

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

Petition of PPL Corporation, PPL Rhode)
Island Holdings, LLC, National Grid USA,)
and The Narragansett Electric Company for) Docket No. D-21-09
Authority to Transfer Ownership of The)
Narragansett Electric Company to PPL Rhode)
Island Holdings, LLC and Related Approvals)

**OPPOSITION OF NATIONAL GRID USA AND
THE NARRAGANSETT ELECTRIC COMPANY TO MOTION FOR RECUSAL**

National Grid USA and The Narragansett Electric Company (“Narragansett”) (together, “National Grid”) hereby respond to the motion for recusal (the “Motion”) submitted by New Energy Rhode Island on behalf of its members, Circular Fuels, LLC, RER Energy Group, LLC, Clean Economy Development, LLC, Heartwood Group, Inc., and Green Development, LLC (collectively, “NERI”). For the reasons described below, the motion for recusal is baseless and untimely. The actual purpose of the Motion appears to be a vehicle to reargue NERI’s motion to intervene. The result is a specious, unprofessional and unwarranted effort to tarnish the reputation of the Hearing Officer, who is a longtime, well-respected member of the Rhode Island Bar, known for his judicious and respectful consideration of issues that come before him. The Motion fails to demonstrate any level of personal bias or prejudice on the part of the Hearing Officer. Therefore, the Motion should be denied.

I. ARGUMENT

There are two primary reasons that NERI’s Motion should be denied. First, the Motion does not meet the standard for recusal, which is not surprising given that there is no basis for

recusal – not even one that could be manufactured. Second, the Motion is untimely, as NERI filed it after several opportunities where it could have requested recusal but did not. The Motion is designed to be disruptive to this proceeding. Accordingly, the Motion should be rejected.

A. The Motion Does Not Meet the Standard for Recusal.

The Motion does not meet the standard for recusal. An adjudicator has an obligation not to disqualify themselves if there is no sound reason to do so. Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1246 (R.I. 1999); State v. Clark, 423 A.2d 1151, 1158 (R.I. 1980). Adjudicators in administrative agencies enjoy a “presumption of honesty and integrity.” Davis v. Wood, 444 A.2d 190, 192 (1982). A party seeking recusal must establish that the adjudicator has a “personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his [or her] impartiality seriously and to sway his [or her] judgment.” Kelly, 740 A.2d at 1246 (quoting Cavanagh v. Cavanagh, 375 A.2d 911, 917 (1977)). “The person alleging prejudice carries a substantial burden.” In re Yasher, 713 A.2d 787, 790 (R.I. 1998).

The Motion fails to meet the substantial burden to overcome the Hearing Officer’s presumption of honesty and integrity. The allegation of bias against the Hearing Officer appears to arise exclusively as a result of the Hearing Officer’s response to NERI’s April 21, 2020 Access to Public Records Act requests and NERI’s apparent disagreement with a subsequent decision by the Rhode Island Public Utilities Commission (“PUC”) on remand from the Rhode Island Supreme Court regarding, in part, NERI’s allegations of bias with the regulatory process in the Petition of the Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs and Related “Affected System Operator Studies,” Docket No. 4981

("Docket 4981").¹ The Division of Public Utilities and Carriers Advocacy Section ("Advocacy Section") was a party to Docket No. 4981, as it is in every proceeding before the PUC. The written decision was issued in Docket No. 4981 on July 14, 2021. Clearly upset with the outcome of the Docket No. 4981 decision, NERI filed the Motion in this proceeding just days later, on July 19, 2021.

Moreover, there is no substantive claim put forward in the Motion that comes anywhere close to suggesting or indicating prejudice on the part of the Hearing Officer. A party seeking recusal must establish that the adjudicator has a "personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his [or her] impartiality seriously and to sway his [or her] judgment." NERI has made no showing whatsoever that there is personal bias or prejudice that would impair the Hearing Officer's impartiality or sway the Hearing Officer's judgment in relation to the issues under consideration in this proceeding. Thus, NERI has failed to meet its burden to require the Hearing Officer to recuse himself from this proceeding.

For obvious reasons, there is a high threshold for recusal. Yet, the Motion simply rehashes NERI's arguments from Docket No. 4981 and arguments from the motion to intervene in this docket. Without a showing of personal bias or prejudice *to any degree*, the Motion must be rejected.

B. The Motion Is Untimely.

NERI submitted the Motion almost immediately after the Hearing Officer's scheduled hearing on the motions to intervene in this proceeding. In fact, the Motion devotes much of its

¹ A copy of the Order in Response to Remand from the Superior Court in Docket 4981, including the Concurring Opinion of the Chairman, at Order No. 24087, is attached hereto as Exhibit A. In addition, NERI filed a "Motion for Recusal, Withdrawal of Notice and Further Assurance Against Bias" against the PUC Chairman in Docket 4981. The PUC issued an order denying that motion for recusal, attached hereto as Exhibit B.

time rehashing its argument from the motion to intervene and spends several pages quoting its motion to intervene, often for pages at a time. NERI could have filed the Motion before, or in combination with, NERI's motion to intervene that was filed on June 25, 2021.² Filing the Motion at that point – before the petitioners and Advocacy Section filed their responses to the motions to intervene on July 9, 2021, and before the hearing on the motions to intervene that was conducted on July 15, 2021 – would have been the appropriate point to raise issues regarding the Hearing Officer's impartiality. NERI could also have raised the issue *during* the hearing on the motions to intervene. Instead, NERI filed the Motion on July 19, 2021, positioning the Motion as a last-ditch effort to disrupt and delay the proceeding. Accordingly, the Motion should be rejected as both meritless and untimely. Moreover, National Grid requests that the Hearing Officer strike NERI's untimely statements in its Motion regarding the motion to intervene.

II. CONCLUSION

For the foregoing reasons, National Grid requests that the Motion be denied.

² The Hearing Officer issued a Notice of Deadline to Intervene on June 11, 2021.

Respectfully submitted,

**NATIONAL GRID USA and
THE NARRAGANSETT ELECTRIC
COMPANY d/b/a NATIONAL GRID**

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