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June 2, 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 Motion to Strike, 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

61043184 (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 4/27/2021

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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
MOTION TO STRIKE**

I. Introduction

Pursuant to 810-RICR-00-00-1.16, The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) moves the Rhode Island Public Utilities Commission (the “Commission”) to strike: (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”), (5) the Pre-Filed Testimony of Dennis Burton (the “Burton Testimony”), and (6) the Pre-Filed Testimony of Karl R. Rábago & John Farrell (the “Rábago-Farrell Testimony”) (collectively, the Ursillo Testimony, Payne Testimony, the Milnes Testimony, the Unger Testimony, and the Burton Testimony, and the Rábago-Farrell Testimony are referred to as the “Pre-Filed Testimony”). Petitioner, the Episcopal Diocese of Rhode Island (the “Diocese”), submitted the Pre-Filed Testimony to the Commission for filing on May 25 and May 26, 2021. For the reasons set forth in this motion, the Pre-Filed Testimony is irrelevant to the matters currently before the Commission in this docket and represents an improper and impermissible attempt to expand the scope of this proceeding. The Commission,

therefore, should strike the Pre-Filed Testimony and clearly circumscribe this proceeding within the narrow limits of the Rhode Island Supreme Court remand.

This docket is addressed to the legal question of whether the Company can charge an interconnecting customer developing a distributed generation project for the costs of Affected System Operator (“ASO”) transmission studies and ASO transmission system upgrades that are necessary for the interconnection of the distributed generation project. In the original proceeding, the Company and the Diocese submitted Agreed Facts and presented questions of law to the Commission. The Commission concluded that the Company could properly charge those costs to interconnecting customers under existing tariffs, state law, and federal law. The Diocese disagreed with that decision and appealed it to the Rhode Island Supreme Court. That appeal is pending. That is the way the system is supposed to work. The Diocese, however, has sought to mutate that system and launch a collateral attack on the fairness of the legally established regulatory and adjudicatory process by introducing extraneous facts and opinion regarding the alleged impact of the application of the legal principles set forth in the Commission’s Order. The Commission should reject this improper attempt and strike the improper Pre-Filed Testimony submitted by the Diocese.

II. BACKGROUND AND PROCEDURAL HISTORY¹

This matter originated as an offshoot of the Diocese’s September 13, 2019 petition for dispute resolution in Docket No. 4973, asserting numerous claims and requests for relief related to the interconnection process for the Diocese’s proposed solar projects on its property in Gloucester, Rhode Island. After an October 4, 2019 meeting between the Diocese, the Company, and the mediator assigned to the dispute resolution process, the mediator opined that she could

¹ Although the Commission is familiar with the history of this docket, for purposes of this motion to strike, the Company restates the key aspects of the travel of this matter that are relevant to the Commission’s consideration.

not provide a ruling on the Diocese's claims regarding the treatment of ASO transmission studies and upgrades associated with the Diocese's projects. Accordingly, on October 9, 2019, the Diocese filed a petition for Declaratory Judgment with the PUC seeking eight different declarations regarding whether the Company may, pursuant to its tariff establishing Standards for Connecting Distributed Generation and under Rhode Island and federal law, charge the Diocese for costs associated with the ASO transmission studies and any necessary ASO transmission system upgrades.

On October 25, 2019, to facilitate the Commission's consideration of the Diocese's declaratory judgment petition, the Company and the Diocese submitted Agreed Facts. The issues before the Commission on the Diocese's declaratory judgment petition were limited to whether, on the Agreed Facts, the law permits the Company to charge an interconnecting generation customer, like the Diocese, for the costs of ASO transmission studies and any electric system upgrades required on ASO transmission systems for continued safe operation after interconnection.

The Company moved to intervene in this docket and filed an extensive memorandum of law. The Rhode Island Division of Public Utilities and Carriers (the "Division") also submitted reply comments in response to the Diocese's petition. The Diocese submitted a reply brief. The Commission also solicited and received public comments from other renewable energy developers. The Commission heard oral argument on February 25, 2020. Thereafter, the Commission held an Open Meeting on March 6, 2020 to review the law and the Agreed Facts and decide on the requested declarations from the Diocese. On April 14, 2021, the Commission issued Order No. 23811 (the "Order"), reflecting its Open Meeting decisions. At the Open Meeting and in the Order, the Commission concluded that the Company can pass through costs

of ASO transmission system studies and ASO transmission system modifications to distributed generation developers.² The Diocese timely obtained a statutory writ of certiorari under R.I. Gen. Laws § 39-5-1 to appeal the Order.

After the Commission entered the Order, on April 21, 2020, the Diocese sent the Division an Access to Public Records Act (“APRA”) request, seeking all communications between the Division and its counsel on the one hand, and the Company and its counsel on the other hand. The Division denied the APRA request. The Diocese filed a complaint with the Attorney General, and the Attorney General concluded that the Division should have produced the requested documents. On November 12, 2020, after the Attorney General’s decision, the Division produced the requested documents, which consist of 24 pages of email records.

After receiving the 24 pages of email records, on December 18, 2020, the Diocese filed an affidavit of new evidence with the Supreme Court pursuant to R.I. Gen. Laws § 39-5-5 attaching the 24 pages of email records and the Attorney General’s decision. R.I. Gen. Laws § 39-5-5 directs the Supreme Court to determine whether “the newly discovered evidence . . . [is] of such character and sufficient importance to warrant reconsideration of the matter by the commission[,]” and if it determines that it is of such a character, to “transmit a copy of the affidavit to the commission for further consideration, and . . . stay further proceedings in the supreme court for such time as it shall deem proper.” R.I. Gen. Laws § 39-5-5.

On January 12, 2021, the Rhode Island Supreme Court entered an Order directing the Commission to “consider the affidavit of new evidence and confirm, alter, amend, rescind, or reverse the Order being appealed . . . and report its action to this Court[.]” On February 11, 2021, pursuant to a properly noticed Open Meeting, the Commission considered the affidavit of

² The PUC made several findings and conclusions, including declining to interpret certain aspects of federal law and permitting “holds” on the timing of interconnection studies. *See* Order No. 23811 at 28-29.

new evidence and, after discussion, voted 2-0 to confirm the Order. On March 4, 2021, the Commission reported its action to the Rhode Island Supreme Court with a letter stating that “the Commission considered the affidavit together with the attached evidence and . . . [e]ach Commissioner indicated that the additional evidence did not change her respective interpretation of the law[.]” The Commission also attached a transcript of the Open Meeting reflecting the Commissioners discussions and consideration of the affidavit of new evidence. On March 24, 2021, the Supreme Court entered an Order remanding this matter for the PUC “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.”

On April 15, 2021, in response to the Supreme Court’s March 24, 2021 remand order, the Commission issued a procedural schedule and request for information. The Commission directed the Diocese to submit an Initial Brief by April 30, 2021 addressing five specific issues. It also set a May 14, 2021 deadline for the Company and the Division to submit Response Briefs, and a May 26, 2021 deadline for the Diocese to submit a Reply Brief. The Commission’s briefing questions sought the parties’ positions on whether the information in the affidavit of new evidence impacted any of the Agreed Facts upon which the Commission based its original decision and/or the conclusions of law the Commission reached. After the Diocese objected to the briefing schedule, the Commission clarified that it would review the briefs and consider oral arguments regarding the affidavit of new evidence to “determine whether any further hearings are necessary to appropriately respond to the Supreme Court’s Order of March 24.” The briefing schedule did not seek any pre-filed testimony or set a time for a new evidentiary hearing.

Although the Diocese submitted an Initial Brief on April 30, 2021, that brief did not respond to the Commission’s briefing questions.³ Rather, the Diocese has attempted improperly to expand the scope of this proceeding into an evaluation of the fairness of the regulatory processes established by law and regulation for the consideration of matters by the Commission. After the Company and the Division, through their Response Briefs, identified the evasiveness and impropriety of the Diocese’s Initial Brief, focused those Response Briefs on the irrelevance of the information contained within the affidavit of new evidence, and explained the inherent flaws in Diocese’s arguments, the Diocese doubled down on its attempts to transform this proceeding. Rather than re-focusing its Reply Brief on the actual issues before the Commission on remand, the Diocese instead filed the Pre-Filed Testimony and a Reply Brief that focus entirely on the alleged unfairness of the established regulatory process and not on the legal questions before the Commission. Specifically, the Pre-Filed Testimony is focused on the following:

- The Burton Testimony addresses Mr. Burton’s subjective belief that the Commission did not act as a neutral decision-maker based on the nature of the questions the Diocese’s counsel received and that Commission counsel’s questions were “based entirely on precedent and historical practice[;]”
- The Rábago-Farrell Testimony focuses on perceived problems with (1) maintaining integrity in utility policy developments; (2) “regulatory capture” allegedly causing regulators to be unintentionally doing the bidding of the utilities

³ Additionally, although the Commission has not established any discovery period for this proceeding on remand, the Diocese served data requests on the Division – all of which addressed the process by which the Division determined its position in the original proceeding before the Commission – not anything related to the application of facts to the legal questions presented.

they regulate; and (3) regulatory decision-making in the context of competitive non-utility customer generators;

- The Payne Testimony argues that the Commission and the Division need to take different actions to more rapidly address climate change concerns and the transition to renewable energy;
- The Milnes Testimony describes particular economic challenges Econox Renewables, Inc. has had with developing a renewable generation project, which largely mirror comments submitted as part of the initial proceedings in this docket;
- The Unger Testimony (which also largely mirrors The Heartwood Group, Inc.'s comments in the initial proceedings) describes alleged challenges with interconnection for renewable generation projects the Heartwood Group, Inc. has faced and provides Mr. Unger's subjective beliefs about how certain process improvements potentially could make it easier to facilitate new renewable generation; and
- The Ursillo Testimony recites the previous disputes Green Development and its related entities have had with the Company regarding the distributed generation interconnection process and its dissatisfaction with the results of those disputes, expressing the view that the Commission and the Division are not doing enough to support the development of renewable energy.

The Commission has not requested any pre-filed testimony from any party, nor has it indicated that it is admitting any additional evidence.⁴ The Company has complied with the

⁴ On May 19, 2021, the Commission issued a memorandum stating that, for completeness, it intended to include the materials from Docket No. 4973 in the record and asked the parties if they had any objections to doing so. On May

procedural schedule established by the Commission for consideration of the narrow question before the Commission on remand. All the extraneous and inapposite information submitted by the Diocese is inappropriate and should not be considered by the Commission in this proceeding. The Pre-Filed Testimony should be stricken.

III. ARGUMENT

It is appropriate to grant a motion to strike that is addressed to matters that are immaterial to the issues before the adjudicatory body. *See Long v. Dell, Inc.*, 93 A.3d 988, 1005-06 (R.I. 2014) (affirming order granting motion to strike affirmative defenses because the defenses were not applicable to the issues before the court). Here, the Pre-Filed Testimony (1) exceeds the narrow scope of the proceeding on remand; and (2) is immaterial to the legal questions before the Commission.

First, the proceeding on remand is limited only to whether the affidavit of new evidence should alter the Commission's original order concluding that the Company can charge interconnecting customers for the costs of ASO transmission studies and ASO transmission upgrades necessary to safely facilitate distributed generation interconnection. It is well established that "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." *Butterfly Realty v. James Romanella & Sons, Inc.*, 93 A.3d 1022, 1031–32 (R.I. 2014) (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))). This rule applies with equal force to remand orders directed to

24, 2021, the Company responded that it had no objection, but the inclusion of such materials will be addressed at oral argument on June 2, 2021. Additionally, the May 19, 2021 memorandum submitted a request for information and asked for responses from the Company and the Diocese by May 24, 2021. The Commission also indicated that it would determine whether the responses would become part of the record after oral argument on June 2, 2021. The Company provided a response on May 24, 2021 and stated its objection to the inclusion of the information in the record. The Diocese did not submit a response.

administrative bodies. *See Willis*, 941 A.2d at 166; *see also 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”).

Here, the remand is narrowly circumscribed for the purposes set forth in R.I. Gen. Laws § 39-5-5. The only purpose of the remand under that statute is to determine whether the affidavit of new evidence submitted by the Diocese provides the Commission with a reason to change its previous order. R.I. Gen. Laws § 39-5-5. There is nothing in the statute that authorizes opening the record to new evidence or new issues. Similarly, there is nothing in the Supreme Court’s March 24, 2021 Order that authorizes any further expansion of the record or the issues to be considered in the proceeding.⁵

The Commission set a briefing schedule to perform the precise task given to it by the Supreme Court – evaluation of how, if at all, the affidavit of new evidence impacts the legal analysis it performed when it entered its initial order. All the Pre-Filed Testimony is clearly extraneous to the issues before the Commission and, in any event, represents an impermissible expansion of the record on remand.

Second, the information contained in the Pre-Filed testimony is far afield of any relevance to the issues in this docket. As the Diocese acknowledges, the question before the Commission is a narrow legal question – whether existing tariffs, state law, and federal law, as

⁵ On appeal, the Diocese raised for the first time a bias argument based on the relationship of Commission counsel to an attorney employed by the law firm that represented the Company in the initial proceeding. Notwithstanding the baseless nature of that argument, its existence is immaterial to the current remand for two reasons. First, the Diocese did not raise that argument to the Commission in the initial proceeding and therefore waived it. *Neuschatz v. Reitsma*, No. PC-02-1589, 2004 WL 1351325, *4-*7 (R.I. Super. Ct. May 24, 2004) (explaining the rationale behind the raise-or-waive rule and applying it to an administrative proceeding). Second, even if the issue raised on appeal was proper, that issue is not the one the Diocese now presses. Rather, the Diocese is now pressing concerns with the way in which the regulatory process works and contends that there is some form of bias bound up in the way that process worked in this case. That is clearly different from what the Diocese has argued for the first time on appeal and beyond the scope of the original proceeding in this matter.

applied to the Agreed Facts, permit the Company to charge interconnecting customers for the costs of ASO transmission studies and ASO transmission upgrades caused by the proposed interconnection. In fact, the Burton Testimony acknowledges that the Commission got the answer to that question correct when he notes that the Commission based its position on precedent and historical practice.

This Supreme Court's remand of this docket is not an invitation to revisit the function of the well-established regulatory and adjudicatory process that governs utility regulation in this state and nationally. The Commission followed the letter of the law in reaching the decisions reflected in its order. As demonstrated in their respective Response Briefs, all communications between the Division and Company were appropriate and in accordance with existing legal requirements and rules. The Diocese's dissatisfaction with the Commission's order and the existing regulatory structures that govern utility regulation does not grant a license to expand the narrow legal questions presented by the petition for declaratory judgment in this matter into a full-scale inquiry into regulatory and energy policy. Nor does the dissatisfaction of other similarly situated renewable energy developers with the Commission's order make their particular circumstances that were not at issue in this proceeding relevant to the outcome of this docket.

IV. CONCLUSION

The Pre-Filed Testimony submitted by the Diocese is far afield of the purposes of this remand. The Commission should maintain the limited scope of this proceeding and honor the scope of the Supreme Court remand by striking the Pre-Filed Testimony.

THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID

By Its Attorneys,



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Dated: June 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2021, I delivered a true copy of the foregoing document to the service list by electronic mail.



Adam M. Ramos

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