

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs and Related “Affected System Operator” Studies

Docket No. 4981

THE EPISCOPAL DIOCESE OF RHODE ISLAND’S
MOTION FOR RECUSAL, WITHDRAWAL OF NOTICE AND
FURTHER ASSURANCE AGAINST BIAS

The Episcopal Diocese of Rhode Island objects to the Chair’s participation in this docket on remand and to his “Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner’s Brief.” **Exhibit A.** The Chair must recuse himself from this proceeding. The Notice contains biased advocacy and must be withdrawn. Once the Chair recuses, the Diocese asks the two Commissioners remaining on this docket to consult with another independent and appropriate authority to determine whether the Commission can still impartially decide docket 4981 despite the Chair’s prejudicial communication.

i. Chair Geratowski Must Recuse for the Reconsideration of Order 23811.

Chair Geratowski must recuse himself from docket 4981 and from any reconsideration of Order 23811. The Chair appeared to have recused himself on the Supreme Court’s first remand. He did not participate in that first open meeting in which the Commission reconsidered Order 23811. However, the Chair now reinserts himself and his opinions and advocacy in this case. On May 3, 2021, the Chair sent Diocese counsel a letter in which he footnotes that “The reason I did not participate in the open meeting discussion on February 1, 2021, was not a recusal, but

simply a practical consideration, given that my two fellow commissioners were involved in the original decision, and therefore my participation responding to the remand was unnecessary at that time.” **Exhibit A**. The Chair has not explained why his participation is necessary and not conflicted at this stage. Subsequently, on May 19, 2021, the Chair issued his “Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner’s Brief” to the attorneys on this docket. **Exhibit B** (the Notice). The Diocese objects to the Chair’s participation in the remand of this docket for two reasons: 1) because the Chair worked as a Senior Regulatory Advisor to the Division at the time Docket 4891 was decided and cannot be impartial regarding the propriety of the Division’s consultation with National Grid in this proceeding;¹ and 2) because the Notice contains advocacy against the Diocese position and, therefore, demonstrates bias. The Diocese asks the Commission to withdraw the Notice and to determine how to safeguard neutrality of this adjudication moving forward in this docket.

To maintain public confidence in the fairness of the agency’s decision making, an agency adjudicator must not prejudge a matter before the agency. Champlin’s Realty Assoc. v. Tikoian, 989 A.2d 427, 443 (R.I. 2010) (citing Davis v. Wood, 427 A.2d 332, 337 (R.I.1981); see also Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 185 (R.I. 2008), cert. denied, 555 U.S. 955 (2008)). “An adjudicator must recuse himself or herself when he or she possesses “a ‘personal bias or prejudice by reason of a preconceived and settled opinion of a character calculated to impair his [or her] impartiality seriously and sway his [or her] judgment.’” Id. (quoting Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1246 (R.I. 1999).

¹ <http://www.ripuc.ri.gov/generalinfo/meetcommish.html>

Based on this standard and the actions of the Chair, neither the Diocese nor the public can have confidence in the Chair's impartiality.

The Commission's website describes the Chair's background to include, "Prior to his appointment, he served as a Senior Regulatory Advisor to the Rhode Island Division of Public Utilities and Carriers." Given his history of work as regulatory advisor to the Division, the Chair cannot be neutral on a question of whether the Division's collaboration with National Grid was improper and prejudiced this case.

The Chair's Notice argues that the Petitioner's brief "makes two statements which do not appear to be supported by any information that is in the current record before the Commission." He then goes further to dig up a Diocese filing from docket 4981 and take issue with it. Among other argument, he contends that "[w]ith respect to Petitioner's assumption about New England Power Company ownership, the Chairman points out (through administrative notice of proceedings recently occurring in Docket 4770) that Narragansett Electric owns transmission facilities in Rhode Island." The four-page Notice requires substantive response to the Chair's advocacy on specific matters of fact no later than May 24, 2021, one day before the deadline for prefiled testimony in this docket (Commission Rules Of Practice and Procedure 1.21(E) – direct testimony shall be prefiled at least fourteen (14) days prior to the scheduled hearing, scheduled for June 9 if the Commission allows it) and two days before the Diocese must generate its reply brief. This, despite the Division's admission that this docket addresses issues of law, not matters of fact.² "An agency adjudicator must not become 'an advocate or a participant' in a proceeding

² Division's Response Brief (May 14, 2021), p. 9 ("This Matter Pertains Solely to Questions of Law Involving the Application of State and Federal Statutes, Regulations, and Applicable Tariffs to Undisputed Facts").

and must remain neutral.” Tikoian, 989 A.2d at 443. Here, the Chair has inappropriately inserted himself as an advocate providing biased argument against a party. At this stage of the Supreme Court’s remand, the Diocese cannot properly be forced to present its case for reconsideration to a Commission chaired by an advocate against them.

If the Chair does not voluntarily recuse himself, the Diocese requests a hearing on this motion before oral argument to present more evidence of the Chair’s bias that is too detailed for time to allow its documentation and filing as time allows now.

ii. The Diocese is Entitled to and Requests the Commission’s Protections Against Bias.

The Diocese asks the Commission to withdraw the Notice. In addition to its prejudicial effect, it requests factual information that is irrelevant to the matter on remand. Docket 23811 decided issues of law based on agreed facts. Those facts are not now to be revisited, revised or supplemented. As one specific example, the agreed facts establish that New England Power conducted the study regarding potential impacts to its transmission system.

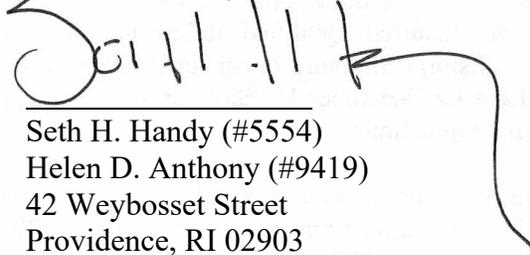
The Notice is sufficiently prejudicial to question whether the remaining members of the Commission can remain neutral in deciding this matter on reconsideration. The Diocese asks the other two Commissioners to take the necessary time to make that determination in consultation with another independent and appropriate authority and to institute any remedial measures

deemed necessary and warranted as a result of that consultation.

**THE EPISCOPAL DIOCESE OF
RHODE ISLAND**

By its attorneys,

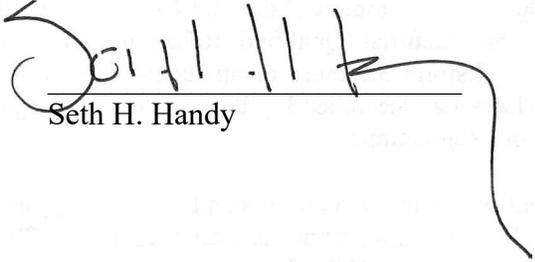
HANDY LAW, LLC

A handwritten signature in black ink, appearing to read "Seth H. Handy", is written over a horizontal line. A long, curved arrow-like stroke extends from the end of the signature to the right.

Seth H. Handy (#5554)
Helen D. Anthony (#9419)
42 Weybosset Street
Providence, RI 02903
(401) 626-4839
seth@handylawllc.com

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2021, I delivered a true copy of the foregoing document to the service list by electronic mail.



Seth H. Handy

EXHIBIT A

Chair's Letter to Seth Handy, Esq.

May 3, 2021



STATE OF RHODE ISLAND
Public Utilities Commission

89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500

Chairman Ronald T. Gerwatowski
Commissioner Abigail Anthony
Commissioner John C. Revens, Jr.

May 3, 2021

Seth Handy, Esq.
Handy Law, LLC
42 Weybossett Street
Providence, RI 02903

Re: Investigation Regarding Allegations of Ex Parte Communications
Occurring in Docket 4981

Dear Mr. Handy:

In reviewing pleadings that have been recently filed in Docket 4981 on behalf of your client, the Episcopal Diocese of Rhode Island, I noted statements that appear to indicate that you are personally aware or have been made aware through others of *ex parte* communications that occurred in the proceedings in Docket 4981 prior to the appeal being taken.

If I understand your statements correctly, it appears that you are indicating that prior to the Commission issuing its order on April 14, 2020 in Docket 4981, staff of the Commission had *ex parte* communications with an employee or employees of the Division of Public Utilities and Carriers (Division) who you maintain "consulted with the Commission on its decision." (page 4 of "The Episcopal Diocese of Rhode Island Objection," dated April 21, 2021; and page 2 of "The Episcopal Diocese of Rhode Island Brief," dated April 30, 2021) As Chairman of the Public Utilities Commission, it is my duty to investigate the extent to which any statutory or other rules may have been violated by the Commission staff or parties participating in a Commission docket. For that reason, I am seeking further information.¹

Accordingly, I am asking you to provide more specific disclosure of the details of the *ex parte* communications to which you are referring in your pleadings. An allegation of such kind is an extremely serious matter which implicates ethics rules and has the potential to be damaging to the careers and personal reputation of the individuals that are alleged to be involved, as well as

¹ Given the statement you made in footnote 6 to your recently filed brief on April 30, I believe it may be helpful and important to clarify that I have never been involved in any way for or with the Division in Docket 4981, including without limitation the period when I had a consulting contract with the Division. Nor have I ever had any dealings or communications whatsoever with National Grid on Docket 4981 or anything that could reasonably relate to it. In fact, I retired from National Grid nearly seven years ago in 2014. The reason I did not participate in the open meeting discussion on February 1, 2021 was not a recusal, but simply a practical consideration, given that my two fellow Commissioners were involved in the original decision and, therefore, my participation responding to the remand was unnecessary at that time.

the agency itself. For that reason, it is critical for me to obtain the specific details of any *ex parte* events. Depending upon the circumstances and details, the information would be needed to determine appropriate disciplinary or other actions that I may need to take in response, acting in my capacity as Chairman.

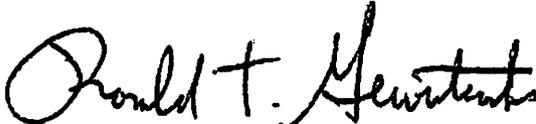
In this context, I respectfully request that you please provide the following information:

- (1) Indicate the dates between October 9, 2019 and April 14, 2020 when the *ex parte* communications occurred,
- (2) Identify the individual(s) from the Commission who participated in the *ex parte* communications and the individuals with whom the communications occurred, and
- (3) Provide a description of the substantive content of the *ex parte* communications (Note: including as much detail as possible would be very helpful and appreciated).

At this time, I am not asking for your statement to be put into the form of an affidavit. Rather, a letter will suffice. However, I may at some point need to request that the information be confirmed under oath.

Thank you in advance for your cooperation regarding this matter which I take very seriously. Please provide a response as soon as possible, but no later than the close of business on May 7.

Sincerely,

A handwritten signature in black ink that reads "Ronald T. Gerwatowski". The signature is written in a cursive, flowing style.

Ronald T. Gerwatowski
Chairman

ec: Commissioner Abigail Anthony
Commissioner John Revens
Patricia Lucarelli, Esq.
Christy Hetherington, Esq.,
Adam Ramos, Esq.
Gregory Schultz, Esq.

EXHIBIT B

Chair's Requested

“Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to
Update Information Stated in Petitioner’s Brief”

May 19, 2021



STATE OF RHODE ISLAND

Public Utilities Commission

89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500

Chairman Ronald T. Gervatowski
Commissioner Abigail Anthony
Commissioner John C. Revens, Jr.

To: Parties in Docket 4981
From: Patricia Lucarelli
Date: May 19, 2021

Subject: Notice of Inclusion of Certain Documents from Docket 4973 Into the Record and Request to Update Information Stated in Petitioner's Brief

The Chairman has requested that I provide this Notice and Request to the parties well in advance of the hearing on June 2, 2021. The Chairman was not involved in the initial proceedings below and, for that reason, he has reviewed the complete record of the proceedings. In that review, two separate and unrelated issues have been identified.

I. Inclusion of Filings in Docket 4973 Into the Record of this Proceeding

In reviewing the entire record of the proceedings in this Docket 4981, it was noted that there are several references that were made by the parties to Docket of 4973. As the parties are aware, it was a Petition for Dispute Resolution in Docket 4973 and its associated mediation process which commenced the proceedings at the Commission regarding the Episcopal Diocese's requests for relief. That docket then proceeded in parallel with Docket 4981. The references to Docket 4973 and its associated mediation process appeared as follows:

- (a) Narragansett Electric's Brief filed in Docket 4981 on November 22, 2019, page 10, footnote 10;
- (b) Reply of the Episcopal Diocese filed on November 27, 2019, page 2 & footnote 2, page 4, page 5, footnote 5; and
- (c) Comments of Narragansett Electric filed on January 23, 2020, page 4.
- (d) The Petitioner then cited Docket 4973 in its Brief filed in this remand on April 30, 2021, pages 15-16.

Since the Petitioner has raised issues in the filings with both the Commission (in this remand) and the Supreme Court (initiating the appeal) about how the prior proceedings were conducted, the Chairman intends to include certain public documents from Docket 4973 as a record of the travel of the case that occurred earlier, to inform the Supreme Court of how the dockets proceeded in parallel. All of the documents currently available on the Commission's website listed under Docket 4973 would be included in the record for that purpose. Specifically, the following:

- (i) Petition for Dispute Resolution, filed by the Petitioner (Episcopal Diocese) on September 12, 2019;
- (ii) The Interim Report of the Mediator, Cynthia Wilson-Frias, published on December 30, 2019;¹
- (iii) Mediator's Recommendations, published April 22, 2020; and
- (iv) Letter from the Episcopal Diocese filed April 23, 2020.

If any party has an objection to the inclusion of any of these documents in the record of the travel of the case, the objection will be considered at oral argument. Please notify the Commission by no later than noon on June 1 if you intend to raise an objection at oral argument.

II. Request for Updated Information

The second matter to which the Chairman wishes to draw the parties' attention is not necessarily within the scope of this remand, but relates to information that could have been material to the assumptions that were made by the Commission in the original proceedings, had the information been available. Specifically, at the time of ruling on the Petition, the details of the transmission modifications or improvements that Narragansett Electric claimed should be the cost responsibility of the Petitioner were not known. At that time, it is apparent the parties were waiting for the results of a transmission impact study which would identify the transmission modifications or improvements.

Regarding the prospective transmission improvements or modifications, the Petitioner's Brief filed on April 30, 2021 in this remand proceeding makes two statements which do not appear to be supported by any information that is in the current record before the Commission:

- (1) A reference on pages 15-16 to "over \$300,000 to fix a transmission line that was already overloaded;" and
- (2) The statement on page 19: "The transmission system improvements at issue in Docket 4981 are far far removed from the customer's premises."²

Based on the Petitioner's second statement quoted above, it appears to the Chairman that the disputed transmission study may have been completed and, consequently, the parties may now be aware of the transmission improvements or modifications referenced by the Petitioner, their location, and the associated costs that Narragansett Electric has sought to allocate to the Petitioner.

The details of the improvements could be important new information. Those details could have had an impact on how the Commission interpreted R.I.G.L. §39-26.3-4(a) if they had been known at the time the Order. A question of statutory interpretation arises because the Petitioner made the following statement in a reply brief during the earlier proceedings about the assumed ownership of the facilities being modified:

¹ Footnote 1 on page 2 of the Interim Report (which was also signed by the Petitioner and Narragansett Electric), states in pertinent part: "Following discussion at the October 4, 2019 meeting during which the mediator opined that she could not provide a ruling on one of the claims, the Diocese filed a Declaratory Judgment petition which was docketed by the Commission as Docket No. 4981."

² The words "far far" is an accurate quote. The word "far" was repeated, which we assume was written to place emphasis on a great distance (as opposed to a typo).

“The Rhode Island statute states that ‘the electric distribution company may only charge an interconnecting, renewable-energy customer for any system modifications to its electric power system specifically necessary for and directly related to the interconnection.’ R.I. Gen. Laws §39-26.3-4.1(a) Despite [Narragansett Electric’s] misguided reference to ‘legislative history,’ NEP’s transmission system very distinctly and definitely is not part of [Narragansett Electric’s] ‘electric power system.’ It is clear from [Narragansett Electric’s] comments that the transmission system is owned by NEP – not [Narragansett Electric].”³ (emphasis in original)

With respect to the Petitioner’s assumption about New England Power Company ownership, the Chairman points out (through administrative notice of proceedings recently occurring in Docket 4770) that Narragansett Electric owns transmission facilities in Rhode Island.⁴ Further, Narragansett Electric also may own distribution facilities that are used for transmission purposes in Rhode Island.⁵ While knowing the ownership or classification of the modified facilities may not have changed the outcome for relief, it could have affected the reasoning that was set forth in the Order when applying the statute to the facts under state law.

In light of the foregoing, the Chairman asks the Petitioner and Narragansett Electric to each provide a project update by responding to the following multi-part question:

Referring to the Petitioner’s Brief on page 19 that states: “The transmission system improvements at issue in Docket 4981 are far far removed from the customer’s premises,” please indicate the status of the transmission impact study and describe:

- (i) where the referenced transmission improvements or modifications are proposed to be made and the relative distance from the Eastern Array,
- (ii) the facilities that will be improved or modified, including voltage and whether they are classified as transmission or distribution used for transmission,
- (iii) the specific legal entity-owner of the facilities to be improved or modified for transmission purposes (i.e., Narragansett Electric, New England Power Company, or an owner not affiliated with National Grid, if known),
- (iv) the nature of the improvements or modifications, and
- (v) the estimated cost (if any) that Narragansett Electric maintains should be allocated to the Petitioner from the referenced transmission system improvements or modifications.

Please note that this request for updated information should **not** be construed as a decision to place the responses into the record of the remand proceedings. The Chairman is aware of the legal question that has been raised regarding the scope of the remand which needs to be addressed at oral argument. Whether and how any new information should be treated or considered, if at all, will be determined after the responses are provided and the parties have an

³ See “The Episcopal Diocese of Rhode Island Reply to TNEC’s Public Comment,” p. 5

⁴ See Docket 4770 at <http://www.ripuc.ri.gov/eventsactions/docket/4770page.html> under “Compliance Financial Reports”, response to PUC 3-10, Attachment 3-10 “New England Electric Transmission-Distribution Classification Asset Rules Document,” pages 4-5, and PUC 4-11. The response indicates that Narragansett Electric owns transmission lines and transmission substations in Rhode Island.

⁵ The response to PUC 1-2, page 3 in Docket 4770 indicates that there can be distribution facilities owned by Narragansett Electric that are used for transmission purposes, the cost of which flow through transmission rates.

opportunity to address any issues regarding the content and relevancy of the responses – procedural or otherwise – at oral argument. The responses are due no later than close of business, May 24.