

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: INVESTIGATION OF UTILITY MISCONDUCT :
OR FRAUD BY THE NARRAGANSETT ELECTRIC : DOCKET NO. 22-05-EE
COMPANY RELATING TO PAST PAYMENT OF : DOCKET NO. 5189
SHAREHOLDER INCENTIVE :**

AMENDED ORDER

On July 11, 2022, pursuant to Rule 1.13 of the Commission’s Rules of Practice and Procedure (810-RICR-00-00-1.13), the Commission issued an Order in this Docket (Initial Order)¹ relating to the energy efficiency programs of The Narragansett Electric Company (Company). The Order opened an investigation into invoicing practices relating to the alleged manipulation of the reporting of invoices affecting the calculation of past energy efficiency shareholder incentives and the resulting impact on ratepayers during the time that the Company was owned by National Grid USA.² The facts and circumstances giving rise to the investigation are stated in the Initial Order and are incorporated herein by reference. The purpose of this Amended Order is to expand the scope of the investigation to matters relating to the potential assessment of penalties and/or other actions relating to accountability.

Travel of the Case to Date

The Initial Order was issued by the Commission on July 11, 2022 after the Company – now a subsidiary of PPL Corporation – submitted an internal report on the *Review of Invoices Within the Energy Efficiency Program* on June 7, 2022.³ The report described an internal

¹ *In Re: Investigation of Utility Misconduct or Fraud by the Narragansett Electric Company Relating to Past Payment of Shareholder Incentive*, Order No. 24441 (July 11, 2022)(“Initial Order”).

² As described in the Initial Order, at the time of the time of the alleged invoicing practices, the Company was owned by subsidiary of National Grid USA, and was doing business as “National Grid.” For purposes of this Order, the term “National Grid” refers to The Narragansett Electric Company when it was owned by National Grid USA.

³ Available at: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-06/5189-RIEnergy-Energy%20Efficiency%20Invoices%20Update%20to%20PUC%20%28PUC%206-7-22%29.pdf>

investigation undertaken by National Grid and its affiliates, revealing that they had found 48 instances in which the Company wrongly reported invoices for payment of energy efficiency programs, resulting in National Grid earning a higher shareholder incentive than it should have earned.

Subsequently, discovery occurred for several months, through which the Division of Public Utilities and Carriers (Division) asked numerous data requests and National Grid filed information with the Commission and the Division through the fall of 2022.⁴ In the submittals in response to the discovery, National Grid represented that its internal investigation had expanded and the Company committed to filing a more comprehensive report summarizing its more expansive investigation by March of 2023.⁵

On March 10, 2023, National Grid filed its comprehensive investigatory report covering the period all the way back to 2012.⁶ Around the same time, a jurisdictional issue arose relating to the Division and the Commission. But the Commission resolved the matter with an order issued on April 20, 2023 (April 2023 Order).⁷ The April 2023 Order also contained facts regarding the travel of the case which are incorporated herein by reference.

In July, the Division informed the Commission that it was continuing an audit of the Company and would be filing its conclusions with the Commission.⁸ In a letter to counsel for the

⁴ The Division of Public Utilities and Carriers is a statutory party in this case, acting in its capacity as ratepayer advocate. The Rhode Island Attorney General also is a party, having filed an unopposed motion to intervene which was granted by the Commission.

⁵ Company response to Division 9-1 (filed November 17, 2022).

⁶ The report can be found at: https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2205-NGrid-Report-on-Investigation_310-2023.pdf

⁷ *Order Denying Motion to Dismiss*, Order No. 24648 (April 20, 2023). The Order can be found at: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-04/2205-5189-PUC-Ord24648%204-20-23.pdf>

⁸ See “Memorandum of Exception to the Public Utilities Commission’s Conclusions Regarding the Division of Public Utilities & Carriers’ Jurisdiction,” at 40 (July 14, 2023) (The Division stated: “The Division is proceeding with its independent investigation and audit of the Energy Efficiency Program, and it will continue to do so until such time as its efforts and findings are complete; these findings will be shared with the Commission.”)

Commission dated August 2, 2023, the Division confirmed that it would be filing a report with the Commission.⁹ On November 27, the Division filed its report in the form of pre-filed testimony.¹⁰

After receiving and reviewing the Division's pre-filed testimony, the Commission formally requested the parties to brief certain threshold legal issues – one of which related to the question of statutory penalties. Briefs were filed by the parties in January and February of 2024.

Decision to Expand the Scope of the Investigation

Regarding the issue of penalties that was briefed by the parties, the Commission has identified two separate statutes within Title 39 that may apply.

The first statute is R.I. Gen. Laws § 39-2-8. Quoted in its entirety, the statute states:

Any public utility which shall violate any provision of chapters 1 — 5 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, shall be subject to a penalty of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), and in the case of a continuing violation of any of the provisions of the chapters, every day's continuance thereof shall be deemed to be a separate and distinct offense.

This penalty provision relates to violations of statutes or the failure of a utility to perform a duty required of it.

The second statute is R.I. Gen. Laws § 39-1-22, relating to false reports or false statements furnished to the Commission under oath. Quoted in its entirety, the statute states:

A company subject to the supervision of the commission or division that furnishes it with a sworn or affirmed report, return, or statement, that the company knows or should know contains false figures or information regarding any material matter lawfully required of it, and any company that fails within a reasonable time to obey a final order of the commission or division, shall be fined not more than twenty thousand dollars (\$20,000).

⁹ Letter from Margaret L. Hogan to John Harrington (August 2, 2023).

¹⁰ The filing can be found at: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-11/2205-DPUC-Testimony-Redacted11-27-23.pdf>

National Grid maintains that Section 39-2-8 does not apply, arguing that a penalty relating to false statements is provided for within Section 39-1-22, and Section 39-2-8 only applies if a penalty is not provided for elsewhere for the alleged misconduct.¹¹ But this argument appears to miss a key difference between the two statutes, in that Section 39-1-22 applies to false statements under oath, while 39-2-8 has no such limitation.¹²

In this case, there will be at least one question related to annual reports which were used as the basis for calculating earned incentives.¹³ These reports were not filed under oath, but arose from other filing requirements related to the administration of the energy efficiency program. There is a question whether the utility had a duty to file accurate reports that would trigger the application of 39-2-8. There may be other filings as well which might implicate this provision.

While the statutory penalties specified in 39-2-8 appear low in dollar amounts per violation, the Commission notes that the penalty provision also specifies that “every day’s continuance thereof shall be deemed to be a separate and distinct offense.” When requesting briefs from the parties, the Commission cited a California case regarding fraud in an energy efficiency program. In that case, the California Commission counted each day that a false annual report remained uncorrected as a continuous violation.¹⁴ The Commission draws no conclusions at this time

¹¹ Reply Brief of National Grid USA in Response to Briefing Questions Issued by the Rhode Island Public Utilities Commission, at 4 (February 16, 2024).

¹² Section 39-1-22 references reports, returns, or statements that are “sworn or affirmed.” The Commission notes that there is Supreme Court precedent that appears to treat the terms “sworn” and “affirmed” as the same act of testifying under oath. *See Scarborough v. Wright*, 871 A.2d 937, 938-939 (2005)(Citing Supreme Court of Nebraska case *State v. Haase*, 530 N.W. 2d 617, 618 (1995)). *Black’s Law Dictionary* also defines “affirmation:” as “[a] solemn pledge equivalent to an oath but without reference to a supreme being or to swearing; a solemn declaration made under penalty of perjury, but without an oath. . . While an oath is “sworn to,” an affirmation is merely “affirmed,” but either type of pledge may subject the person making it to the penalties for perjury.” *Black’s Law Dictionary* (11th ed. 2019).

¹³ Every year, the Company files an annual report regarding the energy efficiency program from the prior year. *See e.g.*, “National Grid 2019 Energy Efficiency Year End Report,” filed in 2020, found at: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/4888-NGird-Year-End-Report-2019-%285-15-20%29.pdf>

¹⁴ When establishing the briefing schedule, the Commission identified a California Public Utilities Commission case involving energy efficiency management fraud, in which the California Commission counted each day that certain

through this Order as to whether a similar interpretation would be applicable in Rhode Island, but leaves this as an issue to be addressed in this proceeding once all the evidence has been presented.

Regarding 39-1-22, there have been many proceedings in which employees of the Company adopted statements and schedules relating to the calculation of performance incentives that were a part of sworn testimony. Thus, the penalty provisions of 39-1-22 could be implicated in the circumstances of this case separately from the penalties under 39-2-8.

The Commission notes that this case is more than simply confirming whether the incentive amounts that flowed through the rate reconciliation were accurate. It relates to serious allegations of misconduct in the administration of the program. In these circumstances, it is apparent that the Commission has authority to address the potential for penalties or other measures of accountability in this investigation. While the Commission interprets its Initial Order opening this docket as being broad enough to include the potential issuance of penalties, for purposes of clarity the Commission is issuing this Amended Order to expressly expand the scope to consideration of the applicability of penalties and accountability.

Accordingly, it is hereby

(24970) ORDERED:

That the Commission hereby amends its Initial Order in Docket No. 22-05-EE to expressly expand the scope of these proceedings to address issues of accountability and the question whether statutory penalties should be assessed against the Company relating to the manipulation of the reporting of invoices affecting the recovery of past shareholder incentives in rates and the resulting impact on ratepayers.

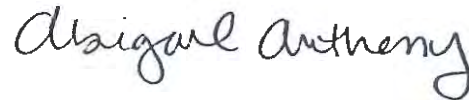
filings remained uncorrected as constituting a continuing violation. The California decision can be found at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M498/K964/498964399.PDF> (See pages 27-28 of the California Order).

EFFECTIVE AT WARWICK, RHODE ISLAND ON MARCH 28, 2024, PURSUANT TO AN OPEN MEETING DECISION ON MARCH 28, 2024. WRITTEN ORDER ISSUED APRIL 2, 2024.

PUBLIC UTILITIES COMMISSION



Ronald T. Gerwatowski, Chairman



Abigail Anthony, Commissioner



John C. Revens, Jr., Commissioner



NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws §39-5-1, any person aggrieved by a decision or order of the PUC may, within seven (7) days from the date of the order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.