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June 9, 2021

VIA E-MAIL AND FIRST CLASS MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Re: *Episcopal Diocese of Rhode Island – Petition for Declaratory Judgment on Transmission System Costs and Related “Affected System Operator” Studies*, PUC Docket No. 4981

Dear Ms. Massaro:

Enclosed please find an original plus nine copies of The Narragansett Electric Company d/b/a National Grid’s Objection to the Episcopal Diocese of Rhode Island’s Motion for Reconsideration, which is to be filed in the above-entitled docket.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Adam M. Ramos".

Adam M. Ramos

AMR:cw
Enclosures

cc: Docket No. 4981 Service List

61062200 (57972.182923)

PUC Docket No. 4981 - Episcopal Diocese of RI – Petition for Declaratory Judgment on Transmission System Costs and Related "Affected System Operator" Studies Service List Updated 5/21/2021

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STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

Petition of the Episcopal Diocese of Rhode Island :
for Declaratory Judgment on Docket No. 4981 : Docket No. 4981
Transmission System Costs and Related :
“Affected System Operator” Studies :
:

THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID’S
OBJECTION TO THE EPISCOPAL DIOCESE OF RHODE ISLAND’S
MOTION FOR RECONSIDERATION

I. INTRODUCTION

The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) objects to the Motion for Reconsideration filed by The Episcopal Diocese of Rhode Island (“Petitioner”) seeking reconsideration of the Rhode Island Public Utilities Commission’s (the “Commission”) decision granting, in part, the Company’s Motion to Strike and the Rhode Island Division of Public Utilities and Carriers’ (the “Division”) Objection and Motion to Quash Petitioner’s Proposed Submission of Additional Evidence (the “Motion to Quash”) (collectively, the Motion to Strike and the Motion to Quash are referred to herein as the “Motions”). That decision precluded the admission of (1) the Pre-Filed Testimony of Matt Ursillo (the “Ursillo Testimony”), (2) the Pre-Filed Testimony of Dr. Kenneth Payne (the “Payne Testimony”), (3) the Pre-Filed Testimony of Scott Milnes (the “Milnes Testimony”), (4) the Pre-Filed Testimony of Fred Unger (the “Unger Testimony”), and (5) the Pre-Filed Testimony of Karl R. Rábago & John Farrell (the “Rábago-Farrell Testimony”) (collectively, the Ursillo Testimony,

the Payne Testimony, the Milnes Testimony, the Unger Testimony, and the Rábago-Farrell Testimony are referred to as the “Precluded Pre-Filed Testimony”).¹

Petitioner has failed to meet its burden to seek relief from the Commission’s decision precluding admission of the Precluded Pre-Filed Testimony under 810-RICR-00-00-1.29. The Commission reached its decision to strike and quash the Precluded Pre-Filed Testimony based on proper procedure; there was no mistake or inadvertence by the Commission, and there is no other reason justifying relief from the Order.² The Precluded Pre-Filed Testimony is beyond the scope of the Rhode Island Supreme Court remand to the Commission and is not relevant to the issues before the Commission.

First, Petitioners’ complaint about process is unfounded. The Commission is the master of the proceedings before it. The Commission has the discretion to establish the process and determine the manner of filings and the content of proceedings before it. The Commission’s decisions to require Petitioner to make its objections to the Motions orally on short notice and to limit the scope of the hearing on remand were well within its discretion.³

¹ The Commission determined it would admit the Pre-Filed Testimony of Dennis Burton and continued the June 2, 2021 hearing until June 9, 2021 at 10:00 a.m. for admission of that testimony and cross-examination of Mr. Burton. The Company maintains and continues to press its objection to the admission of Mr. Burton’s testimony as beyond the scope of the Commission’s jurisdiction on remand. *See Valley Gas Co. v. Burke*, 415 A.2d 165, 165 (R.I. 1980) (mem.) (affirming Commission decision denying motion to reopen record noting that nothing in the remand order “authorize[d] the taking of additional evidence”).

² Petitioner styles the motion as a Motion for Reconsideration. Unlike the Division’s Rules of Practice and Procedure, the Commission Rules do not provide for such a motion. Petitioner relies on 810-RICR-00-00-1.29 as the basis for its motion, which is the rule for seeking relief from an order on the basis of mistake, inadvertence, or excusable neglect. Accordingly, this objection addresses the standard set forth in 810-RICR-00-00-1.29 for obtaining relief from an order. In reality, however, Petitioners’ arguments are more appropriate for an appeal from the Commission’s order. They are challenges to the Commission’s exercise of discretion – not assertions that the Commission made a mistake or inadvertent error, or that Petitioner should receive relief from the consequences of its own excusable neglect.

³ The Company maintains that the Commission has impermissibly exceeded the scope of the remand by allowing the admission of the Burton Testimony. *See Butterfly Realty v. James Romanella & Sons, Inc.*, 93 A.3d 1022, 1031–32 (R.I. 2014) (“lower courts * * * that receive our remand orders may not exceed the scope of the remand or open up the proceeding to legal issues beyond the remand.”) (quoting *Pleasant Management LLC v. Carrasco*, 960 A.2d 216, 223 (R.I. 2008) ((quoting *Willis v. Wall*, 941 A.2d 163, 166 (R.I. 2008))).

Second, the Precluded Pre-Filed Testimony is irrelevant to the proceedings on remand and to the issues before the Commission in this docket. Petitioner established the scope of this proceeding when it filed its petition for declaratory judgment. The Commission answered the legal questions Petitioner presented regarding whether the Company could charge interconnecting customers for costs of Affected System Operator (“ASO”) transmission studies and ASO transmission upgrades required for the safe interconnection of distributed generation facilities. The Commission decided those questions based on Agreed Facts presented jointly by the Petitioner and the Company. This proceeding on remand is to address only a very narrow question: whether the communications between National Grid’s counsel and the Division’s counsel, which are contained in the affidavit of new evidence Mr. Burton submitted to the Supreme Court, alter the legal conclusions that the Commission reached on the legal questions presented by the Petitioner based on the Agreed Facts to which the Petitioner consented.

The Commission correctly concluded that the Precluded Pre-Filed Testimony is far afield of that narrow scope. The Precluded Pre-Filed Testimony generally falls into two categories: (1) opinion testimony alleging flaws in the regulatory process that purportedly interfere with the regulators’ ability to properly fulfill their regulatory function; and (2) complaints about how the renewable distributed generation industry has been disadvantaged by the Company’s policies, the Division’s positions, and the Commission’s decisions regarding distributed generation interconnection costs and processes. These categories of testimony bear no relation to the issues before the Commission regarding whether the Company can fairly charge an interconnection customer for the costs of ASO transmission studies and ASO transmission upgrades necessary for interconnection of distributed generation projects. The Precluded Pre-Filed Testimony certainly is unrelated to whether the communications contained within the Burton affidavit of

new evidence contain facts that should change the Commission's legal analysis of those issues on remand. The Commission, therefore, properly struck the Precluded Pre-Filed Testimony from the record of this proceeding.

II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner's motion for reconsideration comes after the Commission conducted a comprehensive oral argument hearing on June 2, 2021. At that hearing, the Commission heard from the parties regarding the scope of the Supreme Court remand, as well as their positions on the proper procedure for the Commission to carry out its obligations to the Supreme Court under that remand. In advance of the oral argument hearing, the Commission specifically requested briefing and informed the parties that it would hold oral argument to determine whether any further hearing was necessary. The Commission did not direct the parties to submit any pre-filed testimony; nor did the Commission definitively schedule an evidentiary hearing. Rather, the Commission advised the parties that it would determine whether it would require any further proceedings after completing the oral argument hearing.

Despite this clear direction from the Commission, Petitioner decided unilaterally to submit the Precluded Pre-Filed Testimony to assert unfounded arguments about alleged bias and alleged undue influence that allegedly affected the Commission's determination in Order No. 23811 at the conclusion of the initial proceeding in this docket. Shortly before the oral argument hearing, the Division filed the Motion to Quash and the Company filed the Motion to Strike seeking to preclude all the testimony submitted by the Petitioner because it is beyond the scope of the remand and is irrelevant to the issues before the Commission. At the oral argument hearing, the Commission determined that it would act on those motions and directed Petitioner's

counsel to provide any arguments objecting the motions orally.⁴ After hearing argument on the motions, the Commission determined that it would permit the Burton Testimony, but that it would grant the Motion to Strike and the Motion to Quash as to the Precluded Pre-Filed Testimony. The Commission explained that it thought some of the Burton Testimony addressed the content of the affidavit of new evidence Mr. Burton submitted to the Supreme Court, but that the Precluded Pre-Filed Testimony did not address the issues before the Commission.

Now, Petitioner seeks “reconsideration” of that decision, asserting that it was based on deficient procedure and was an abuse of discretion – claiming those grounds as a basis for the relief from an order under 810-RICR-00-00-1.29 for mistake or inadvertence. Specifically, Petitioner complains that it was not given sufficient opportunity to object to the Motion to Strike and Motion to Quash, that it has been denied its alleged right to a hearing under Commission rules, and that the Commission has improperly interpreted the scope of the Supreme Court remand. All these arguments fail.

III. ARGUMENT

A. The Commission Provided Petitioner With Sufficient Process.

The Commission has the statutory authority to promulgate the rules and regulations that “govern[] the procedure to be followed in any matter that may come before it for a hearing[.]” R.I. Gen. Laws § 39-1-11. The Commission has exercised this authority through promulgation of its Rules of Practice and Procedure (the “Commission Rules”). In its conduct of this remand proceeding, including its consideration of the Company’s Motion to Strike and the Division’s Motion to Quash, the Commission has complied with the procedural rules it promulgated.

⁴ The Commission Chairman noted that the Division and the Company could have made their motions orally at the hearing, which would have obligated Petitioner to respond orally as well.

First, the Commission Rules authorize the Commission to exercise its discretion to alter or restrict the time and manner in which a party may object to a motion. Rule 1.16(D) specifically provides that “[t]he time for filing objections may be varied by order of the Commission. 810-RICR-00-00-1.16(D). Further, the 10-day period for filing an objection to a motion applies only to a “written motion” – not to an oral motion. *Id.* As the Commission Chairman identified, both the Company and the Division could have made their respective motions orally at the hearing rather than submitting written filings shortly before the hearing. One of the purposes of the oral argument hearing was to determine the scope of the Commission’s process on remand, which necessarily included whether the pre-filed testimony filed by the Petitioner would be a part of the record for the Commission to consider. Accordingly, it was well within the Commission’s discretion to vary the time and manner for Petitioner to respond to the motions and to address the merits of the motions after hearing oral argument from Petitioner on the basis of its objections.⁵

Similarly, Petitioner’s argument that the Commission’s decision striking the Precluded Pre-Filed Testimony means that the Commission is not conducting a hearing (as Petitioner alleges is required by the Supreme Court’s remand order) is procedurally meritless. Petitioner bases this argument on the language of the remand order directing the Commission “to hold a hearing to consider the new evidence and to provide findings of fact and citations to the rules upon which the Commission may rest its conclusion.” From this clause, Petitioner extrapolates an alleged right to submit as much evidence as it wants on topics that far exceed the scope of

⁵ Petitioner’s argument that the motions were deficient because they lacked a certification that a request for concurrence was requested but denied is baseless and hypocritical. The Diocese makes this argument in the very same motion in which it has failed to include precisely the same certification. It is beyond peradventure that there is no concurrence between the parties on the subject matter of the scope of this remand and the evidence the Commission should consider.

Petitioners' original request for declaratory judgment, and certainly the scope of the much more limited remand.

Rhode Island General Laws, section 39-5-5 authorizes the submission of an affidavit of new evidence. If the Supreme Court determines the affidavit of new evidence “warrant[s] reconsideration of the matter by the [C]ommission[,]” then it directs the Commission to “confirm, alter, amend, rescind, or reverse the judgment or order which was appealed.” R.I. Gen. Laws § 39-5-5. Nowhere does the statute suggest that any remand should trigger a new inquiry into issues that were not a part of the original proceeding or the subject of the original order. Accordingly, there is no basis in the statutory language for the Commission to conclude that it should admit testimony that goes beyond the content of the affidavit of new evidence and its application to the facts and legal questions presented by the Petitioner's requests for declaratory judgment in this docket to satisfy the requirements of the Supreme Court's remand.

Petitioner's argument relying on the content of 810-RICR-00-00-1.21 falls equally flat for at least two reasons. First, there is no statement in the Supreme Court order or in R.I. Gen. Laws § 39-5-5 that requires a hearing with all the elements described in that rule. Rather, the Supreme Court directed a hearing – without any definition as to what that entailed. The oral argument held by the Commission on June 2, 2021 constitutes a hearing that would satisfy the requirement that the Commission hold a hearing.

Second, Petitioner's argument ignores other language in the text of the rule that unambiguously provides that a “hearing” before the Commission does not provide an unfettered right to introduce any and all pre-filed testimony Petitioner cares to produce. Rather, 810-RICR-00-00-1.21 provides broad discretion for the Commission and the Chairman to determine what, if any, evidence it will admit as part of a hearing. For example, 810-RICR-00-00-1.21(C) provides

that “[t]he presiding officer shall make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing, unless such authority is delegated to Commission counsel.” Similarly, 810-RICR-00-00-1.21(H) provides that “[t]he Commission may limit appropriately the number of witnesses that may be heard upon any issue.” The text of the rule thus provides no support for Petitioner’s contention that it must have the right to introduce the Precluded Pre-Filed Testimony for a “hearing” to be conducted.⁶

There is, therefore, no basis for Petitioner’s procedural arguments, and the Commission should reject them.

B. The Commission Correctly Determined the Pre-Filed Testimony Is Irrelevant.

Although Petitioner’s disagreement with the Commission’s decision on the Motion to Strike and Motion to Quash is not a basis for Petitioner to obtain relief from the order under 810-RICR-00-00-1.29, it is nevertheless apparent that the Commission’s decision to grant the Motions was correct.

Petitioner baldly asserts that the Division’s communications with the Company, reflected in the affidavit of new evidence, somehow infected the proceeding with bias and undue influence such that the Commission could not reach an independent decision on the merits of the matter without being tarnished with the impact of these alleged ills. It is on this house of cards perched upon a thin reed that Petitioner bases its argument that the Pre-Filed Testimony, which imagines the potential for regulatory capture and unfair treatment of renewable energy developers seeking

⁶ Petitioners’ position that it had to file pre-filed testimony 14 days prior to the date the “hearing” was to commence also is baseless. First, Petitioner based the scheduled hearing date only on a tentative hold date the Commission set in the event that it determined a further hearing was necessary after oral argument. Second, the Commission Rules provide only that pre-filed direct testimony shall be filed 14 days in advance of a scheduled hearing “[w]here time permits.” 810-RICR-00-00-1.21(E)(1). Third, the Commission Rules provide that “[t]he filing and service of testimony . . . shall be made in accordance with the pre-hearing conference schedule[.]” In this matter, the pre-hearing conference schedule did not call for the submission of pre-filed testimony.

to interconnect with the Company's electric grid, is now relevant to the inquiry before it on remand. This position is baseless.

There is no evidence of bias. The affidavit of new evidence shows nothing more than two parties to the proceeding communicating with one another as permitted by the rules and as happens in every proceeding. The Division and its counsel represent the interests of all ratepayers as the customer advocate. *See, e.g., Narragansett Elec. Co. v. Harsch*, 117 R.I. 395, 368 A.2d 1194 (1977) (noting the Division, in addition to having regulatory powers, is to appear on behalf of public as a party to present evidence and make arguments in rate cases before the PUC). The Company's counsel represented the Company. They shared their thoughts regarding their legal arguments on the issues before the Commission in this matter. There is no prohibition on that in the rules. *See* The Narragansett Electric Company d/b/a National Grid's Brief at 4-6.

Petitioner simply assumes bias and improper influence from the existence of the communications in the affidavit of new evidence. There is no evidence that the Division reached its position based on National Grid's communication of its position. Rather, the affidavit of newly discovered evidence shows that the Division engaged its own independent expert consultant to assist it in developing its position as the ratepayer advocate in this proceeding. Petitioner is simply dissatisfied that the Division did not agree with its position.

Finally, there is no evidence that the Commission weighed the Division's position more heavily than the positions of the other parties to the proceeding. Rather, all evidence indicates that the Commission independently evaluated the facts and applicable law and reached its conclusions on that basis. Thus, even if there was some flaw in the manner by which the Division determined the position it would take in this proceeding, it is immaterial. The

Commission acted as it is obligated to act – independently. And, it reached its conclusion in a well-reasoned and thoroughly supported decision reflected in Order 23811.

Accordingly, there is no basis for the Commission to expand the scope of this proceeding to inquire into the baseless areas of inquiry urged by Petitioner. The Commission reached the correct decision when it limited the scope of the remand hearing by striking and quashing the Precluded Pre-Filed Testimony.

IV. CONCLUSION

For these reasons, as well as those set forth in the Company’s Motion to Strike and the Division’s Objection and Motion to Quash Petitioner’s Proposed Submission of Additional Evidence, the Commission should deny Petitioner’s Motion for Reconsideration.

THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID

By Its Attorneys,



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Dated: June 9, 2021

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2021, I delivered a true copy of the foregoing document to the service list by electronic mail.



Adam M. Ramos

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