

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC            :**  
**COMPANY D/B/A RHODE ISLAND ENERGY –   :**  
**PROPOSED FY 2027 ELECTRIC                 :**       **DOCKET NO. 25-54-EL**  
**INFRASTRUCTURE, SAFETY, AND               :**  
**RELIABILITY PLAN                               :**

**THE ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND’S  
REPLY TO THE NARRAGANSETT ELECTRIC COMPANY D/B/A  
RHODE ISLAND ENERGY’S LEGAL MEMORANDUM**

NOW COMES Peter F. Neronha, Attorney General of the State of Rhode Island (“Attorney General”), who provides the following reply to the legal memorandum submitted by the Narragansett Electric Company d/b/a Rhode Island Energy (“RIE”) in the above-captioned docket currently pending before the Public Utilities Commission (“Commission”).

**I. Introduction**

RIE seeks approval of its annual Electric Infrastructure, Safety, and Reliability (“ISR”) Plan with a Fiscal Year 2027 total budget of \$153.7 million. This includes \$135.8 million towards capital investments. *See* Proposed FY 2027 Electric Infrastructure, Safety, and Reliability Plan: Book 1, at 2, Commission Docket No. 25-54-EL (filed Dec. 22, 2025). However, this request does not provide a complete picture of RIE’s planned expenditures. RIE acknowledges that it is simultaneously planning for and advancing capital expenditures that would typically have been included within its ISR Plan in other years outside of the ISR process. In footnote 3 in its initial cover letter, RIE states:

The proposed ISR Plan capital investments, and the forecasts of future years’ capital investments contained within the ISR Plan, do not represent the total amount of capital investment anticipated by the Company in this year and future years. In this ISR Plan, the proposed capital investments and forecasts of future capital investments only include those amounts that the Company has proposed, or, with respect to future years, plans to propose, to recover through the ISR mechanism.

*Id.* n.3. By so doing, the Company’s ISR Plan for FY2027 did not contain the Company’s full plan for safety and reliability spending. Instead, the Company put forth a list of projects that it would like considered for immediate recovery without giving the Commission and ratepayers the benefit of knowing how those investments fit within the entire safety and reliability spending picture, and therefore without the benefit of an opportunity to properly assess whether the investments are appropriate for ISR rate recovery.

As evidenced by the Pre-Filed Direct Testimony of Gregory L. Booth, PE, on behalf of the Division of Public Utilities and Carriers, Commission Docket No. 25-54-EL (filed Feb. 20, 2026) (“Booth Testimony”), Exhibit GLB-2, Report of Gregory L. Booth, PE (“Booth Report”), the amount at stake in this separate set of capital investments is substantial. In fact, the Company is planning to pursue more than \$40 million of investments that it believes would be eligible for the ISR Plan outside of the ISR. *See* Supplemental Response to PUC 1-5. By way of example, the Booth Report identified the Phillipsdale Substation and spare power transformers as investments that had been initially proposed in RIE’s Fiscal Year 2026 ISR Plan filing, but that were not part of its approved ISR Plan. *Id.* By moving these investments outside of the ISR, “RIE is now attempting to remove a significant number of expensive Area Study and infrastructure, safety and reliability projects from review by the Division and presumably from the Commission as well.”

*Id.* at 21.

## **II. The ISR Statute Requires A Full Accounting of Planned Investments in ISR Categories.**

The ISR statute directs regulated utilities such as RIE to prepare “their infrastructure, safety, and reliability spending plan for the following fiscal year” addressing the following four categories:

- (1) Capital spending on utility infrastructure;

- (2) For electric distribution companies, operation and maintenance expenses on vegetation management;
- (3) For electric distribution companies, operation and maintenance expenses on system inspection, including expenses from expected resulting repairs; and
- (4) Any other costs relating to maintaining safety and reliability that are mutually agreed upon by the division and the company.

R.I. Gen. Laws § 39-1-27.7.1(d). Of note, the statutory language references the Company's *plan* (singular) for these categories of spend. *See id.*

Following submission of that plan to the Division of Public Utilities and Carriers ("Division"), the Company and the Division are then directed to cooperate in good faith to reach an agreement on the proposed plan. With or without consensus, the plan is then submitted to the Commission for review and approval. Where the Division and the Company cannot agree, "investments and spending [ ] found to be **reasonably needed** to maintain safe and reliable distribution service **over the short and long term**" should be approved. *Id.* (emphasis added). Importantly, "[i]t is the Company that has the burden of proving that its investment budget is reasonable and supported by the evidence. It must show that the investment is needed in the short- and long-term to provide safe and reliable service." Report and Order 15, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2024 Proposal*, Commission Docket No. 22-53-EL (filed Dec. 1, 2023).

While there is no Rhode Island case law concerning what constitutes a "reasonably needed" investment under the state's ISR statute, R.I. Gen. Laws § 39-1-27.7.1, other courts have held that in the context of public utilities, "[r]easonably necessary" means reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." *Fitchburg Gas & Elec. Light Co. v. Dep't of Pub. Utils.*, 483 N.E.2d 76, 82 (Mass. 1985) (quoting *Lowell Gas*

*Light Co. v. Dep't of Pub. Utils.*, 64 N.E.2d 640, 644 (Mass. 1946)). Similarly, legal dictionaries have defined the term “reasonable necessity” as: “A necessity arising because an alternative cannot be used or acquired without a substantial expenditure of money or labor.” *Necessity*, *Black's Law Dictionary* (12th ed. 2024).

At a minimum, finding what is “reasonably needed” is inherently a fact-intensive inquiry. This is more than a “perfunctory review” of a given proposal. *See Fitchburg*, 483 N.E.2d at 82. Rhode Island courts have found that a carrier service was “reasonably needed” only after concluding that there was a “reliable, probative and substantial evidence in this record.” *Miller v. Burke*, No. C.A. 79-835, 1980 WL 336169, at \*3 (R.I. Super. Ct. Dec. 19, 1980) (citing R.I. Gen. Laws § 42-35-15(g)). This follows general principles of administrative law where the Commission must “set forth sufficiently the findings and the evidentiary facts upon which it rests its decisions.” *Narragansett Elec. Co. v. R.I. Pub. Utils. Comm'n*, 35 A.3d 925, 935 (R.I. 2012) (quoting *R.I. Consumers' Council v. Smith*, 111 R.I. 271, 278, 302 A.2d 757, 763 (R.I. 1973)). Otherwise, the lack of record development on a particular issue “could well ‘mask the economic realities of the situation.’” *See id.* (quoting *Bristol Cnty. Water Co. v. Harsch*, 120 R.I. 223, 234, 386 A.2d 1103, 1109 (R.I. 1978)); *cf.* Booth Report 21 (“[T]he Company’s action means that the Division is evaluating ISR Plan capital projects for a system which is not the actual system which will exist.”).

One thing is certain: whether an investment is reasonably needed cannot be divorced from consideration of its impact on rates, especially when compared to potential alternatives. The Commission has rightfully described affordability as “an important consideration” when assessing whether an investment or spending is reasonably needed under the ISR statute. Report and Order 13, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric*

*Infrastructure, Safety, and Reliability Plan FY 2026 Proposal*, Commission Docket No. 24-54-EL (filed July 17, 2025).

How infrastructure investments impact rates depends on both expenditures for which the Company seeks immediate rate recovery *and* expenditures for which the Company may intend to seek recovery through other rate-setting mechanisms. The categorization of expenditures between these two recovery mechanisms has a direct impact on rate calculations. Moreover, regardless of whether capital investments hit rates now (i.e., through the ISR process) or evade current review for potential recovery in the future, there is no question that RIE’s entire slate of projects stands to impact affordability. The Company’s assertion that its investments outside of the ISR will not currently impact rates is cold comfort. *See e.g.* Lafond Rebuttal Testimony at 9:13 (claiming that “spending on non-ISR investments has *no rate impact* on customers currently.”). The breadth and character of those investments will impact rates in the future (and potentially limit future ability to pursue other investments).

Just because projects may ultimately be needed, does not mean they are needed all at once, and the ISR is the mechanism for the Commission to have constant and consistent view into investment timing decisions. What is more, pacing of investments can dramatically impact energy affordability. That concern is inherent in the requirement that ISR investments be needed in the long *and* short term.

As the Commission made clear just last year:

If something is beneficial but can either be paced differently or deferred without impacting safety and reliability, the Company must consider customer affordability. . . . [I]n the absence of evidence of deteriorating performance, the Commission cannot support increased spending at the pace proposed by the Company when there are so many other pressures on utility rates . . . .

Report and Order 13, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy’s Electric Infrastructure, Safety, and Reliability Plan FY 2026 Proposal*, Commission Docket No.

24-54-EL (filed July 17, 2025). Indeed, it has been the Commission’s position that “ramp-up of spending typically occurs when the utility system is not meeting performance standards,” which has not been the case for RIE “which has had excellent performance over the past several years with lower levels of investment.” *Id.* Now is a time to carefully plan for the future and pursue only what is needed to ensure continued reliability and safety from the electric distribution system. Robbing the Commission of the ability to perceive and assess these timing and affordability considerations by providing only a partial picture in the ISR plan could allow the Company the ability to over-invest or accelerate investment through sleight of hand.

**III. The Company’s Interpretation Impermissibly Obscures the Commission’s Understanding of Capital Investments and Does Not Allow it to Make Fully Informed Affordability Decisions.**

Although the ISR statute clearly contemplates a single plan, the Company has decided to pursue capital expenditure in two separate categories. As conceded by the Company’s legal memorandum, certain project information was intentionally withheld from its ISR Plan. However, the Company insists that it need not provide a full view into investments that could be pursued in its ISR Plan, but were not included, stating that there is no “express[] mandate that the Company provide all information about all investments that the Company is planning.” *See* Legal Memorandum of RIE in Response to Pre-Filed Direct Testimony (“RIE Legal Memorandum”), at 11, Commission Docket No. 25-54-EL (filed Mar. 4, 2025); *see also id.* at 9 (discussing how RIE “moved forward with the separate investments it determined, in the exercise of its role as the manager of and party responsible for the safe and reliable operation of the electric distribution system, were needed”); *see also* Booth Testimony 5:14–16 (discussing how RIE carved out “the Phillipsdale Substation, power transformer spares, mobile substations, volt-var optimization program advancement” from the ISR Plan, although they had previously been included). The result is a two-track system where certain investments are subject to review in the ISR Plan, and

others are pursued for recovery in a future rate case, potentially long after ISR Plan investments are approved for inclusion in rates, relying on only partial information about affordability afforded by the two-track strategy as put forth.

As a result, the Company's ISR Plan for FY 2027 provides an incomplete picture, failing to provide evidence that its pace of investment is reasonable, given other substantial improvements it is pursuing outside the ISR Plan. The Commission has explained that the ISR statute "needs to be applied judiciously to ensure a reasonable pace of investment necessary to achieve safe and reliable service." Report and Order, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2024 Proposal*, Commission at 16, Docket No. 22-53-EL (filed Dec. 1, 2023). Yet, it is clear that "RIE has proposed advancing discretionary capital projects at a very rapid pace." Booth Testimony 24:11. The Company seeks "much more aggressive reliability targets" and a "low risk tolerance level," even though "load growth is well below projections" and the outage contingencies it is concerned about have never occurred. *See id.* at 24:12–18. If left unchecked, the result will be annual capital investments of nearly \$200 million. *See* Booth Report at 39 of 44.

These sorts of investment strategies are exactly what the Commission has struck down before. For example, RIE seeks to invest in VVO/CVR (smart capacitors and regulators) as capital projects that will go through the general ratemaking process. Pre-Filed Rebuttal Testimony of Phillip Lafond 13:17–19, Commission Docket No. 25-54-EL (filed Mar. 4, 2026). But just last year, the Commission ruled that investments in VVO "can be deferred or paced differently" and thus failed to meet the ISR statutory standard of being reasonably necessary in that year. Report and Order 13, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2026 Proposal*, Commission Docket No. 24-54-EL

(filed July 17, 2025). However, proceeding outside of the ISR should not present a backdoor solution. Even if RIE wants to take on previously denied investment at risk, that intention needs to be revealed as part of the ISR planning so that the Division, Commission, and the public understand the full existing and potential burden of infrastructure investment. That is to say, knowing that the Company will pursue investment despite the Commission’s disapproval for ISR recovery may counsel against approval of other elements of the ISR submission for, by way of example, affordability reasons.

The following hypothetical highlights the Attorney General’s concern. Perhaps a company submits in its ISR plan that investing in X technology at a certain cost is reasonably needed to ensure grid reliability and safety. As it turns out, the record shows that the company also considered Y technology at some concrete, but undisclosed amount that could also ensure grid reliability and safety. Unless the Commission also knows the cost (and perhaps relatedly, cost-effectiveness or cost-benefit) and details of Y technology, it would be unable to know whether X technology is truly “reasonably needed” given the possibility that Y could be preferable. Full understanding of intended investments and their costs are also needed to avoid ratepayers footing the bill for potentially duplicative investments.

In the case of RIE’s submitted ISR Plan, perhaps investing in X technology at a certain cost is sufficient to ensure grid reliability and safety; but it is undisputed that, separately, the company also will be investing in Y and Z technologies at undisclosed amounts. The Commission has no way of knowing what selection, combination, or permutation of investments is “reasonably needed” since it is entirely possible that a more effective alternative to X exists and may in fact even be implemented by the company. The Commission has already warned RIE that “needed investments” and “beneficial investments” are “not the same.” Report and Order 11–12, *In re:*

*The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2026 Proposal*, Commission Docket No. 24-54-EL (filed July 17, 2025).

And to distinguish the investments that are truly needed in the coming year for the short and long term safety and reliability of the system from those that are merely beneficial, the Commission must understand the full breadth and timing of investments that are planned by RIE.

**IV. The ISR Statute is Not a Fast-track Cost-Recovery Scheme, But Rather a Structured Way of Compensating and Incentivizing an Enumerated Set of Investments.**

RIE's basis for planning to invest outside of the ISR statute is a claim that the general rate recovery procedure must always be available, since the ISR statute was never intended to displace traditional ratemaking. *See* RIE Legal Memorandum 5–6. According to RIE, “the Company has not only the option, but the obligation, to make needed investments, and the Company can then seek cost recovery through traditional ratemaking in base distribution rate cases.” *Id.* at 8 (citing Report and Order 16 n.54, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2026 Proposal*, Commission Docket No. 24-54-EL (filed July 17, 2025)).

The Attorney General agrees that the ISR statute does not prohibit investments that are separate from the ISR budget. As the Commission held, “if the Company, despite a Commission ruling determines that it must make an investment in the system that is prudent, it has the legal obligation to do so and it may request cost recovery no later than the next rate case.” Report and Order 16 n.54, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2026 Proposal*, Commission Docket No. 24-54-EL (filed July 17, 2025) (quoting Report and Order 16, *In re: The Narragansett Electric Company d/b/a Rhode Island Energy's Electric Infrastructure, Safety, and Reliability Plan FY 2024 Proposal*, Commission Docket No. 22-53-EL (filed Dec. 1, 2023)). However, the Company

misconstrues the Commission's determination to mean that *planned* investments for safety and reliability can be pursued without an opportunity for the Commission (and Division) to review known costs and expected system benefits while determining the need for and reasonableness of other concurrent investments seeking immediate recovery under the ISR mechanism. *See e.g.* RIE Legal Memorandum at 8 (using a Commission determination that “[n]othing [ ] prohibits the Company from making needed investments and seeking cost recovery in its next rate case” to support regular and intentional planning of additional ISR-eligible investments outside of the ISR and the purview of ISR Plan review.)

As discussed *supra* page 2, the Rhode Island legislature has directed utilities such as RIE to address four different categories of investments in their ISR plans. R.I. Gen. Laws § 39-1-27.7.1(d)(1) to (4). Investments in those categories for which the Company is seeking special rate treatment under the ISR statute are reviewed under a different standard. *See* Booth Report 22 (discussing RIE's assertion that the non-ISR projects “are not subject to the same review process and standard”). Any investments for which the Company seeks recovery in a rate case will be subject to the applicable standard at that time. However, the Commission should reject RIE's attempt to evade full review under the ISR statute standard by limiting the ability to fully understand the Company's full investment plan and information that is specifically applicable to consideration of the need for and reasonableness of ISR projects.

## **V. Conclusion**

RIE cannot circumvent the ISR planning process by seeking immediate recovery to a set budget, while continuing to rapidly invest elsewhere in the same types of capital investments while evading review or consideration of proper pacing. Such efforts impede the Division's ability to review the Company's system and its needs, along with ratepayer financial impacts. At the same time, it obstructs the Commission's ability to determine whether RIE's investments and spending

are “reasonably needed” in the “short and long term.” RIE’s attempt to bypass the ISR process also severely undermines the purpose of ensuring that the Commission apply a certain standard when assessing the Company’s requested recovery in rates.

The Company’s interpretation of the regulatory landscape cannot stand, and it cannot use creative accounting to increase capital investment at the ultimate expense of ratepayers. The Commission must force the Company to pace its investments as required under the ISR statute to ensure that only capital investments reasonably necessary in the short and long term are pursued, in light of the Company’s full plan for investment. The Company cannot hide from view rapid infrastructure buildout that will ultimately render essential utility services unaffordable for Rhode Islanders.

Respectfully submitted,

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Dated: March 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2026, the original and five hard copies of this Reply were sent via in hand-delivery to Stephanie De La Rosa of the Public Utilities Commission, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of the Reply were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas M. Vaz