Island Needs to as Well.

The potential ramifications of Rhode Island’s work to map out a future for the natural gas system can be seen by looking at Massachusetts’ efforts in this space. There, a similar investigatory docket yielded an order from the Massachusetts Department of Public Utilities (“MA DPU”) outlining a new approach to its gas system in light of the commonwealth’s goal to reach net zero by 2050. That order expressly outlined several important principles, including that “achieving state climate change goals necessarily requires the minimization of stranded assets to the extent possible” and that “recoverability of additional investments in natural gas infrastructure will require analysis of whether such investments are consistent with state emissions reduction targets and thorough evaluation of [Non-Pipeline Alternatives].” MA DPU Docket 20-80-B, *Order on Regulatory Principles and Frameworks* (“MA DPU Order”), (Dec. 6, 2023), at pg. 97.¹ The MA DPU also called upon the Massachusetts legislature to repeal legislation that “encourages new main and service extensions and increased use of natural gas.” *MA DPU Order*, at pg. 100.

Neither the Commission’s incorporation of the Act on Climate in last year’s ISR decision, nor the analogous authority set forth in Massachusetts has swayed the Company from its business-as-usual aggressive investment proposals in its current submission. Indeed, in response to a data request by the PUC questioning whether the Company expects to continue collecting monies in the future regardless of the actual useful life of its proposed investments, the Company cited to the MA DPU Order to support the proposition that recovery of approved investments should continue as they always have. *See* Response to PUC 1-6 (quoting the MA DPU Order, “[t]raditional notions of the regulatory compact continue to apply to [existing investments in natural gas infrastructure]

¹ The Order can be found at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/18297602>.

and, accordingly, there generally must be some demonstration of imprudence before recovery of existing investments can be challenged.”). However, this quote from the MA DPU Order only serves to reiterate the importance of not approving more than is necessary while the future remains in flux and to avoid further complications as investments become obsolete well before their assumed useful life. If anything, the MA DPU Order supports the proposition that investment should be slowed, not accelerated, in response to the need to carefully review recovery mechanisms in the context of the Act on Climate. It also points to a need to consider whether the Act on Climate directly changes the prudence standard—investments made that further the system on a known path to obsolescence are certainly well within the dictionary definition of imprudent.

C. The ISR Plan Contains Increased Spending that Fails to Meet the “Reasonably Needed” Standard, Approval of Which Could Harm Rhode Islanders for Decades to Come

As noted above, the Commission is being asked by the Company to continue to approve spending on long-term investments without understanding how the Company expects to adjust its operations going into the future. For instance, the Company has proposed \$63,669,000 in proactive main replacement. *See Response to Data Request PUC 1-2, Attachment PUC 1-2.* This creates the potential for mistakes that could hinder efforts to avert climate change, while, at the same time, costing the people of Rhode Island for decades. This is particularly true where capital investments are proactive without explicit consideration of potential alternatives taking the Act on Climate into account.

Despite these concerns, the Company has not proposed a more equitable solution, nor has it changed its reasoning for continuing to invest in the system. While the Company acknowledges that the Future of Gas Docket may change the State’s plans for the gas distribution system, the only considerations made for the Act on Climate in the Company’s ISR Plan involve decisions to aggressively invest in pipeline replacement to avoid leaks. But the Company has failed to provide,

either in tandem with the ISR or in the Act on Climate docket, any plan or map that would overlay the leak-prone pipe replacement system with a map of hydraulically feasible decommissioning sequences. This failure imprudently ignores the possibility that those same pipelines being replaced today may be abandoned permanently in the mid to short-term. This potential has only been bolstered by recently released preliminary results in the Future of Gas Docket modeling process. In most scenarios, pipeline replacement driven by ISR will continue to serve fewer and fewer customers over time. *See* Docket 22-01-NG, *Draft Report* (February 6, 2024), at Slide 14 (showing significant reductions in gas customers over several scenarios). Meanwhile, gas delivery rates are expected to become untenable long-term in all but one of the studied scenarios (the “Continued Use of Gas” scenario), with the potential for significant unrecovered rate base in the billions by 2050. *See id.* at Slide 51. At the same time, a managed transition away from gas use could result in reducing the cost of the gas system by nearly 35%. *Id.* at Slide 16. Although these preliminary numbers may not be conclusive, they demonstrate that careful consideration of a new and different energy future is needed and that continued investment in business-as-usual gas infrastructure investment is both unnecessary and imprudent.

Even claims that line replacements are consistent with the Act on Climate do not necessarily support large-scale investment in pipe replacement. When calculating the reduction in methane, the Company indicates that it expected to reduce methane by roughly 15,461 MCF over 12 months by replacing some 61.2 miles of leak prone pipe. *See* FY25 ISR Plan, Section 1 at 9 of 12. However, the Plan also contemplated a proactive main replacement budget of \$63,669,000 and a service replacement budget of \$250,000. *See* Response to Data Request PUC 1-2. While these may not be a perfect comparison, it is clear that the cost of pipe replacement is quite high for each avoided MCF. At the same time, a fully abandoned pipe would emit zero

methane and incur \$0 in replacement costs. Moreover, there is a limit to how many MCFs could possibly be avoided through leak-prone pipe replacement.

Last year, the Rhode Island Executive Climate Change Coordinating Council (“EC4”) concluded, “[g]as mains that are replaced through this program have an expected lifespan between 50-100 years, locking in gas infrastructure well beyond the target date for an emissions-free state.” EC4, Rhode Island 2022 Climate Change Update (“2022 Update”), EC4 at 8, December 15, 2022, (available at <https://climatechange.ri.gov/media/1221/download?language=en>). In fact, the MCF savings from leak-prone pipe replacement were intentionally not considered by the EC4’s consultants altogether “because the level of uncertainty surrounding EPA’s per mile emission factors is too high.” *Id.* at 70. Therefore, Rhode Island’s current plan to meet the 2030 Act on Climate mandate does not rely on the continuation of this program and it may be halted without derailing the current 2030 plans. As EC4 succinctly concluded, “[i]t would be imprudent to continue to reinforce and expand gas infrastructure that could not be easily and affordably decarbonized by 2050.” *2022 Update* at 91. The Commission has a duty to halt any expansion of the program and to slow any expenditures under the program as much as possible as the details of non-pipe alternatives are fully explored in the Future of Gas and its companion dockets and/or sub-dockets. In fact, the Company also seems to recognize this future shift, and formed a working group to explore potential non-pipe alternatives to expansion and enforcing of the fossil gas network. *See id.* Rhode Island agencies have already recognized that this pipe replacement program may not continue under the Act on Climate mandates, and therefore it would be imprudent to remain on the path of past expansion rather than immediately working to slow or halt this investment. The Commission may not await the conclusions of other dockets before acting on this important

insight, which will require reduction of the proposed investment in this ISR plan.

Notwithstanding this potential major shift in pipeline use and infrastructure, the Company posits that all risk should remain with gas customers and that it should be able to recover all investments in full. However, capital expenditures are already burdening ratepayers, and will continue to do so for years into the future because of the utility's decision to double-down on its profits from the distribution of fossil fuels. Additionally, the costs have proven to be far more than the initial investment numbers suggest, and if the Company's plan is approved as submitted, this trend will only continue. As is exemplified in the Company's filing at Section 3: Attachment 1, \$56,441,363 of the proposed revenue requirement in Fiscal Year 2025 comes from Incremental Capital from FY 2018-2024² that is included in the rate base, amounts that must now be paid by ratepayers for past expenditures. *See* FY25 ISR Plan at Section 3: Attachment 1. Moreover, based on forecasted revenue requirements, the revenue requirement expected from Fiscal Year 2024 Capital Investments was \$6,096,711. The revenue requirement for 2024's investment is expected to almost double to \$12,028,274 in Fiscal Year 2025. *See id.* This highlights the fact that investments approved now will continue to burden ratepayers in years to come, narrowing the capacity of ratepayers to afford future alternate investments.

D. A Clear ISR Budgeting Plan Could be Helpful, But the Company's Proposal Includes an Unnecessary Contingency for Unpassed Federal Legislation

The Commission has previously opened Docket No. 23-39-NG 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 proposed and that customer funding is being directed as presented during the ISR review process each year. *See generally*, Docket No. 23-39-NG. In its proposal, the Company

² Note, 2023 and 2024 numbers are forecasted.

has suggested a budgetary framework that remains generally aligned with the Commission's suggestions reviewed in that docket. *See Response to Data Request PUC 1-1*. Additional testimony and explanation may help refine and fully vet these categories, but on the whole, 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 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.

Additionally, the Company has proposed a separate budgeted category to invoke should the Pipeline and Hazardous Materials Safety Administration ("PHMSA") complete its proposed rulemaking regarding leak detection and repair during the coming fiscal year. This budget, while not included in rate calculations, could result in an additional \$10.8 million of spending to be considered during reconciliation, bringing ISR Spending to \$196.2 million dollars. *See e.g. FY25 ISR Plan, Book I, 39-42 of 46*. This "Contingency Plan" is just that – a contingency for an unknowable potential expenditure that may be required in light of an unknown final rulemaking. Therefore, it cannot include expenses that are known and needed in this coming year. Moreover, the expenditures would apparently result from a need to repair and monitor pipeline leaks, which is already contemplated within the proposed ISR Plan. The assumption that the Company can efficiently implement this increased work in this ISR timeframe should be questioned, especially in light of the fact that the Company can only complete a finite amount of work in a given year with its internal resources. Additionally, any such work completed

outside of a full Commission vetting process could potentially fail to consider alternatives that are better suited to meet the State's Act on Climate mandated greenhouse gas reductions. Any Company expenditures made in response to a future PHMSA Rulemaking should be considered in a future ISR or, if appropriate, in a reconciliation docket.

III. THE COMMISSION MUST DENY ANY PROPOSED EXPENDITURES THAT THE COMPANY FAILS TO PROVE ARE REASONABLY NEEDED FOR SAFE AND RELIABLE SERVICE AND SHOULD ATTEMPT TO LIMIT SPENDING TO AVOID ANY INCREASE IN THE AVERAGE ANNUAL BILL

As it did last year, the Company has proposed increased expenditures while the State considers how to transform the gas distribution system to meet legally mandated reductions in greenhouse gas emissions. This request is inherently imprudent. The Company is proposing to increase its infrastructure investments because revenue mechanisms guarantee its profits on the backs of ratepayers, even when decisions in other states, such as Massachusetts, are signaling that those revenue mechanisms may also need to be transformed. The Commission must not allow the Company to profit off of investments that will, in hindsight, appear unreasonably risky in light of the transformative change to the gas distribution system that will be needed in the near future.

In the coming years, we will be asking Rhode Islanders, many of whom are already on a tight budget, to choose investments in air source heat-pumps, needed roof repair, and installing insulation to meet climate resiliency goals over other preferred spending, and we must ask the Company to shift its investments and save for future years in the same manner. Regardless of the path chosen by Rhode Island, compliance with the Act on Climate will require economy-wide investments in new technologies and in new manners and methods of completing the basic tasks of daily life like heating our homes and businesses. As shown by EC4's 2022 Update, claimed MCF savings from leak-prone pipe replacement alone cannot justify continued investment as usual. And, if the state fails to adapt and continues to operate as it does now, planned levels of capital

expenditure through the ISR suggest that “annual costs of the gas system could nearly double towards 2050.” *Id.* Docket 22-01-NG, *Draft Report* (February 6, 2024) at Slide 45.

The Commission must hold the Company to a reasonable budget to avoid unnecessary financial burden on ratepayers that will outlast the current gas distribution system. This means, at minimum, denying any increase in ISR spending, and perhaps decreasing the spending, where the Commission can determine that spending is not necessary for immediate maintenance of safe and reliable service. Certainly, no increase in the average annual bill due to ISR should be approved until there is some clarity about what investments will be needed to make the future of the natural gas distribution system a reality that meets the mandates of the Act on Climate. Each upgrade, expansion, equipment purchase, facility, and other future-looking investment must be viewed through a critical lens and only those proposals that are clearly shown to be reasonably needed in the short term to ensure safe and reliable gas service should be approved.

Respectfully submitted,

PETER F. NERONHA ATTORNEY
GENERAL OF THE STATE OF RHODE
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By his Attorney,

/s/ Nicholas M. Vaz
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Dated: February 9, 2024

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February 2024, the original and five hard copies of this document were sent, via electronic mail and hand delivery, to Luly Massaro, Clerk of the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of the Statement of Position were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas M. Vaz