STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888

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

ORDER

(In response to Motions to Intervene, Strike and Recusal)

On May 4, 2021, PPL Corporation ("PPL") and PPL Rhode Island Holdings, LLC ("PPL Rhode Island") (together, "PPL") and National Grid USA ("National Grid USA") and The Narragansett Electric Company ("Narragansett") (together, "Narragansett"), (collectively, the "Petitioners") filed a joint petition ("Petition") with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking the approval of the Division for authority to transfer ownership of Narragansett to PPL Rhode Island. The Petition also contained requests for certain other related approvals. The Petitioners also respectfully requested that the Division issue its ruling "by no later than November 1, 2021." The instant petition was filed pursuant to the regulatory requirements contained in R.I. Gen. Laws §§39-3-24 and 39-3-25 and 815-RICR-00-00-1.13.

In furtherance of starting the process of adjudicating the petition request, the Division established a filing deadline of June 25, 2021 for all motions to intervene in the docket. Notification of the joint filing and the

prescribed deadline for intervention was posted on the Division's website and published in the Providence Journal on June 11, 2021. The Division indicated in the notice that all motions would be considered in accordance with the requirements contained in Rule 1.17 of the Division's "Rules of Practice and Procedure." The notice also directed the Petitioners to submit responsive pleadings by July 9, 2021. The notice additionally indicated that the Division would conduct a motion hearing to hear all intervention-related issues and arguments at 10:00AM on Thursday, July 15, 2021 in the Division's Hearing Room, located at 89 Jefferson Boulevard in Warwick, Rhode Island.

In response to the published notice of deadline to intervene, the Division received ten (10) timely motions to intervene from: the Rhode Island Department of Attorney General ("Attorney General"); the Rhode Island Office of Energy Resources ("OER"); the Acadia Center ("Acadia Center"); Green Energy Consumers Alliance, Inc. ("Green Energy"); New England Cable & Telecommunications Association, Inc. ("NECTA"); Friends of India Point Park, Fox Point Neighborhood Association, Jewelry District Association, Residential Properties, Narragansett Brewing Company, Grand Festivals and David Riley (collectively, the "Providence Intervenors"); Energy Development Partners, LLC ("EDP"); New Energy Rhode Island ("NERI"); Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC and XOOM Energy Rhode Island, LLC (collectively, the "NRG Retail Companies"); and the Conservation Law Foundation ("CLF") (collectively, the "Movants").

After receiving copies of these formal intervention requests, the Petitioners filed timely individual written responses and objections. In short, the Petitioners object to the intervention motions filed by NERI, EDP, the NRG Retail Companies and the Providence Intervenors; the Petitioners argue that these Movants have failed to satisfy the intervention standards set forth in Rule 1.17, *infra*. With respect to CLF, Green Energy and the Acadia Center, the Petitioners argue that their interventions should be limited to matters within the proper scope of this proceeding, *infra*. The Petitioners did not oppose the intervention requests filed by the Attorney General and OER.

The Division also received a position response from the Division's Advocacy Section ("Advocacy Section") regarding the intervention requests now before the Division (the Advocacy Section is an indispensable party in all matters jurisdictional to the Division). The Advocacy Section primarily addressed the intervention motions filed by the Providence Intervenors and EDP. The Advocacy Section points out that the particularized interests of these Movants are presently pending in alternative forums and that it would be improper for the Division to consider their grievances in this proceeding, *infra*.

In response to the objections raised by Narragansett, National Grid USA, PPL, PPL Rhode Island and the Division's Advocacy Section, the Division conducted a duly noticed public hearing on July 15, 2021, for the limited

purpose of hearing oral arguments on all disputed intervention-related issues.

The following counsel entered appearances[1]:

For Narragansett and National Grid USA:	Cheryl M. Kimball, Esq., Robert J. Humm, Esq., and John K. Habib, Esq.
For PPL and PPL Rhode Island:	Gerald J. Petros, Esq., and Adam M. Ramos, Esq.
For the Attorney General:	Nicholas M. Vaz, Esq., and Tiffany A. Parenteau, Esq. Special Assts. Attorney General
For the Division's Advocacy Section:	Christy Hetherington, Esq., and Leo J. Wold, Esq.
For OER:	Albert J. Vitali, Esq.
For EDP:	Christian F. Capizzo, Esq., and John A. Pagliarini, Jr., Esq.
For Acadia Center:	Henry Webster, Esq.
For the Providence Intervenors:	Patrick C. Lynch, Esq., and Terence J. Tierney, Esq.
For NERI:	Seth H. Handy, Esq., and Justin T. Somelofske, Esq.
For the NRG Retail Companies:	Daniel Clearfield, Esq., and Craig Waksler, Esq.
For NECTA:	Leah J. Donaldson, Esq., and Michael R. McElroy, Esq.
For Green Energy:	James G. Rhodes, Esq.

[1] Appearances reflect attorneys appearing for the July 15, 2021 hearing and those identified in pleadings.

For CLF: Margaret Curran, Esq., and
James Crowley, Esq.

The Division has carefully considered the arguments proffered by the Movants, the Petitioners and the Advocacy Section regarding the pending intervention motions. Summaries of the Movants' rationale for intervention and the Petitioners' and Advocacy Section's responses and objections are outlined below:

INTERVENTION MOVANTS

1. EDP

EDP identifies itself as a Providence-based renewable energy solutions provider. EDP states that it works with landowners, public organizations, universities, companies and investors that want to reduce their carbon footprint by providing renewable energy solutions. The Company also works with organizations to help them develop, plan, and optimize their energy needs.[2] EDP notes that it began its operations in 2011 and has since developed and brought on-line approximately 66 MWs of solar energy projects in Rhode Island.[3]

EDP states that its experience has shown that "the incumbent utility has repeatedly failed to live up to its obligations under the State's energy policies and regulations, whether through lack of adequate internal processes or as a result of business self-interest."[4] EDP asserts that its perspective and experience on renewable energy projects will bring value to the docket and also

[2] EDP Motion, p. 2.
[3] Id., pp. 2-3.
[4] Id., p. 3.

allow it to compare Rhode Island's progress on renewables to the progress being made in other jurisdictions.[5]

EDP contends it is uniquely positioned to inform the Division about the negative implications for the public associated with PPL's planned acquisition of Narragansett. Specifically, EDP is concerned with the unforeseen costs and the time it takes to complete interconnection agreements to advance solar projects in Rhode Island. EDP offers its experience with a 50 MW solar project in North Kingstown as an example of the delays renewable energy developers are facing in their interactions with Narragansett. EDP states that the interconnection agreement for this project has taken four years to complete. It also asserts that Narragansett "refuses to share basic information relating to its construction and equipment procurement" and "relies on an anticompetitive agreement with its transmission affiliate to demand hundreds of thousands of dollars of unjustifiable fees annually."[6] EDP additionally complains that Narragansett "will not perform a '*true-up*' and return excess capital costs paid by EDP until 2024, more than three (3) years later – in effect, denying EDP access to millions of dollars of its own money without any justification."[7]

EDP asserts that its interconnection agreement experiences with Narragansett "is unique and supports granting this motion to intervene." EDP also asserts that its participation "is in the public interest because EDP's unique first-hand experience with current market and regulatory issues facing

[5] Id.
[6] Id., pp. 3-4.
[7] Id., p. 4.

distributed generation developers will assist the Division in assessing whether 'facilities for furnishing service to the public will not thereby be diminished [by the Transaction] and… the terms [of the Agreement and the Transaction] are consistent with the public interest.'"[8]

If permitted to intervene, EDP "will seek PPL's commitment to increased transparency with interconnection customers like EDP." EDP argues that the interconnection planning and procurement process must be transparent, allowing customers the opportunity to provide input.[9] EDP also says it will seek assurances from PPL that the over $10 million in EDP's funds, currently being held by Narragansett, will be protected and that procedures for reimbursement are improved to ensure fairness and promote investment in renewal energy projects.

EDP also raises concerns over Narragansett's recent demands for payment of Direct Assignment Facility ("DAF") charges, which Narragansett "allegedly" pays to its transmission affiliate. EDP argues that these charges are not customary outside of New England and do not reflect current public policy, market and regulatory realities. EDP wishes to intervene to seek "PPL's assent to terminate the levying of anticompetitive and outdated DAF charges by amending the Interconnection Tariff to reflect the same."[10]

EDP reiterated its concerns during the July 15 oral argument hearing. EDP argues that "[w]e are very well versed with friendly and unfriendly utility

[8] Id.
[9] Id., pp. 4-5.
[10] Id., pp. 5-6.

structures, and we believe that we would be an asset to the Division in the depth of our experience on DG." EDP also emphasized that the "General Assembly has expressly declared that the development of renewable energy projects is in the public interest." EDP also asserts that the Advocacy Section, the Attorney General and OER have limited, if any, experience in the actual development of distributed generation projects that EDP builds, and, therefore, are not able to adequately represent EDP's interests. EDP also reiterated that it seeks assurances that "the proposed sale does not negatively affect the reimbursement of expended funds that are owed to EDP and other DG developers."[11]

2. NERI

In its motion, NERI identifies its member participants as developers of local renewable energy projects in Rhode Island and those who have ownership, energy offtake, or other financial or policy interests in such projects. NERI states that its members have developed and are developing many solar and wind distributed generation renewable energy projects in Rhode Island, leased or sold/purchased real estate for development of energy projects in Rhode Island, contracted for the purchase of renewable energy from renewable energy projects in Rhode Island or have worked for or with state and local governments for the implementation of our State's energy policies.[12] NERI states that it has many years of experience on important energy policy matters and has participated in several related docket cases before the Public Utilities

[11] Tr. 54-59, 7/15/21.
[12] NERI Motion, pp. 1-2.

Commission ("PUC" or "Commission"). NERI asserts that its coalition "represents the public interest because the success of the distributed generation of renewable energy in Rhode Island is needed to reach the goals of the 2021 Act on Climate and the State's 100% by 2030 plan."[13]

In support of its motion, NERI asserts that Narragansett has "underserved our state's preference for lower cost, more secure, and cleaner distributed energy resources to provide for its own profit from natural gas and infrastructure investment." To buttress this claim, NERI observes that Narragansett has been required since 2017 to propose locational incentives for renewable energy projects that could save ratepayers money on upgrades to the distribution system but has yet to do so.[14] NERI contends that Narragansett's "failure to pursue non-wires alternatives costs small businesses and consumers." NERI also faults Narragansett for seeking "to keep its cost benefit analyses of our energy decision-making confidential and not subject to stakeholder review and critique."[15]

NERI next argues that Narragansett is improperly obstructing local small businesses "seeking to use local labor to interconnect lower-cost, more secure, and cleaner supply alternatives" and is assessing "huge transmission system operating and maintenance fees being billed by its transmission affiliate, New England Power, on projects designed to supply lower cost energy right here in Rhode Island." NERI also contends that National Grid's recent acquisition of

[13] Id., p. 3.
[14] Id., p. 4.
[15] Id.

Geronimo Solar and its sale of Narragansett, "positions its unregulated affiliate, 'National Grid Renewables' to bring utility scale renewables to out-compete local clean energy businesses…."[16] NERI stresses that "[c]ontinued overreliance on dirty, imported energy solutions becomes even more of a threat as we seek to electrify our transportation and heating and cooling sectors and need more and more electricity."[17]

NERI's members are concerned that PPL's priorities may not align with Rhode Island's long-term energy, ratepayer, labor and public interests. NERI observes that PPL's Kentucky subsidiary just filed its third request for a rate increase in four years, while also "slashing the benefit that Kentucky customers get from their own clean energy investments by 80%." NERI asserts that Rhode Island's public interest is not served by unwarranted infrastructure investments that drive rates higher and higher."[18]

NERI maintains that in this docket proceeding, it will seek PPL's commitment to "a proactive plan for rate reduction through implementation of local, distributed-energy solutions and for managing the electric system to achieve the state's goals of reaching 100% renewable energy by 2030 and net zero emissions by 2050." NERI argues that the planning process must be "transparent," allowing stakeholders the opportunity to provide input and help shape the plan. NERI seeks assurances from National Grid and PPL that "they will insulate their own economic interests from solutions produced by our own

[16] Id.
[17] Id., p. 5.
[18] Id.

small businesses that provide local jobs for clean energy alternatives, not allowing natural gas, transmission and other utility business interests to contaminate the proper, neutral administration of our electric system."[19]

NERI reiterated its concerns during the July 15 oral argument hearing. It also argued strenuously that none of the other parties could adequately represent NERI's interests in this proceeding. NERI asserted that Narragansett has mischaracterized NERI's interests in its objection. NERI argues that customer generators "provide the means to an alternative path to our energy future that produces clean energy right here in Rhode Island thereby displacing natural gas and saving ratepayers money on infrastructure used to move electricity long distances." NERI maintains that its members "have a unique and unrepresented interest on the impact of the sale and their capacity to compete for that energy future." NERI reiterates that it will advocate for the mechanics of a utility future that will most effectively fulfill state policy, 100 percent by 2030, power sector transformation and the 2021 Act on Climate." NERI also argues that denying its request for intervention "effectively denies the public its right to air issues, to present expertise, and to ensure the full consideration of the issues presented for review."[20]

NERI's Motion for Recusal

On July 19, 2021, NERI, by its attorneys, and on behalf of its members, filed a motion requesting that the undersigned hearing officer recuse himself from presiding in this docket. In support of its recusal motion, NERI argues

[19] Id., pp. 5-6.
[20] Tr. 32-49, 7/15/21.

that "Mr. Spirito has demonstrated his prejudice against distributed energy resources in a manner that indicates a personal bias and preconceived and settled opinion of such character as to impair his judgment."[21]

The basis for NERI's recusal request relates to an April 21, 2020 access to public records ("APRA") request, which was made by Mr. Handy, on behalf of a client, in the context of Commission Docket No. 4981. That APRA request was denied by the Division, based on the perceived applicability of a particular APRA exception. The denial response in issue was drafted by the undersigned hearing officer, in his then official capacity as the Division's Chief Legal Counsel.

NERI argues that in response to an access to public records request, "Mr. Spirito refused to produce correspondence with Narragansett related to PUC docket 4981, claiming that the Division has a 'common interest' with Narragansett that made the correspondence work product privileged."[22] NERI states that the Division's refusal to produce the requested records was later "corrected" by the Attorney General on appeal, and the records were ultimately produced.[23]

NERI argues that it is improper for the Division to "claim a common interest with a utility it is charged to regulate…." NERI contends that the Division's claimed "common interest" with National Grid on this interconnection issue demonstrates a bias against local renewable energy

[21] NERI Recusal Motion, p. 1.
[22] Id., p. 2.
[23] Id.

developers. NERI reasons that National Grid "makes money from investments in moving electricity and thus prospers from the suppression of local energy projects that reduce those costs for Rhode Island ratepayers."

NERI also points to a subsequent data response from the Division in Docket No. 4981, which NERI attributes to the undersigned hearing officer, wherein the Division responded: "…both the Company and the Division possess a common interest in ensuring the application of accepted ratemaking principles to ensure that transmission upgrade and study costs are not passed on to the general body of ratepayers, particularly when the energy that is produced by Petitioner's project is subsidized by the general body of ratepayers and exceeds the cost of more traditional forms of energy within National Grid's portfolio." NERI argues that this declaration by the Division is "unsupported [and] inconsistent with public duty and public policy."[24]

NERI contends that this hearing officer's previous use of the "common interest doctrine privilege" in the Division's denial of the APRA request "and his unfounded opinion that local clean energy projects are subsidized by other ratepayers prove him unfit to determine whether NERI's members are adequately represented by the advocacy section or OER."[25] NERI further suggests that based on the Division's recent claims of having a "common interest" with National Grid in Docket No. 4981, coupled with its recent statement "that local clean energy solutions are subsidized by ratepayers," NERI questions whether the Advocacy Section is properly able to represent the

[24] Id., pp. 3-4.
[25] Id., p. 9.

interests of renewable energy developers, offtakers and advocates participating in NERI" in this proceeding.[26] NERI further asserts that OER is also not suited to represent NERI's members' interests as "[t]he current administration at OER has shown that it shares Mr. Spirito's prejudice against local energy resources."[27]

3. NRG Retail Companies

The NRG Retail Companies state that they operate in Rhode Island as nonregulated power producers ("NPPs"), selling electricity to both residential and non-residential customers; the NRG Retail Companies also operate as registered natural gas marketers selling natural gas to non-residential customers.

The NRG Retail Companies argue that they meet the standard for intervention set forth in Rule 1.17 because they possess an interest which may be directly affected and which is not adequately represented by existing participants, and as to which the NRG Retail Companies may be bound by the action of the Division.[28]

The NRG Retail Companies state that they have an interest in facilitating the development of Rhode Island's competitive electric and natural gas retail markets. They wish to intervene in order to evaluate the Transaction and "analyze whether it could result in preventing retail electric and natural gas customers from obtaining the benefits of properly functioning and effectively

[26] Id.
[27] Id., p. 10.
[28] NRG Retail Companies' Motion, p. 3.

competitive retail markets."[29] The NRG Retail Companies also assert that they have the experience and ability to assess how any changes to the rates and related tariffs, as well as the operation or structure of any Narragansett programs, could impact the level of retail competition.[30]

The NRG Retail Companies contend that it is important "that certain operational processes and procedures of Narragansett be maintained or enhanced as a result of the proposed change in ownership in order for the competitive markets to remain balanced and operate in an efficient manner, and to maintain open communications channels between electric and natural gas suppliers' and Narragansett's operational personnel." The NRG Retail Companies argue that it is important to ensure that the Transaction does not "result in any degradation of competitive suppliers' ability to function… or the competitive market generally."[31] The NRG Retail Companies argue that any reduction in competition would be "contrary to the public interest."[32]

The NRG Retail Companies also state that they have an interest in ensuring that the proposals of other parties advanced through testimony, legal arguments, or settlement discussions do not adversely impact the ability of the NRG Retail Companies to effectively operate as suppliers in Rhode Island.[33]

The NRG Retail Companies maintain that their interests are unique and not adequately represented by other parties that have or may seek to intervene;

[29] Id., pp. 3-4.
[30] Id., p. 4.
[31] Id.
[32] Id., pp. 4-5.
[33] Id., p. 5.

they argue that they "have unique business models and their interests and perspectives are unique."[34] They also argue that the Division's actions regarding the Petitioners' proposals may have a substantial impact on the NRG Retail Companies' future involvement in the electrical and natural gas markets in Rhode Island.[35]

In response to the objections filed by PPL and Narragansett, the NRG Retail Companies supplemented its arguments during the July 15 oral argument hearing. The NRG Retail Companies stressed that its entities are the only competitive suppliers seeking to intervene and that "they have a unique ability that no other party has seeking to intervene to provide the prospective of the competitive supplier markets." The NRG Retail Companies also argue that "our Rhode Island legislature has already determined that competition in the energy sector is in the public interest." The NRG Retail Companies also reject PPL's and Narragansett's arguments that the NRG Retail Companies are "trying to achieve a net benefit for the competitive supplier market." To the contrary, the NRG Retail Companies argue that they are only looking for assurances that their ability to compete will not be diminished if the Transaction is approved.[36]

4. CLF

CLF identifies itself as New England's leading environmental advocacy organization; claiming it has worked to protect New England's people, natural

[34] Id., p. 6.
[35] Id.
[36] Tr. 49-54, 7/15/21.

resources, and communities since 1966. CLF states that "it promotes clean, renewable, and efficient energy production and heating throughout New England and has an unparalleled record of advocacy on behalf of the region's environmental resources."[37]

CLF argues that it is committed to using the law, policy, and the market to protect New England's environment and combat the climate crisis. CLF asserts that utility companies, like Narragansett, have a key role to play in decarbonizing our economy and transitioning to clean energy. CLF states that it has "a keen interest in ensuring that the sale of National Grid's Rhode Island utility business to PPL does not result in the deterioration of any such programs or commitments."[38]

CLF also argues that its intervention would not unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties. CLF argues that it has a long history of productive participation in dockets before the PUC and the Energy Facility Siting Board ("EFSB").[39]

Due to the lack of any objections, CLF declined to make any oral arguments during the July 15 hearing. CLF rested on its filing.[40]

5. <u>The Providence Intervenors</u>

The Providence Intervenors seek to intervene in the instant docket "to protect vital environmental, social and economic interests as they relate to the

[37] CLF Motion, p. 2.
[38] Id., pp. 2-5.
[39] Id., p. 5. In support of this claim, CLF provided a list of PUC dockets wherein it participated as an intervening party.
[40] Tr. 59, <u>7/15/21</u>.

sitting and operation of energy infrastructure in close proximity to nearby residents, businesses and parklands along the waterfront of the City of Providence." They argue that their interest "is a real and substantial interest."[41]

The Providence Intervenors assert their right to ensure that any approval of this transaction "not only redress the unjust activities and conduct of… [Narragansett] over the course of almost two decades, but also to ensure that any transaction approval is explicitly conditioned on PPL Corporation's agreement to treat the neighborhoods and businesses of Providence in the same manner as the communities and businesses of other towns and cities in Rhode Island wherein National Grid has devoted substantial time, resources and support to bury power lines without any transparency to either the Division or the Public Utilities Commission."[42]

The Providence Intervenors explain that their intervention request is tied to "the 18+ year effort to bury the 'E-183' transmission line," which, they claim, National Grid has undermined, hindered and obstructed, despite support from "the City of Providence, the Rhode Island Department of Environmental Management, the Rhode Island Division of Statewide Planning, many elected officials (local, State and federal) and countless associations and citizens from all across the state."[43] The Providence Intervenors emphasize that $18 million has been raised to effectuate the burying of the E-183 power line, the

[41] The Providence Intervenors' Motion, p. 1.
[42] Id., p. 2.
[43] Id.

necessary amount, they assert, that was quoted by Narragansett in 2007. The Providence Intervenors further assert that Narragansett's "decades-long intransigence toward embracing available technologies to bury the E-183 power line… and the utility's apparent discrimination against lower-income communities like Providence, must be addressed in the context of this transaction proceeding."[44] The Providence Intervenors note that State law requires that the Transaction should not be approved unless it is consistent with the public interest; they contend that remedying this matter is in the public interest. They also argue that no other party can adequately represent these interests.[45]

In support of their motion, the Providence Intervenors provided a detailed description of their constituent group members along with their respective interests in seeing that the E-183 power line is buried.[46] The Providence Intervenors also provided a detailed history of the travel of the E-183 power line burial matter, starting with an October 9, 2003 filing, by Narragansett, with the EFSB, for authority "to 'modify' the E-183 transmission line to accommodate the relocation of Interstate 195 across the waterfront of Providence."[47] The Providence Intervenors stress that during that proceeding the cities of Providence and East Providence, along with the Attorney General, all intervened and opposed the proposal to replace the facilities with overhead

[44] Id.
[45] Id., pp. 2-3.
[46] Id., pp. 3-7.
[47] Id., p. 7.

structures, and instead argued that Narragansett should utilize underground technology to minimize environmental and socio-economic impacts.

The Providence Intervenors relate that a settlement was ultimately reached and approved by the EFSB and that $18 million was raised to facilitate the burial project. However, the Providence Intervenors maintain that Narragansett undermined efforts to advance the burial project and has violated the settlement agreement. The Providence Intervenors also argue that Narragansett has improperly used a portion of the "burial funds" to compensate its lawyers and consultants. The Providence Intervenors argue that the Division should not approve the Transaction until Narragansett makes the necessary reimbursements to the burial fund and until PPL provides assurances "that the transgressions in agency proceedings before the Siting Board will be remedied immediately."[48] The Providence Intervenors also seek assurances from PPL that it "will not continue… [Narragansett's] practice of undermining the social and environmental welfare of customers, communities, businesses and park users along the waterfront of Providence…."[49] The Providence Intervenors argue that Narragansett has "worked to meet numerous requests of other communities around the State to achieve burial solutions" but has treated the City of Providence differently. Based on perceived disparate treatment, the Providence Intervenors question "whether PPL Corporation will continue these disparate and unjust practices as it relates to

[48] Id., pp. 7-9.
[49] Id., pp. 9-10.

Providence communities, since all communities regardless of ethnicity or income should be treated equally as a matter of law."[50]

Providence Intervenors' Motion to Strike

During the hearing conducted on July 15, 2021, the Providence Intervenors orally moved that the Advocacy Section's position filing in this proceeding be stricken from the record and from the hearing officer's consideration. In support of its motion, the Providence Intervenors assert that the Advocacy Section failed to submit its responsive pleading by the July 9, 2021 deadline established in the Division's "Notice of Filing and Deadline to Intervene," issued by the Division on June 11, 2021. The Providence Intervenors argue that they did not receive the Advocacy Section's responsive pleading until July 13, 2021.[51]

6. NECTA

NECTA identified itself as a regional trade association representing cable and telecommunications companies in Rhode Island, Connecticut, Massachusetts, New Hampshire and Vermont. NECTA states that its members' services are distributed to Rhode Island customers using cables and associated equipment attached to over 200,000 utility poles that are wholly or jointly owned by Narragansett. NECTA argued that its interest in this proceeding is to ensure that NECTA's members and their affiliates who utilize

[50] Id., pp. 10-17.
[51] Tr. 12-15, 7/15/21.

the poles to deploy their services are not adversely impacted by the transfer of ownership to PPL.[52]

On July 8, 2021 NECTA filed a "Voluntary Withdrawal of Motion to Intervene."

7. Green Energy

Green Energy identified itself as a "nonprofit organization whose mission is to harness the power of energy consumers to speed the transition to a low-carbon future."[53] Green Energy states that it advocates for consumers and the environment on local and statewide issues and offers energy-related assistance and programming on green power, distributed energy, electric vehicles, grid modernization, home heating, and energy efficiency. Green Energy states that each of these programs must be integrated with the utility, and, is thus impacted by this proceeding.[54]

As examples, Green Energy relates that it is the leading REC (Renewable Energy Certificate) supplier in Narragansett's 'GreenUp' program, which allows electric customers to support renewable energy.[55] Green Energy adds that it also works to promote municipal aggregation, which permits municipalities to aggregate their electricity demand of the accounts in their jurisdiction. Green Energy states further that it has a history of advocacy for the passage of policies and programs that promote the greatest consumer and economic advantages possible, such as, efforts to increase the Renewable Energy

[52] NECTA Motion, pp. 1-2.
[53] Green Energy Motion, p. 1.
[54] Id., p. 2.
[55] Id.

Standard, offshore wind procurement, and Power Sector Transformation. Green Energy argues that the ultimate success of these programs relies upon the actions of the utility and will be impacted by this proceeding.

Green Energy states that due to its unique set of skills, expertise, membership and interests, it is an active member of both the Environmental Council of Rhode Island and the Northeast Clean Energy Council. Also, in addition to serving its own 5000 members, Green Energy says its work is intended to be in the public interest through the education of consumers and advocating for programs intended to provide consumer benefits.[56]

Based on its experience and advocacy work, Green Energy argues that its participation in this proceeding is in the public interest. Green Energy maintains that its organization's mission "is consistent with the public good of achieving real and measurable reductions of GHG [Greenhouse Gas] emissions, mitigating the risk of a changing climate on our population and environment, and doing so with regard to social equity and environmental justice, a state policy described in the 2021 Act on Climate."[57]

During the oral argument hearing conducted on July 15, Green Energy's only comment related to PPL's and Narragansett's arguments that Green Energy's intervention should be limited to the narrow scope of the instant proceeding. Green Energy responded by arguing that no limitation is necessary as "such limitation is already inherent in these proceedings" and

[56] Id., p. 3.
[57] Id., pp. 4-5. Green Energy also provided the following citation for the State's recently enacted Act on Climate: R.I. Gen. Laws §§ 42-6.2-1 *et. seq.*

that the hearing officer has the authority to rule on any matter that may arguably fall outside the statutory scope of this case.[58]

8. OER

OER states that its mission is to lead the state toward a clean, affordable, reliable, and equitable energy future.[59] Relying on R.I. Gen. Laws §42-140-3, OER outlines its statutory purpose as follows:

> - Develop and put into effect plans and programs to promote, encourage, and assist the provision of energy resources for Rhode Island in a manner that enhances economic well-being, social equity, and environmental quality;
>
> - Monitor, forecast, and report on energy use, energy prices, and energy demand and supply forecasts, and make findings and recommendations with regard to energy supply diversity, reliability, and procurement, including least-cost procurement;
>
> - Monitor and report technological developments that may result in new and/or improved sources of energy supply, increased energy efficiency, and reduced environmental impacts from energy supply, transmission and distribution;
>
> - Develop and put into effect plans and programs to promote, encourage and assist the efficient and productive use of energy resources in Rhode Island, and to coordinate energy programs for natural gas, electricity, and heating oil to maximize the aggregate benefits of conservation and efficiency of investments; and
>
> - Advise the governor and the general assembly with regard to energy resources and all matters relevant to achieving the purpose of this office.[60]

[58] Tr. 60-61, 7/15/21.
[59] OER Motion, p. 3.
[60] Id.

OER argues that in order to fulfill its statutory duty, it must be allowed to intervene in this proceeding. OER argues that "[t]hese utilities, by their nature, play an integral role in the advancement of vital economic, energy, and environmental policies, and impact nearly every Rhode Island home, business, and public sector entity." OER concludes that its work is inextricably tied to Rhode Island's energy utilities and requires certain utility capabilities and commitments, especially in areas of energy decarbonization, grid modernization and planning, advanced metering, and the integration of clean transportation solutions. OER argues that its interest and responsibilities "may be directly affected by these proceedings."[61]

9. <u>Acadia Center</u>

The Acadia Center identified itself as a non-profit data and research organization that has been working in the public interest for over 20 years with a long history working on energy and environment issues on behalf of Rhode Islanders. The Acadia Center argues that it will be directly affected by the outcome of this proceeding, and its interests are not adequately represented by existing parties.[62]

The Acadia Center states that it is committed to advancing a clean energy future through data-driven research, innovative policies, and market-based solutions. The Acadia Center states that it has become a central public interest voice in Rhode Island energy issues, on topics including energy

[61] Id., p. 4.
[62] Acadia Center Motion, p. 1.

efficiency, natural gas infrastructure, climate planning, electric vehicles, energy storage, distributed generation, grid modernization, advanced metering functionality, and system reliability procurement.[63] The Acadia Center asserts that its expertise will be of considerable benefit to the Division in this docket.

The Acadia Center argues that its interests are directly affected by the issues in this proceeding and cannot be adequately represented by any other party. The Acadia Center argues that its "status as a settling party to the ongoing implementation of the settlement in [PUC] Dockets…, and our commitment to building environmentally-friendly energy systems and ensuring the alignment of utility programs with state energy policy goals may all be directly impacted by this proceeding, binding Acadia Center with the decision."[64]

The Acadia Center joined with the comments offered by Green Energy and CLF at the July 15 hearing. The Acadia Center also argued that "standing and scope are two separate issues…."[65]

10. Attorney General

The Attorney General primarily relies on R.I. Gen. Laws §42-9-6 as his legal basis for seeking intervention in this matter. Through this statute, the Attorney General argues that he is the "legal advisor of all state boards, divisions, departments, and commissions and the officers thereof…." The Attorney General also maintains that he is "also the public officer charged with

[63] Id., pp. 1-2.
[64] Id., p. 2.
[65] Tr. 61-62, 7/15/21.

representing the State of Rhode Island, the public interest, and the people of the State."[66]

Additionally, through his designated Environmental Advocate and pursuant to the Environmental Rights Act, R.I. Gen. Laws §10-20-1, *et seq.*, the Attorney General claims a statutory obligation to 'take all possible action' for 'protection, preservation, and enhancement of air, water, land, and other natural resources located in the state. The Attorney General also asserts a "common law duty to protect the public interest."[67]

In his motion, the Attorney General argues that "given that almost the entirety of the State's energy distribution system will be impacted by the Transaction, the Rhode Island Attorney General must intervene to represent the State's interest in ensuring that this transaction is in line with the State's long-term energy and climate change goals." The Attorney General contends that he seeks to intervene to "ensure that the proposed transfer of equity ownership does not negatively impact service quality, provides benefits to customers in terms of rate impacts, furthers the climate and renewal energy goals of the state, and does not otherwise conflict with the public interest."[68]

At the July 15 hearing, the Attorney General reiterated the arguments provided in its pleading and noted that the Division has previously permitted the Attorney General to intervene as a full party in "cases involving public

[66] Attorney General Motion, pp. 2-3.
[67] Id., p. 3.
[68] Id.

utility mergers and acquisition." The Attorney General also noted that the Petitioners have not proffered any objections.[69]

PETITIONERS' RESPONSES TO MOTIONS TO INTERVENE

1. Narragansett and National Grid USA

Narragansett and National Grid USA (together, "Narragansett") filed timely objections to several of the motions to intervene. Specifically, Narragansett objects to the requests to intervene made by EDP, NERI, the Providence Intervenors and the NRG Retail Companies. Narragansett argues that the motions filed by EDP, NERI, the Providence Intervenors, and the NRG Retail Companies should be denied because they seek to advance individual or financial interests that are far beyond the scope of the Division's review under R.I. Gen. Laws §39-3-25 and the Division's jurisdiction.[70]

With respect to the motions filed by the Attorney General, OER, Green Energy, the Acadia Center and CLF, Narragansett voiced no objections and only requests that the Division "condition" their interventions "to maintain the proper scope of the proceeding."[71]

Narragansett argues that the standard for approval of the Transaction under R.I. Gen. Laws §39-3-25 is that 'the facilities for furnishing service to the public will not thereby be diminished [by the Transaction] and… the terms [of the Agreement and the Transaction] are consistent with the public interest.'[72] Narragansett argues that the Division has previously construed these terms in

[69] Tr. 62-65, 7/15/21.
[70] Narragansett and National Grid USA Objection, p. 4.
[71] Id., pp. 1-2.
[72] Id., pp. 2-3.

the case of: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company[73] ("Southern Union Case") finding that the first criterion requires a finding that 'there will be no degradation of utility services after the transaction is consummated,' and that the second criterion 'ensures no harm to the general public as a whole (including ratepayers).'[74]

Narragansett next argues that the legal standard for intervening in Division proceedings, as prescribed under Division Rule 1.17B, provides that any person with a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene, so long as that interest meets the following definition:

> (a) A right conferred by statute;
>
> (b) An interest which may be directly affected, and which is not adequately represented by existing parties and as to which movants may be bound by the Division's action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent; or
>
> (c) Any other interest of such a nature that movant's participation may be in the public interest.[75]

[73] Id., p. 3. Citing from: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 52.
[74] Id.
[75] Id.; Citing from Division Rule 815-RICR-00-00-1.17B.

Narragansett contends that to find that a movant's participation would be in the public interest, 'the Division must logically find that their individual interests warrant recognition and protection in furtherance of the general welfare of the public.'[76] Narragansett also argues that the Division must also consider 'whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the petitioners and other parties.'[77]

With respect to EDP, Narragansett maintains that EDP is a renewable energy developer that develops distributed energy generation projects in Rhode Island. Narragansett argues that EDP seeks to introduce issues related to the financial cost of interconnection related to a specific 50 MW solar project that it is developing in North Kingstown. Narragansett observes that EDP raises complaints about the "alleged 'multi-million-dollar financial impact of the incumbent's constantly evolving regulatory interpretations and lack of transparency to EDP…' [and] complaints about the assignment of certain Direct Assignment Facility charges associated with the interconnection of its North Kingstown projects." Narragansett notes that in EDP's "own words," it seeks 'participation in this proceeding *to protect its economic interests* and the

[76] Id., pp. 3-4; Citing from City of E. Providence, 2006 WL 1660761 (quoting Order, In re: Joint Pet. for Purchase & Sale of Assets by the Narragansett Elec. Co. & So. Union Co., Dkt. No. D-06-13 (R.I.D.P.U.C. May 4, 2006 (affirming denial of motion to intervene by City of East Providence).
[77] Id.; Citing from same case noted in footnote 15.

public interest in a pro-competitive, pro-renewable, and well-managed electrical infrastructure grid.'[78]

Narragansett argues that EDP seeks to advance financial and policy interests outside the scope of the proceeding and properly placed before the PUC. Narragansett argues that the Division should deny EDP's motion because the interests raised are 'beyond the scope' and 'not directly related to the instant proceeding;' they also argue that allowing EDP to intervene would 'unreasonably broaden the issues in this case' and 'unduly delay and prejudice the adjudication of the rights of the Petitioners.'[79]

With respect to the Providence Intervenors, Narragansett recognizes that this group seeks to 'protect vital environmental, social and economic interests as they relate to siting and operation of energy infrastructure in close proximity to nearby residents, businesses and parklands along the waterfront….'[80] Narragansett observes that the Providence Intervenors have requested specific relief in the form of commitments from PPL to: (1) remove certain existing transmission infrastructure along India Point Park; (2) not erect and operate energy facilities that undermine the Providence Intervenors' interests; (3) discontinue alleged discriminatory practices towards certain Providence communities; (4) provide information about all internal and external legal, engineering, and construction costs related to the burial of infrastructure projects, including a list of projects dating back to 1994; and (5) restore certain

[78] Id., pp. 4-5, emphasis added.
[79] Id., pp. 8-9; citing from City of E. Providence v. Narragansett Elec. Co., *supra*.
[80] Id., p. 5.

funds that the Providence Intervenors claim were inappropriately used by National Grid under the terms of a 2004 settlement agreement approved by the EFSB in prior litigation.[81]

With respect to the NRG Retail Companies, Narragansett argues that "their interest… is to facilitate the development of Rhode Island's competitive electric and natural gas retail markets."[82] Narragansett states that NRG Retail Companies have said that they have 'a substantial and direct interest in ensuring that this transaction does not negatively affect… [their] operations and their ability to compete for the service customers in the Narragansett service territories in Rhode Island.'[83] Narragansett also notes that the NRG Retail Companies are asking the Division "to 'examine whether operational or policy improvements could be implemented as part of the approved transaction' to advance its interest in competitive retail markets."[84]

Regarding NERI, Narragansett observes that NERI represents a group of developers of renewable energy projects in Rhode Island or that have ownership, energy offtake, or other financial or policy interests in such projects. Narragansett notes that if permitted to intervene, NERI represents that it will 'seek PPL's commitment to a proactive plan for rate reduction through implementation of local, distributed-energy solutions and for

[81] Id., pp. 5-6.
[82] Id., p. 6.
[83] Id.
[84] Id.

managing the electric system to achieve the state's goals of reaching 100% renewable energy by 2030 and net zero emissions by 2050."[85]

Narragansett maintains that EDP, the Providence Intervenors, the NRG Retail Companies and NERI all seek to advance financial and policy interests that are outside the scope of this proceeding and properly placed before the PUC. Narragansett asserts that because these interests are 'beyond the scope of' and 'not directly related to the instant proceeding', their motions should be denied by the Division. Narragansett adds that denial is also warranted because their interventions would 'unreasonably broaden the issues in this case' and 'unduly delay and prejudice the adjudication of the rights of the Petitioners.'[86]

To buttress its limited scope arguments, Narragansett contends that the Division's role in this proceeding is limited to an evaluation of whether Rhode Island consumers would experience a diminishment of service if the Transaction is approved, or whether service-quality would suffer, by considering factors such as the buyer's operational experience, overall size, and financial strength.[87] Narragansett emphasizes that the Division has "specifically rejected the premise that the criteria in R.I. Gen. Laws §39-3-25 require a proposed transaction to result in a 'net benefit' to customers to gain approval;" instead, the Division concluded that "the public interest criterion

[85] Id., pp. 6-7.
[86] Id., pp. 8-9; citing from City of E. Providence v. Narragansett Elec. Co., *supra.*
[87] Id., p. 9; citing from In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, *supra.*

'requires a finding that the proposed transaction will not unfavorably impact the general public (including ratepayers).'"[88]

Narragansett stresses that the Division "is an agency of limited jurisdiction." Narragansett argues that R.I. Gen. Laws §39-1-3 establishes two separate agencies, the Division and the PUC, and that these agencies have different regulatory responsibilities. Narragansett relies on a 1989 Rhode Island Supreme Court decision to explain the roles of each agency:

> The Legislature intended to segregate the judicial and administrative attributes of ratemaking and utilities regulation and to vest them separately and respectively in the commission and the administrator (or division). The commission is to function as a quasi-judicial tribunal. It has the power to hold hearings and to 'sit as an impartial, independent body [...] charged with the duty of rendering independent decisions affecting the public interest and private rights based upon the law and upon the evidence presented before it by the division and by the parties in interest.[89]

Narragansett argues that it is clear from the law that the PUC has exclusive jurisdiction to determine the rates of public utilities. Narragansett also points out that the Division has previously recognized that 'to attach rate-related... conditions to an approval of the proposed transaction would not only be contrary to the Division's jurisdiction powers under R.I.G.L §39-3-25, but also tantamount to an attempted usurpation of a long-established Commission ratemaking function.'[90]

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[88] Id; citing from In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 51-52, *supra.*
[89] Id., pp. 9-10; citing from O'Neil v. Interstate Nav. Co., 565 A.2d 530, 531-32 (R.I. 1989).
[90] Id., p. 10; also citing from Southern Union Company, Docket No. D-06-13, Order No. 18676, at 57, *supra.*

Narragansett argues that the Movants have asserted interests related to rates and policies regarding the development and interconnection of renewable energy resources, the siting of distribution and transmission infrastructure, and the advancement of the competitive retail electricity and natural gas markets. Narragansett asserts that none of these issues are within the scope of the Division's authority to address; nor will any of these issues be 'directly affected' by the Division's decision in this case."[91] Narragansett contends that the Transaction will not limit the Movants' ability to advocate for these interests before the PUC. Narragansett also contends that the "specific and nuanced policy issues raised by the Movants are not relevant to the issues under consideration in this proceeding," and, as such, the Division is not compelled to consider these issues in its evaluation of whether the Transaction will have an adverse impact on customers.[92]

Narragansett argues that EDP, the Providence Intervenors, the NRG Retail Companies and NERI have not asserted interests showing that their participation would be in the 'public interest;' instead, "each has raised specific disputes largely related to their own proprietary economic interests."[93] Narragansett further asserts that "none of the Movants' stated objectives are in the *public* interest." Narragansett adds that to the extent "the Transaction may have any impact on policies related to the development of distributed generation, competitive retail electric and natural gas markets, or the siting of

[91] Id., pp. 10-11.
[92] Id., p. 11.
[93] Id., pp. 11-12.

electric facilities, the interests of the public in those topics will be represented adequately by OER and the Attorney General."[94] Narragansett additionally argues that permitting the Movants to intervene for the purpose of pursuing their proprietary interests will result in unreasonable delay, distraction, and burden to the petitioners and to the Division's investigation pursuant to R.I. Gen. Laws §39-3-25.[95]

Lastly, with respect to the intervention requests filed by Acadia Center, CLF and Green Energy, Narragansett, again, points to the Division's limited jurisdiction in this matter. Narragansett argues that if these entities are permitted to intervene, these parties "should be strictly limited to confirming that PPL is capable of continuing to implement renewable energy policies already in place…."[96]

During oral arguments on July 15, Narragansett indicated that it fully supported PPL's position and arguments on the various intervention requests. Narragansett also argues that the legal scope of this proceeding mandates a "focus" on an evaluation of whether the Transaction will result in a diminishment of utility services and whether the sale is consistent with the public interest.[97]

Narragansett thereupon argued that several of the Movants have interests which go beyond this mandated scope. Starting with the NRG Retail Companies, Narragansett argues this group's interest "is to facilitate

[94] Id., p. 12.
[95] Id., p. 13.
[96] Id., p. 14.
[97] Tr. 98-99, 7/15/21.

development of Rhode Island's competitive electric and natural gas markets." Narragansett contends that the NRG Retail Companies' interest is to "make sure there's not a diminution of service to the NRG entities as businesses, as private entities, as market participants, not the general public." Narragansett argues that issues related to "competitive supply are properly heard at the PUC, in another forum other than this particular docket."[98]

With respect to the Providence Intervenors, Narragansett argues that their interests "relate to the energy facility siting policy in Rhode Island and the implementation of a bilateral settlement agreement…," which are beyond the scope of this matter before the Division. Narragansett also emphasized that the Providence Intervenors' case is currently before the Rhode Island Supreme Court.[99]

Regarding EDP, Narragansett observes that EDP's stated interests concern the cost of interconnection related to a specific 50 megawatt solar project located in North Kingstown, a "multi-million dollar financial impact of the incumbent's constantly evolving regulatory interpretations and lack of transparency," and "the assignment of certain direct assignment facility charges which are transmission related to carry charges associated with the interconnection of its North Kingstown projects." Narragansett further observes that EDP also seeks intervention "to protect its economic interests" and the public's interest "in a pro-competitive, pro-renewable and well-

[98] Tr. 100-101, 7/15/21.
[99] Tr. 101-103, 7/15/21.

managed infrastructure grid."[100] However, Narragansett argues that these interests relate to "a conditional interconnection service agreement… which was approved by the Commission…." Narragansett argues that EDP's dispute must be resolved through the dispute resolution provisions of the "DG tariff," which falls under the Commission's jurisdiction.[101]

Narragansett next discussed NERI's request to intervene in this proceeding. Narragansett argues that NERI, one of the largest developers of renewable energy projects in Rhode Island, espouses interests related to "renewable energy policies, including the implementation of the DG interconnection charges and incentives for renewable projects as well as other energy supply, security, [and] resilience issues." While Narragansett believes NERI's positions on these issues are made in "good faith," Narragansett argues that these issues are not properly before the Division in this proceeding. In support of this assertion, Narragansett notes that NERI has "brought up those issues" in proceedings before the Commission and is aware that the Commission is currently hearing an interconnection case wherein the Commission is reviewing "issues regarding cost allocation, transmission and distribution cost allocation to DG developers." Narragansett also notes that "they [Green Development] have a current request for dispute resolution at the PUC in Docket 5128 and they have filed a docket at FERC addressing transmission cost allocation in FERC Docket EL-21-47-000. Narragansett adds that "they are also aware of a request for declaratory judgment in Docket

[100] Tr. 103-104, 7/15/21.
[101] Tr. 103-105, 7/15/21.

4981 at the PUC addressing interconnection costs and implementation issues which was remanded to the PUC and which is currently before the Supreme Court." Narragansett asserts that NERI "knows that the PUC is the forum for addressing these issues…" and should not be permitted to "forum shop" those same issues in this docket.[102]

Narragansett's Response to NERI's Motion for Recusal

On July 29, 2021, consistent with the 10-day deadline prescribed in Rule 1.19(D) of the Division's Rules of Practice and Procedure, Narragansett filed an objection to NERI's recusal motion. Narragansett argues that NERI's motion should be denied and rejected on two grounds, specifically, (1) the motion does not meet the standard for recusal, and (2) the motion is untimely.

As preliminary arguments, Narragansett argues that "[a]n adjudicator has an obligation not to disqualify themselves if there is no sound reason to do so;"[103] that adjudicators in administrative agencies enjoy a 'presumption of honesty and integrity;'[104] that 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;'[105] and that '[t]he person alleging prejudice carries a substantial burden.'[106]

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[102] Tr. 105-108, 7/15/21.
[103] National Grid Objection, pp. 1-2; citing Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1246 (R.I. 1999) and State v. Clark, 423 A.2d 1151, 1158 (R.I. 1980).
[104] Id.; citing Davis v. Wood, 444 A.2d 190, 192 (R.I. 1982).
[105] Id.; citing Kelly, 740 A.2d at 1246.
[106] Id.; citing In re Yasher, 713 A.2d 787, 790 (R.I. 1998).

Narragansett notes that 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… [Commission] 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')."[107]

Narragansett argues that "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." Narragansett asserts that 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."[108]

Narragansett also argues that the Motion is untimely and "devotes much of its time rehashing its argument from the motion to intervene…." Narragansett argues that NERI could have filed the Motion before, or in combination with, NERI's motion to intervene that was filed on June 25, 2021. Narragansett argues that "[f]iling the Motion at that point – before the petitioners and the Advocacy Section filed their responses to the motions to intervene on July 9, 2021, and before the hearing on the motions to intervene

[107] Id., p. 3.
[108] Id.

that was conducted on July 15, 2021 – would have been the appropriate point to raise issues regarding the Hearing Officer's impartiality." Narragansett further argues that NERI also failed to raise the recusal issue during the hearing. Based on these grounds, Narragansett argues that the Motion should be rejected as both meritless and untimely. Narragansett also requests that the Hearing Officer strike NERI's untimely statements in its Motion regarding the motion to intervene.[109]

2. PPL and PPL Rhode Island

PPL and PPL Rhode Island (together, "PPL") also filed timely objections to several of the motions to intervene in this docket. PPL, like Narragansett, objects to the requests to intervene made by EDP, NERI, the Providence Intervenors and the NRG Retail Companies. Also, like Narragansett, PPL does not object to the motions filed by the Attorney General, OER, Green Energy, the Acadia Center and CLF. However, with respect to Green Energy, the Acadia Center and CLF, PPL argues that their interventions should be "limited to matters within the proper scope of this proceeding."[110] For clarification, PPL argues that "scope does not include attempting to reshape the State's renewable energy policies or seeking commitments to advocate for changes or new policies – matters that lie within the Commission's jurisdiction or are addressed through the legislative process."[111]

[109] Id., p. 4.
[110] PPL Objection, pp. 1-3.
[111] Id., p. 2.

PPL began its opposition to the motion filings of EDP, NERI, the Providence Intervenors and the NRG Retail Companies with a discussion on the standard of review applicable to this proceeding. PPL argues that R.I. Gen. Laws §39-3-25 establishes the following two criteria for the Division's evaluation:

(1) That the facilities for furnishing service to the public will not thereby be diminished; and

(2) That the purchase, sale, or lease and the terms thereof are consistent with the public interest.[112]

PPL observes that both the courts and the Division have applied these criteria. PPL argues that the Court has held that an "expansive reading of § 39-3-25 is not consistent with the legislative scheme contemplated by the chapters of our General Laws which deal with the Duties of Utilities and Carriers (§ 39-2-1 *et seq.*) and with the Regulatory Powers of the Administration (§ 39-3-1 *et seq.*)...."[113] With respect to the first criterion, PPL argues that the Division has previously found that the requirement means that "the Division must find 'that there will be no degradation of utility services after the transaction is consummated."[114] PPL notes that the Division has evaluated whether 'Rhode Island consumers would be harmed' by the

[112] Id., pp. 3-4.
[113] Id., p. 4; citing from *City of E. Providence v. Narragansett Elec. Co.,* No. C.A. 06-2888, 2006 WL 1660761 (Super. Ct. June 15, 2006).
[114] Id., p. 4; citing from: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 52.

transaction or whether service quality would suffer, by considering factors such as the buyer's operational experience, overall size, and financial strength.[115]

Regarding the second criterion, PPL argues that the Division has specifically rejected arguments that this prong required the proposed transaction to "result in a 'net benefit' to ratepayers and/or members of the general public in order to be properly approved by the Division;" PPL argues that the Division found "that the plain meaning of 'consistent' foreclosed such an interpretation;" and that the Division, instead, found that the public interest prong 'requires a finding that the proposed transaction will not unfavorably impact the general public (including ratepayers)."[116] PPL emphasizes that the General Assembly has not amended the criteria contained in R.I. Gen. Laws §39-3-25 since the Division's interpretation of these provisions back in 2006.[117]

PPL contends that the Division's interpretations of statutory criteria makes sense considering the statutory division of labor between the Division and the Commission. PPL argues that "[p]olicy decisions regarding the appropriate direction for modernization of the Rhode Island electric grid, or the appropriate balance between various stakeholder interests, fall squarely within the Commission's jurisdiction." Relying on the Division's 2006 "*Southern Union* Approval," PPL reminds the Division that it has previously determined that 'it is not in the public interest to deny or impede the State's proper ratemaking

[115] Id.; citing from: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 51.
[116] Id.; citing from: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 52.
[117] Id., pp. 4-5.

authority, the Public Utilities Commission, from exercising its statutory duty to supervise and regulate gas and electric rates.'[118]

PPL argues that viewed in this light, the interests asserted by the NRG Retail Companies, EDP, NERI and the Providence Intervenors "clearly fall well beyond the proper scope of this proceeding and the 'no harm' standard for evaluating the proposed transaction."[119] PPL observes that the NRG Retail Companies claim an interest 'in facilitating the development of Rhode Island's competitive electric and natural gas retail markets.' PPL notes, however, that this asserted interest "does not speak to whether 'the facilities for furnishing service to the public' will be diminished by the proposed transaction or whether 'the purchase, sale, or lease and the terms thereof are consistent with the public interest.'" PPL argues that to the extent there is a public interest in competition for electric and gas supply, that interest is served by the statutes and tariffs governing the programs through which competitive suppliers participate. PPL contends that if the Transaction is approved, PPL Rhode Island will own and operate Narragansett and continue to be subject to the laws and regulations governing competitive markets. PPL argues that changes to such statutes and procedures must occur through the existing legislative and regulatory processes; PPL adds that "the Division's jurisdiction in this

[118] Id., p. 5; citing from: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 58.
[119] Id., p. 5.

proceeding does not extend to changing policy to establish greater competition in this space."[120]

PPL argues that NERI and EDP want all customers, rather than renewable energy developers, to pay for the costs of interconnection of renewable generation. PPL contends that this issue "falls directly within the Commission's jurisdiction." PPL opines that NERI and EDP "seek to perform an end around the Commission." With respect to NERI, PPL argues that one of NERI's members "has previously litigated and lost a similar challenge before the Rhode Island Supreme Court… [t]hey are not entitled to lodge a second appeal here."[121] PPL also argues that NERI members and EDP currently have numerous proceedings pending before the Rhode Island Supreme Court, the Commission and the FERC on precisely the issues they seek to "improperly introduce into this proceeding."[122]

PPL argues that NERI, likewise, asserts interests that the Division lacks authority to address. Specifically, PPL points out that NERI 'will seek PPL's commitment to a proactive plan for rate reduction through implementation of local, distributed-energy solutions and for managing the electric system to achieve the state's goals of reaching 100% renewable energy by 2030 and net zero emissions by 2050.' But PPL argues that it is the Commission that has jurisdiction to review any 'proactive plan for rate reduction through implementation of local, distributed-energy solutions.' PPL argues that neither

[120] Id., p. 6.
[121] Id.; citing from ACP Land LLC v. Rhode Island Public Utilities Commission, 228 A.3d 328 (R.I. 2020).
[122] Id., pp. 6-7. PPL provided a list of these pending cases.

it nor the Division can determine the proper confines of any such plan in this proceeding.[123]

PPL observes that NERI member, Green Development, has engaged in numerous proceedings before the Commission directly related to the question of which parties should be responsible for the costs of interconnection, arguing that it should be all customers, not the interconnecting developers. PPL notes that "Green Development has asserted the same refrain as set forth here: that such a shift in policy is necessary to facilitate the conversion to 100% renewable energy generation… and net zero emissions." PPL also notes that the "Commission repeatedly has rejected Green Development's arguments, and the Supreme Court also has rejected at least one such argument (and is currently considering another argument)."[124]

PPL argues that the policy decision on the "responsibility for these costs falls squarely within the Commission's authority, and the Commission has already decided on multiple occasions that Green Development's (and other renewable developers) personal financial interests in avoiding interconnection costs do not outweigh the interest in protecting customers as a whole from higher rates to facilitate the interconnection of these projects." PPL calls NERI's motion "a transparent attempt to relitigate these issues and collaterally attack the Commission's decisions through this proceeding."[125]

[123] Id., pp. 7-8.
[124] Id., pp. 11-12.
[125] Id., p. 12.

PPL next urges the Division to deny EDP's motion because EDP also seeks only to advance its own self-interest by securing concessions from the Petitioners in exchange for approval of the Transaction. PPL argues that EDP seeks to interject issues that fall outside the Division's jurisdiction. PPL contends that "EDP's unhappiness with previous Commission rulings does not give EDP the right to circumvent statutory and jurisdictional boundaries."[126]

Regarding the NRG Retail Companies, PPL argues that this group "improperly seek[s] to use this proceeding to advance their own profit-motivated interests and not the public interest." PPL asserts that the NRG Retail Companies' arguments in favor of intervening in this proceeding "reveal that the NRG Retail Companies seek to advance their corporate financial interests with respect to matters outside this proceeding and better addressed in other fora." PPL argues that the NRG Retail Companies "seek to advance objectives and policy interests outside the scope of this proceeding and more properly placed before the Commission or in a rulemaking proceeding."[127] PPL asserts that the Commission, not the Division, has jurisdiction over matters affecting customer choice and competitive retail markets; PPL argues that this group is "not seeking to advance the public interest, but, in fact, seeking to impair the careful balance struck by the Commission and existing, properly promulgated rules to further the public interest." PPL contends that this "type

[126] Id., p. 13.
[127] Id., p. 14.

of self-serving inquiry is outside the scope of this proceeding and would usurp the Commission's authority."[128]

On the Providence Intervenors, PPL argues that this group seeks "a commitment to bury overhead transmission lines, which PPL maintains is a matter that is properly before the Commission. PPL asserts that this issue "is not an appropriate subject to litigate here."[129] PPL argues that the Providence Intervenors seek to re-air and relitigate a long-standing grievance with Narragansett. PPL argues that the Commission has the jurisdiction to determine when the ratepayers should incur the additional, and sometimes extraordinary, costs of burying overhead transmission or distribution lines. PPL maintains that whatever the merits of the Providence Intervenors' claims, they cannot litigate them in this proceeding; "[t]hey have no standing, and they do not represent the broader public that would bear the costs they seek to impose."[130]

PPL is not objecting to the intervention requests from the Acadia Center, CLF and Green Energy. PPL notes that while these "NGOs" [Non-Governmental Organizations] have a history of advocacy on energy issues, including the advancement of renewable energy goals, "those policies are not under examination in this proceeding." PPL argues that the Division "should limit their intervention to whether PPL can capably implement the State's existing

[128] Id., p. 15.
[129] Id., p. 8.
[130] Id., pp. 15-16.

policies, and not whether new or modified policies favored by these three organizations should be adopted."[131]

To sum up its arguments, PPL stresses that the Division's task in this proceeding is not to decide (1) whether developers or ratepayers should bear the cost of interconnection; (2) the elements of a plan to achieve zero carbon emissions; (3) whether the ratepayers should incur the costs of burying transmission lines; or (4) whether to change or redirect Rhode Island energy policy.[132]

PPL next addressed the legal standard for considering intervention motions. Starting with Division Rule 1.17(B), PPL observes that 'any person with a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene…."[133] PPL also observes that the Rule defines such an interest as:

(a) A right conferred by statute;

(b) An interest which may be directly affected, and which is not adequately represented by existing parties and as to which movants may be bound by the Division's action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent; or

[131] Id., pp. 8 and 16-17.
[132] Id.
[133] Id., p. 9; citing from Rule 815-RICR-00-00-1.17(B).

(c) Any other interest of such a nature that movant's participation may be in the public interest.[134]

PPL relates that the Division has previously expounded on the subsection (c) benchmark. PPL proffers the following excerpt:

> In deciding whether the 'public interest' demands participation of these movants, the Division must logically find that their individual interests warrant recognition and protection in furtherance of the general welfare of the public. In considering this issue, the Division must also balance several related factors, specifically, whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and the other parties.[135]

PPL adds that in the Southern Union case, the Division denied motions to intervene that were 'unreasonably vague and/or beyond the scope of this proceeding,' i.e., 'not directly related to the instant proceeding.'[136]

PPL further argues that in addition to meeting the Rule 1.17(B) requirements, the proposed intervenors also must satisfy the basic standing requirements. PPL argues that to meet this standard, the "movants must have suffered an 'injury-in-fact,' which requires a 'legally cognizable and protected interest that is concrete and particularized… and… actual or imminent, not conjectural or hypothetical."[137]

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[134] Id.
[135] Id.; citing from *City of E. Providence*, 2006 WL 1660761 (quoting Order, *In re Joint Pet. For Purchase & Sale of Assets by the Narragansett Elec. Co. & So. Union Co.,* Dkt. No. D-06-13 (R.I.D.P.U.C. May 4, 2006).
[136] Id.
[137] Id., p. 10; citing from Watson v. Fox, 44 A.3d 130, 135-36 (R.I. 2002).

PPL reiterated many of the arguments contained in its responsive pleading during the July 15 hearing. In its oral argument, PPL stated that it was proud of its 100-year history and proud of its opportunity to serve Rhode Island's utility ratepayers and earn their trust and confidence. PPL also observes that while many things have changed since the Division's last Section 39-3-25 decision in 2006 Southern Union case, the standard of review that governs this type of transaction has not changed. PPL asserts that it is crucial that we "pay close heed to the scope of review that's already been established by statute and precedent and to make sure that we spend our time focused on the issues that are identified and fall within that scope of review and not allow the proceeding to wander far from that scope because we have a lot of important work to do."

PPL next discussed the intervention requests. PPL welcomed the interventions of the Attorney General and OER. PPL asserts that these intervenors, along with the Advocacy Section, "clearly represent the public… have terrific lawyers… [and] the resources to engage national experts…." PPL described the Acadia Center, CLF and Green Energy as "not-for-profit organizations that advocate for many laudable policies that focus on renewable energy and the reduction of greenhouse gases…." PPL stated that while it looks forward to their participation in future rate cases before the Commission, "this proceeding does not implicate those energy policies." PPL argues that those issues are beyond the scope of the statutory review and the jurisdiction of the Division. Accordingly, PPL maintains that while it does not oppose their

interventions, their participation must be limited to the scope of review that is required in this case.[138]

With respect to the remaining movants, EDP, NERI, the NRG Retail Companies and the Providence Intervenors, PPL argues that it does not oppose their interventions "because we seek to silence their voices, but because they seek rulings, changes and conditions that are well beyond the Division's jurisdiction in this proceeding." PPL also argues that they are not here as representatives of the public;" that role is served by the Advocacy Section, the Attorney General and OER. PPL further argues that these groups have been "frequent visitors before and participants and intervenors in dockets before the… Commission… where energy policy is shaped." PPL asserts that the Commission has exclusive jurisdiction over such energy policies, not the Division. PPL contends that the concerns and issues raised by these groups have no place in the limited scope prescribed for this type of proceeding.[139]

PPL's Response to NERI's Motion for Recusal

On July 29, 2021, consistent with the 10-day deadline prescribed in Rule 1.19(D) of the Division's Rules of Practice and Procedure, PPL filed an objection to NERI's recusal motion. Like Narragansett, PPL also argues that NERI's motion should be denied and rejected on the grounds that the motion does not meet the standard for recusal, and that the motion improperly reargues NERI's motion to intervene.

[138] Tr. 74-82, 7/15/21.
[139] Tr. 82-98, 7/15/21.

PPL argues that "there is nothing in the motion that demonstrates bias – either related to this proceeding or against NERI and its members in general." PPL observes that, instead, NERI "recounts certain instances in which the Hearing Officer, in other contexts, has disagreed with the positions of NERI members and its counsel and makes an illogical leap to the conclusion that the Hearing Officer must be biased." PPL argues that "mere disagreement is not bias." PPL also notes that the Commission "in an earlier proceeding has already considered and rejected the same arguments NERI raises here."[140]

PPL argues that NERI's motion "launches unsupported claims of bias against the Hearing Officer that fall far short of meeting its substantial burden." Rather, PPL argues that the motion simply reflects NERI's disagreement with positions and conclusions that the Hearing Officer reached in other contexts, when he was not acting as a hearing or adjudicatory officer. PPL notes that NERI's motion is predicated on a records request that was denied by "Mr. Spirito" in a Commission matter (*In Re: Petition of Episcopal Diocese of Rhode Island for Declaratory Judgment on Transmission System Costs and Related 'Affected System Operator' Studies*, Docket No. 4981) where "Mr. Spirito was not acting as a hearing officer, but as an attorney representing the Division…." PPL asserts that "[t]hese are run of the mill disputes in contested matters that occur all the time – and they do not demonstrate bias of any sort." PPL points out that the Division frequently takes positions adverse

[140] PPL Objection, p. 1.

to Narragansett, which does "entitle Narragansett to recuse the Division…."[141] Further, PPL argues that NERI's "contention lies with the Division, the party that made the decision, not Mr. Spirito individually as the lawyer who implemented that decision."[142]

PPL also argues that "NERI's counsel already has litigated his concerns about the Division's actions in the Episcopal Diocese Docket before the Commission – raising identical claims of bias from the assertion of 'common interest.'" PPL emphasizes that the Commission "rejected those claims out of hand, and explained that NERI's position 'collides with a common sense reading of the clear and unambiguous law' and 'is inconsistent with the Commission's rules."[143] PPL also notes that the Chairman of the Commission, was 'compelled to write [a] separate concurrence' "due to concern that NERI's counsel had 'maligned' the integrity of the regulatory and adjudicative process. PPL notes that in addition to "forcefully rejecting and criticizing NERI's counsel's action in that proceeding, the Chairman's concurrence expressly rejected the suggestion that the Division's actions in the Episcopal Diocese docket reflect a bias against renewable energy developers…."[144]

PPL additionally argues that NERI's motion improperly reargues its motion to intervene. PPL observes that NERI "spends little time on the motion to recuse and pivots to rearguing its tenuous motion to intervene." PPL asserts that this "bait and switch directly flouts the schedule every other party and

[141] Id., pp. 4-5.
[142] Id., p. 5.
[143] Id.
[144] Id., pp. 5-6.

potential intervener followed with respect to motions to intervene and wrongfully seeks to expand the now closed record on NERI's motion to intervene."[145]

ADVOCACY SECTION'S RESPONSE TO MOTIONS TO INTERVENE

The Division's Advocacy Section initially notes that R.I. Gen. Laws §39-3-25 requires the Petitioners in this docket to prove that the proposed transaction "will not diminish the facilities for furnishing services to the public and that it is consistent with the public interest." The Advocacy Section also asserts that "although this standard is succinct and seemingly straightforward, the process will not be."[146]

The Advocacy Section argues these administrative proceedings, by necessity, will be complex and consequential given that the outcome stands to impact the safety, reliability and affordability of the entire Rhode Island gas and electric distribution system presently owned by Narragansett. The Advocacy Section also argues that this "is a filing of enormous magnitude with myriad moving parts and copious interests at play." Accordingly, the Advocacy Section asserts that the "scope of the proceeding must remain focused and on point, otherwise its purpose will be frustrated, and excess resources will be needlessly expended. To this end, the Advocacy Section urges the Division to "ensure that particular intervenors, if granted party status, are limited in

[145] Id., p. 1-2 and 6-7.
[146] Advocacy Section's Response, p. 2.

participation scope if necessary to avoid undue delay or prejudice to the process."[147]

The Advocacy Section points out that the Rhode Island Supreme Court "has recognized that allowing particular party interventions is not harmless error as it may negatively impact proceedings through time delays, undue burden on other parties, etc."[148] The Advocacy Section argues that there is Division precedent for denying intervention requests in cases where potential intervenors neither have a statutory right to intervene or a directly affected interest that was not adequately represented by the Advocacy Section; and where their assertion of acting in the public interest didn't meet a balancing test that considered whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interest in other forums and whether the intervention(s) would unduly delay or prejudice the adjudication of the Applicant and other parties.[149]

The Advocacy Section further relies on the case of: *In Re Joint Petition for Purchase and Sale of Assets by the Narragansett Electric Company and the Southern Union Company*, Docket No. D-06-13, "in which the City of East Providence was denied full intervention status based on a finding that 'pursuing this issue [related to environmental concerns and redevelopment interest of a parcel of land owned by Southern Union along the City's

[147] Id.
[148] Id., p. 3; citing from In Re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1246 (R.I. 2000).
[149] Id., pp. 3-4; citing from In Re: Application by Rhode Island Fast Ferry, Inc for Water Carrier Authority, Docket No. D-13-51, Order No. 21170 (September 24, 2013).

waterfront] in the instant docket would unduly delay and prejudice the adjudication of the rights of the Petitioners and unreasonably broaden the issues in this case."[150] The Advocacy Section added that Judge Silverstein subsequently "agreed that the City's asserted interests were inconsistent with the proper scope of proceedings before the Division and that matters, such as the City's concerns… were squarely subject to the jurisdiction of the… [FERC]."[151]

With respect to the Providence Intervenors and EDP, the Advocacy Section argues that these Movants have "particularized interests in this case for which proceedings are already pending in alternative forums." The Advocacy Section notes that the Providence Intervenors seek assurances from PPL to remedy "transgressions" that occurred before the… [EFSB] and assurances that 'existing and future injuries… be addressed and resolved within this proceeding.'[152] The Advocacy Section argues that because the Providence Intervenors currently have a pending appeal before the Rhode Island Supreme Court in connection with an EFSB "decision relative to the burial of electric power lines along the India Point Park waterfront," it would be improper, inappropriate and ill-advised to fully vet in the instant docket the particularized alleged injuries and issues currently pending under the jurisdiction of the Rhode Island Supreme Court and/or the… [EFSB]."[153] The

[150] Id., p. 4; citing from Order 18591 (May 4, 2006) (footnoted citations omitted).
[151] Id.
[152] Id., pp. 4-5.
[153] Id., p. 5; citing from The City of Providence, et al v. The Energy Facility Siting Board, SU-2008-0040-MP.

Advocacy Section argues that the Division is without authority to remedy that case and attempts to do so would unnecessarily broaden the scope of the proceedings and cause undue delay.[154]

Regarding EDP, the Advocacy Section observes that EDP seeks to intervene based on particularized interests relative to its experience and insight about utility obligations, process and practices for distributed generation projects and interconnection. However, the Advocacy Section argues that "many of the facts and circumstances provided in EDP's motion are also the subject of pending and/or potential future disputed matters presently before the… Commission, which has jurisdiction." Considering the Commission's involvement in these issues, the Advocacy Section cautions the Division against EDP's intervention in this proceeding.[155]

As a final argument, the Advocacy Section highlights that it "will represent the interests of all ratepayers in this matter." The Advocacy Section argues that to the extent a Movant's participation is duplicative of this representation, the Advocacy Section recommends limitation or denial of their motions. The Advocacy Section notes that "all Movants may submit public comment to the Hearing Officer for consideration."[156]

Advocacy Section's Response to Providence Intervenors' Motion to Strike

In response to the Providence Intervenors' motion to strike the Advocacy Section's position on interventions, for being out of time, the Advocacy Section

[154] Id., p. 5.
[155] Id.
[156] Id., pp. 5-6.

stated that it had completed and filed its responsive pleading on Friday, July 9, but that only half of the service list received the filing that day; the remainder of the service list received it on Tuesday, July 13. Ms. Hetherington related that when she sent out the Advocacy Section's responsive pleading on July 9, she committed an error by not realizing that the service list in this docket was four pages long. She explained:

> The Advocacy Section did submit its position, if you will. The deadline, again, was for July 9th, and I admit completely that there were some procedural shortfalls in that the entire service list was not sent that position paper.... And then when I realized an error of an incomplete service list, that was remedied on Tuesday, the 13th in which the whole service list was notified of that position.
>
> And just to clarify, as you well know, the service list is kind of a work in progress. As parties call the Clerk, Ms. Massaro, and ask to be added to the service list, they are added. And admittedly, it was human error in that the service list that had been compiled as of July 2nd had four distinct pages of parties that had asked to be included, and in my haste to file, I noticed the first two pages at which it stopped and I did not realize there were two additional pages. So, the first two pages of the service list were sent our filing on Friday, the 9th within the time and it was not until the 13th that everyone, including the final two pages were served those papers.[157]

Additionally, in response to a question from the hearing officer, Ms. Hetherington stated that she learned of the error when a colleague, who was on the service list, questioned her on why he never received a copy of the Advocacy Section's position. She related that this inquiry triggered the investigation that led to the discovery of the error.[158]

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[157] Tr. 69-71, 7/15/21.
[158] Tr. 71-72, 7/15/21.

The Advocacy Section did assert that despite its error, the Providence Intervenors have not demonstrated that they have been prejudiced in this proceeding. The Advocacy Section noted that the Providence Intervenors did not request a continuance based on the delay.[159]

DECISION ON PROVIDENCE INTERVENORS' MOTION TO STRIKE

The Division is satisfied from the record that the Advocacy Section's responsive pleading/position statement was fully completed and substantially filed and distributed by the July 9, 2021 deadline. The error committed, that resulted in half of the service list not receiving the Advocacy Section's pleading until July 13 (including the Division's Clerk), does not appear to have caused any procedural harm or prejudice to EDP or the Providence Intervenors. Both Movants were in receipt of the Advocacy Section's position prior to the July 15, 2021 hearing and seemingly prepared and able to rebut the Advocacy Section's position. Notably, neither Movant requested a continuance due to the delay. Based on these findings, the Division shall deny the Providence Intervenors' motion to strike the Advocacy Section's position pleading on interventions.

DECISION ON RECUSAL MOTION

Before addressing the merits of NERI's motion for recusal, the Division believes that a statement of facts regarding Mr. Handy's April 21, 2020 APRA request in Docket No. 4981 is in order. Specifically, Mr. Handy requested the following records:

"[a]ny record of any communications between staff of the… Division… and any employee of National Grid, New England Power Company or

[159] Tr. 70, 7/15/21.

Narragansett Electric Company regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981…."

"[a]ny record of any communications between staff of the… Division… and any agent of National Grid, New England Power Company or Narragansett Electric Company, including but not limited to any employee or staff of its legal counsel Keegan Werlin LLP including but not limited to Jack Habib, Esq. or Stephen Frias, Esq. regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981…"

"…any memorandums generated by…[Division] for the Interim Director's consideration regarding or related to any issues under consideration in Rhode Island Public Utilities Commission Dockets 4973 or 4981…."

In response to Mr. Handy's APRA request, on April 22, 2020, the Division issued a timely reply indicating that no such records existed and/or that the records requested were not deemed public under the exception contained in R.I.G.L. §38-2-2(4)(E). This exception covers "[a]ny records that would not be available by law or rule of court to opposing party in litigation." The Division asserted "work product privilege."

In a proper exercise of his rights under R.I. Gen. Laws §38-2-8, Mr. Handy subsequently appealed the Division's denial of his APRA request to the Attorney General. At that time, this hearing officer was the Division's Chief Legal Counsel; and in that role, it was my responsibility to defend the Division's decision to deny disclosure of the requested records. In that capacity, I filed a formal response to Mr. Handy's Complaint on May 14, 2020.

It is true that the Division asserted the "common interest doctrine" as a defense in its decision to deny disclosure of the requested records. The Division's response included the following legal argument:

> Further, under the "common interest doctrine," it is not surprising that National Grid and the Division would share discussions on the merits of the Complainant's petition for a declaratory ruling. Courts have generally recognized that if the parties share a **common interest** in litigation, they should be able to communicate with their respective attorneys and with each other to more effectively represent their clients.... The common interest privilege is "an extension of the attorney client privilege."... "[A]s an exception to waiver, the joint defense or common interest rule presupposes the existence of an otherwise valid privilege, and the rule applies not only to communications subject to the attorney-client privilege, but also to communications protected by the work-product doctrine."[160]

After due consideration, however, the Attorney General decided, "based on the totality of evidence," that the "withheld communications were not protected under the work product privilege within Exemption E."[161] In response, the Division promptly released the records.

NERI now asserts that my legal representation of the Division in the aforementioned APRA matter, along with a subsequent Division response to a related data request in Commission Docket No. 4981, which defended the assertion of "common interest" between the Division and Narragansett on a ratemaking issue, and which incidentally was prepared and filed by a different Division attorney, disqualifies me to sit as the hearing officer in this docket proceeding.

The Petitioners have weighed in on NERI's motion for recusal and urge the Division to deny it. The Petitioners argue that NERI has presented no factual basis that warrants a recusal by the Hearing Officer. They also argue

[160] See Division's May 14, 2020 Response to APRA Complaint, p. 4; [citations omitted].
[161] See Attorney General APRA Decision PR 20-65

that NERI has filed an untimely recusal motion merely to circumvent the adopted schedule for arguing in support of their intervention request in this proceeding, *supra*.

As a starting point, the Division finds that NERI 's reliance on *Champlin's Realty Assoc. v. Tikoian* is misguided in this matter. In *Champlin*, the Court considered the propriety of various ex parte statements and off-the-record communications made by those members of the Coastal Resources Management Council (CRMC) while the administrative matter was pending before them. There is no similar scenario presented here.

In the instant case, NERI asserts that this hearing officer must recuse himself because he has demonstrated "a personal bias or prejudice by reason of a preconceived and settled opinion of a character calculated to impair his impartiality seriously and sway his judgment."[162] The factual basis for this claim rests exclusively with the hearing officer's admission that the Division and National Grid shared a "common interest" on a rate-related issue before the Commission in Docket No. 4981 - a common interest on a single issue in a single Commission docket.

In its oral argument, NERI made it crystal clear that it neither believes the Division can represent its interests, nor, for that matter, conduct its regulatory obligations in deference to State energy policy. NERI argues that the Division has a common interest with Narragansett "in matters related to the mechanics and costs of interconnecting renewable energy projects to the

[162] Relying on Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 185 (R.I. 2008).

distribution system, the undisputed objective of Rhode Island energy policy." NERI argues that "the Division has openly stated its position that local, clean energy solutions are subsidized by ratepayers," which NERI contends "is neither supported by state law or policy or the evidence…." NERI also makes it clear that it is challenging "[t]his matter of utility influence on its regulator" before the Rhode Island Supreme Court.[163] Based on this broad attack against the Division, it is questionable whether any member of the Division's staff, including the Administrator herself, would satisfy NERI's perceived and expected standards for an impartial hearing officer.

Mr. Handy's disagreement with utility regulators is also not limited to the instant docket, or to the Division. In a recent decision issued by the Commission in Docket No. 4981, the docket cited by NERI regarding the Division's claim of "common interest" with National Grid, Chairman Gerwatowski stated that he felt compelled to write a separate concurrence in order to respond to Mr. Handy's attack on the integrity of the Commission's quasi-judicial adjudicative process and Mr. Handy's attacks on the integrity, ethics, and competency of the Division.[164] PPL alluded to this Commission matter in its objection to NERI's recusal request.

In that Commission docket, Mr. Handy similarly asserted that both the Division and Commission were biased in the way they adjudicated his client's petition. In response, Chairman Gerwatowski criticized and rejected Mr. Handy's assertions that the Division and Narragansett were involved in

[163] Tr. 47-48, 7/15/21.
[164] See Order No. 24087, issued on July 14, 2021.

inappropriate *ex parte* communications and that these communications corrupted the case before the Commission. Chairman Gerwatowski also criticized Mr. Handy for suggesting that the Division and the Commission were engaged in inappropriate *ex parte* discussions as well.[165]

With respect to the Division's "common interest" position in that case, Chairman Gerwatowski offered the following statement:

> The Commission is aware that there are hundreds of megawatts of renewable energy projects in the interconnection queue that are proposed to be located in Rhode Island. The incremental costs of these initiatives are being funded by ratepayers, even without unexpected system modification costs added. It should, therefore, come as no surprise that the Division – in its role of ratepayer advocate for the wide body of ratepayers – would take a position which supports an allocation of those additional costs to the investors of the distributed generation projects instead of adding costs to the ratepayers. That is not opposition to clean energy that shirks a duty, it is defending ratepayers consistent with the role of ratepayer advocate.[166]

Chairman Gerwatowski also took exception to Mr. Handy's disparaging assertions about the Commission and its members, as evidenced by the following additional excerpt from his concurring opinion:

> Petitioner turned the remand into a disparaging accusation of a flawed regulatory proceeding that led to the Commission's decision in 2019-2020. The implications of Petitioner's allegations were that the opposing parties were either improperly self-interested, derelict in their duties, or incompetent. Petitioner also alleged that its opponents flouted the rules under the law and improperly influenced the Commission. In turn, the implication was that the Commission was naively and illegally duped into drawing incorrect legal conclusions by the Division – all because it read the Division's 6-page brief and heard the Division's

[165] Id.
[166] Id.

> words at oral argument (which consisted of fewer than 3 pages of the 96-page transcript). The presumption that the three Commissioners were so naïve as to be persuaded by the Division to draw incorrect legal conclusions is groundless and disrespectful to the tribunal. It was an implicit attack on the abilities of the three Commissioners who heard the case at that time, without foundation: (i) my fellow Commissioner Dr. Abigail Anthony, who formally worked for an environmental advocate and works tirelessly to search for solutions based on the evidence here at the Commission, (ii) my predecessor, Margaret E. Curran, who is a well-respected lawyer and former U.S Attorney for Rhode Island now working for the Conservation Law Foundation, and (iii) the equally well respected former Commissioner of the Office of Energy Resources, Dr. Marion Gold, who has long supported the growth of renewable energy. All of this denigrates the Commission and can have the effect of undermining public confidence in the regulatory process. As Chairman of the Commission, I could not ignore these attacks and allow them to remain in the public domain without response.[167]

Though NERI proffers little support for its assertion of bias and impartiality in its demand for recusal in the instant docket, the case law on the reverse side of this issue is plentiful and overwhelmingly persuasive. Some examples of the profusion of case law are cited and summarized below:

> "…merely because a judge or administrative hearing officer has prior knowledge of facts concerned in the matter before him does not require recusal. Neither does prior active participation in a matter that later comes again before that same judge or hearing officer mandate automatic recusal."[168]

> "We refuse to infer a risk of adjudicative bias or impropriety based solely upon the hearing officer's government-employment status. Indeed, to do otherwise would mean that no government adjudicator in this state could sit in judgment on any case involving his or her employer. Such a

[167] Id.

[168] Herald Press, Inc. v. Norberg, 122 R.I. 264, 272-273 (1979); Withrow v. Larkin, 421 U.S. 35 (1975).

contention proves too much because, if we were to accept it, then virtually all administrative adjudications involving governmental entities in this and other jurisdictions would grind to a halt."[169]

"No decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. In fact, judges frequently try the same case more than once and decide identical issues each time, although these issues involve questions of both law and fact."[170]

"…that the mere fact that a tribunal has had contact with a particular factual complex in a prior hearing, or indeed has taken a public position on the facts, is not enough to place that tribunal under a constitutional inhibition to pass upon the facts in a subsequent hearing. We believe that more is required."[171]

A litigant must establish facts that indicate a "personal bias or prejudice by reason of a preconceived or settled opinion of character calculated to impair his impartiality seriously and to sway his judgment."[172]

"The moving party has the duty to prove the alleged bias and prejudice stemmed from an extrajudicial source and that the judge based his decision on facts and events not pertinent before the court."[173]

"A defendant's subjective feelings and unsupported accusations are not sufficient grounds for recusal."[174]

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[169] Kent County Water Authority v. State Department of Health, 723 A.2d 1132, (R.I. 1999) at 1138.
[170] FTC v. Cement Institute, 333 U.S. 683, (1948), citing Withrow at 95.
[171] Withrow at 48.
[172] Cavanagh v. Cavanagh, 375 A.2d 911, 917 (RI 1977).
[173] In re: Zachary B. Antonio, 612 A.2d 650, 653 (RI 1992).
[174] State v. Sampson, 884 A.2nd 399, 405 (RI 2005).

"Merely because a judge has ruled adversely against a litigant does not show bias or prejudice on the part of the judge."[175]

"…a judge has as great an obligation not to disqualify himself when there is no occasion to do so as he has to do so when the occasion does arise."[176]

"If adverse rulings during the course of litigation were to be accepted per se to disqualify a judge on the ground that his impartiality might reasonably be questioned, then every disappointed litigant would have it within his power to remove a judge from continuing with the case assigned to him."[177]

"Disqualification is not required because the judge has definite views as to the law of a particular case."[178]

"The alleged bias and prejudice to be disqualifying must…result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."[179]

"Only a judge's personal bias or prejudice stemming from an extrajudicial source constitutes a disqualifying factor."[180]

"Judicial predilection or an attitude of mind resulting from the facts learned by the judge from the judge's participation in the case is not a disqualifying factor."[181]

"…the person alleging prejudice carries a substantial burden. One asserting prejudice must establish that the actions of the trial justice were affected by facts and events which were not pertinent nor before the court."[182]

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[175] In re: Marjorie R. Yashar, 713 A.2d 787, 790 (RI 1998).
[176] State v. Clark, 423 A.2d 1151, 1158 (RI 1981).
[177] Markus v. United States, 545 F. Supp. 998 (SD NY 1982).
[178] Moore, et al, v. McGraw Edison Company, 804 F.2d 1026 (8th Cir. (1986))
[179] Id., citing United States v. Grinnell Corp., 384 U.S. 563 (1966).
[180] State v. Millsap, 704 N.W. 2d 426 (2005).
[181] Id.
[182] State v. Nidever, 120 R.I. 767, 390 A.2d 368 (1978).

> "When considering disqualification, the district court is *not* to use the standard of Caesar's wife, the standard of mere suspicion…that is because the disqualification decision must reflect *not only* the need to secure public confidence through proceedings that appear impartial, but also the need to prevent parties from too easily obtaining the disqualification of a judge, thereby potentially manipulating the system for strategic reasons, perhaps to obtain a judge more to their liking."[183]

> "While judicial officers are obligated to recuse if they are unable to render a fair or an impartial decision in a particular case, justices have an equally great obligation not to disqualify themselves when there is no sound reason to do so."[184]

> "Opinions held by judges as a result of what they learned in earlier proceedings are not 'bias' or 'prejudice' requiring recusal, and it is normal and proper for a judge to sit in the same case upon remand and successive trials involving the same defendant."[185]

In conclusion, the Division finds that NERI's assertion that this hearing officer is unable to serve as a fair and impartial hearing officer to be without merit. Indeed, under such circumstances, the law clearly discourages recusal in order to prevent potential hearing officer "shopping" abuses. The Division also takes notice that Mr. Handy appears to have adopted a uniquely hostile and inexplicable deportment toward the very regulatory bodies charged with adjudicating the renewable energy interconnection issues that are of interest to his clients. His baseless and untimely motion for recusal is certainly

[183] Cigna Fire Underwriters Company v. MacDonald, 86 F.3d 1260 (1st Cir. 1996).
[184] Mattatall v. State, 947 A.2d 896 (R.I. 2008); Ryan, et al v. Roman Catholic Bishop of Providence, 941 A.2d 174 (R.I. 2008).
[185] Liteky v. United States, 510 U.S. 540 (1994).

consistent with his recently displayed advocacy approach before regulatory bodies. Nevertheless, Mr. Handy cannot create bias where none exists.

For the foregoing reasons, the NERI's motion to recuse must be denied.

FINDINGS ON INTERVENTION REQUESTS

In reaching its findings, the Division relied on the provisions of Rule 1.17 of the Division's Rules of Practice and Procedure, Rule 24 of the Superior Court Rules of Civil Procedure, related case law, Division precedent, the arguments articulated at the July 15, 2021 hearing, and the related pleadings filed in this proceeding.

In determining whether the requested interventions are necessary or appropriate, Rule 1.17(B) mandates that the Movant's must demonstrate that they either have: (1) *a right* [to intervene] *conferred by statute*, (2) *an interest which may be directly affected and which is not adequately represented by existing parties and as to which…*[the movant] *may be bound by the Division's action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent*, or (3) *any other interest of such nature that the movant's participation may be in the public interest*.

In deciding whether the "public interest" demands the participation of these movants, the Division has previously determined that "it must logically find that their individual interests warrant recognition and protection in furtherance of the general welfare of the public. In considering this issue, the Division must also balance several related factors, specifically, whether the

Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties."[186]

The Attorney General and OER

The Division will permit the intervention of the Attorney General and OER. The Division finds that because none of the Petitioners objected to the Attorney General's or OER's requests to intervene in this docket, the requests should be approved by operation of law. However, the Division wishes to make it clear that neither the Attorney General nor OER possess a statutory right to intervene in docket cases before the Division.[187] Their admittance into this proceeding is based exclusively on the "public interest" component concomitant with the evaluation prescribed under R.I. Gen. Law §39-3-25. But this admittance does not come without guardrails. The Division places both the Attorney General and OER on notice that they will not be permitted to venture beyond the statutory scope of this regulatory review or to seek "net benefit" commitments from PPL.

The Acadia Center, CLF and Green Energy

The Petitioners similarly did not object to the intervention requests from the Acadia Center, CLF and Green Energy. But on these interventions, the Petitioners argued that the Division should limit their interventions consistent

[186] See In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18591, at 16.
[187] See Rule 17(e).

with the scope of review mandated under R.I. Gen. Law §39-3-25. The Advocacy Section echoed the request for adherence to this limited scope.

The Division is mindful and respects that these non-profit environmental advocacy groups exist to promote clean, renewable, and efficient energy production and heating. They all see Narragansett (or PPL) as playing a key role in decarbonizing our economy and transitioning to clean energy. Their stated interest is in confirming that the sale of Narragansett to PPL does not result in deterioration of any programs or commitments connected to these goals.

In evaluating the Acadia Center's, CLF's and Green Energy's motions, the Division seriously questioned whether any of these groups satisfy the legal standards for intervention. None have a statutory right to intervene. Despite their claims to the contrary, none have an interest that would be "directly affected" by the Division's decision in this matter. Therefore, the final criterion for successful intervention, namely, whether their individual interest and participation "may be in the public interest" becomes the lynchpin for deciding whether to consent to their interventions. But this focused evaluation on whether their individual interests warrant recognition and protection in furtherance of the general welfare of the public necessitates additional scrutiny. As noted elsewhere in this decision, the Division has previously held that in considering this issue, the Division must also balance several related factors. Such as, whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their

respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties. It is this latter element on which the Petitioners and the Advocacy Section base their respective arguments for intervention limitations for these groups. The Division agrees.

Despite concerns that these Movants may more effectively pursue their respective interests in other forums as well as concerns that the Division lacks the jurisdiction to grant the relief they seek, the Division will permit the interventions of the Acadia Center, CLF and Green Energy on the basis that their interests generally warrant recognition in furtherance of the general welfare of the public. However, in the interest of remaining true to the Division's limited jurisdiction under R.I. Gen. Law §39-3-25, as well as to prevent undue delays or prejudice the adjudication of the rights of the Petitioners and other parties, their interventions will be subject to strict limitations.

These groups have indicated in their papers that they seek assurances from PPL, that if PPL's petition is approved, that there will be no deterioration in any of the existing programs or commitments related to the promotion of clean, renewable, and efficient energy production and heating. Accordingly, the Division shall restrict the participation of these parties to seeking only such assurances. PPL put it concisely in its argument in favor of a limited intervention, namely, that the "scope does not include attempting to reshape the State's renewable energy policies or seeking commitments to advocate for

changes or new policies – matters that lie within the Commission's jurisdiction or are addressed through the legislative process." The Division supports this limiting language. The Division also wishes to emphasize that such assurances must be limited to currently existing programs and commitments from National Grid/Narragansett; such participation in this docket shall not be used to seek any expansion of such programs and/or commitments not otherwise specifically required by law or order of the Commission.

The Providence Interveners, EDP, The NRG Retail Companies and NERI

With respect to the other requests to intervene, the Division, again, began its evaluation with a close review of the requirements of Rule 1.17. From that review, the Division finds that the Providence Intervenors, the NRG Retail Companies, EDP and NERI all fail to satisfy the first two criteria under Rule 1.17(B). Clearly, none have a statutory right to intervene. And the Division does not find that any will be "directly affected" by the Division's decision in this case.

Regarding the "directly affected" standard, in determining whether the intervention requests should be approved, the Division must stress that its legislative charge in R.I. Gen. Laws §§39-3-24 and 39-3-25 cases is to confirm that the "facilities for furnishing service to the public will not thereby be diminished" and that the sale is "consistent with the public interest." With respect to the first prong, the Division has previously held that the requirement means that the Division must find "that there will be no degradation of utility

services after the transaction is consummated."[188] The Division makes this determination by considering the buyer's experience and financial strength.[189]

Regarding the second prong, the Division has specifically rejected arguments that this element required the proposed transaction to "result in a 'net benefit' to ratepayers and/or members of the general public in order to be properly approved by the Division;"[190] In its place, the Division found that the public interest prong "requires a finding that the proposed transaction will not unfavorably impact the general public (including ratepayers)."

As these Movants cannot be considered to represent the "general public" with respect to the requisite public harm analysis, in order to demonstrate that they will be "directly affected" by the Division's review process and decision, they must alternatively proffer a compelling case that they would potentially experience a loss of services from PPL Rhode Island if the Transaction were approved. Moreover, even if they could demonstrate any of these rudiments, they must also convince the Division that none of the other parties in this proceeding could adequately represent that interest (especially, the Advocacy Section, the Attorney General and OER). The Division finds that no such persuasive offer of proof has been made by these Movants.

Finally, under Rule 1.17(B), the Movants may be granted intervention status if any of their interests are of "such a nature that… [their] participation may be in the public interest."

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[188] See: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 52.
[189] Id. at 50.
[190] Id. at 51.

Accordingly, the issue boils down to whether it would be in the public interest to permit the Providence Intervenors, the NRG Retail Companies, EDP and/or NERI to participate in this proceeding. In deciding whether the "public interest" demands the participation of these movants, the Division must logically find that their individual interests warrant recognition and protection in furtherance of the general welfare of the public.[191] In considering this issue, the Division must also balance several related factors, specifically, whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties.[192]

The Providence Intervenors, the NRG Retail Companies, EDP and NERI all assert that their interventions would be in the public interest. The Petitioners, on the other hand, argue that EDP, the Providence Intervenors, the NRG Retail Companies and NERI all seek to advance financial and policy interests outside the scope of the proceeding and properly placed before the PUC. The Petitioners also assert that denial of their motions is also warranted because their interventions would 'unreasonably broaden the issues in this case' and 'unduly delay and prejudice the adjudication of the rights of the Petitioners, *supra*.

[191] See definition of "public interest" in Black's Law Dictionary, Seventh Edition.
[192] See: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18591, at 16.

EDP

EDP calls itself a renewable energy solutions provider that works with landowners, public organizations, universities, companies and investors that want to reduce their carbon footprint by providing renewable energy solutions. EDP expressed many complaints about its various interactions with Narragansett. Chief among those complaints is the unforeseen cost and time it takes to complete interconnection agreements.

EDP asserts that its interconnection agreement experiences with Narragansett "is unique and supports granting this motion to intervene." EDP also asserts that its participation "is in the public interest because EDP's unique first-hand experience with current market and regulatory issues facing distributed generation developers will assist the Division in assessing whether 'facilities for furnishing service to the public will not thereby be diminished [by the Transaction] and… the terms [of the Agreement and the Transaction] are consistent with the public interest.'"

Narragansett argues that EDP seeks to introduce issues related to the financial cost of interconnection related to a specific 50 MW solar project that it is developing in North Kingstown. Narragansett notes that in EDP's "own words," it seeks 'participation in this proceeding *to protect its economic interests* and the public interest in a pro-competitive, pro-renewable, and well-managed electrical infrastructure grid,' *supra*.

Likewise, PPL urges the Division to deny EDP's motion because EDP seeks only to advance its own self-interest by securing concessions from the

Petitioners in exchange for approval of the Transaction. PPL argues that EDP seeks to interject issues that fall outside the Division's jurisdiction, and that "EDP's unhappiness with previous Commission rulings does not give EDP the right to circumvent statutory and jurisdictional boundaries," *supra*.

The Division does not find EDP's interest in this matter to be consistent with the interests of the public. Inasmuch, as EDP seeks to shift its interconnection costs to ratepayers, the Division is unable to see the nexus between EDP's interests and the public's (ratepayers') interest. Moreover, the Division finds that EDP's interconnection cost issue is clearly outside the scope of this narrow proceeding and totally beyond the jurisdiction of the Division, as are EDP's concerns with the so-called "anticompetitive agreement" with Narragansett's transmission affiliate, DAF charges, the "reimbursement of expended funds" and Rhode Island's renewables "progress" in comparison to other states. The Division has made it clear that it will not permit a usurpation of Commission rate authority under the guise of imposing arguably illegal rate-related conditions on the proposed Transaction in the context of a Section 39-3-25 review.[193]

Finally, the Division does not accept EDP's argument that it should be permitted to intervene in this proceeding by virtue of the General Assembly's declared interest in advancing renewable energy in Rhode Island. This is a tenuous argument designed only to circumvent the prescribed standards for intervention.

[193] See: In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 58-59.

For the foregoing reasons, the Division shall deny EDP's motion to intervene.

NERI

NERI asserts that its coalition "represents the public interest because the success of the distributed generation of renewable energy in Rhode Island is needed to reach the goals of the 2021 Act on Climate and the State's 100% by 2030 plan," *supra*. NERI asserts that Narragansett has "underserved our state's preference for lower cost, more secure, and cleaner distributed energy resources to provide for its own profit from natural gas and infrastructure investment," and has failed to pursue non-wires alternatives costs. Like EDP, NERI also takes exception to the interconnection costs being charged to renewable energy developers by Narragansett. NERI also objects to utility-scale renewables competing against "local clean energy businesses," *supra*.

NERI maintains that in this docket proceeding, it will seek PPL's commitment to "a proactive plan for rate reduction through implementation of local, distributed-energy solutions and for managing the electric system to achieve the state's goals of reaching 100% renewable energy by 2030 and net zero emissions by 2050." NERI also seeks assurances from National Grid and PPL that "they will insulate their own economic interests from solutions produced by our own small businesses that provide local jobs for clean energy alternatives, not allowing natural gas, transmission and other utility business interests to contaminate the proper, neutral administration of our electric system," *supra*.

Narragansett argues that NERI has not asserted any interest showing that their participation would be in the public interest, rather, only a dispute largely related to its members' own proprietary economic interests. Narragansett adds that to the extent "the Transaction may have any impact on policies related to the development of distributed generation or competitive retail electric markets, the interests of the public in those topics will be represented adequately by OER and the Attorney General. Both Petitioners argue that permitting NERI to intervene for the purpose of pursuing their proprietary interests will result in unreasonable delay, distraction, and burden to the petitioners and to the Division's investigation pursuant to R.I. Gen. Laws §39-3-25.

PPL argues that NERI (and EDP) want all customers, rather than renewable energy developers, to pay for the costs of interconnection of renewable generation. PPL contends that this issue "falls directly within the Commission's jurisdiction" and that NERI (and EDP) "seek to perform an end around the Commission." PPL also argues that one of NERI's members "has previously litigated and lost a similar challenge before the Rhode Island Supreme Court… [t]hey are not entitled to lodge a second appeal here." PPL also argues that NERI members (and EDP) currently have numerous proceedings pending before the Rhode Island Supreme Court, the Commission and the FERC on precisely the issues they seek to "improperly introduce into this proceeding," *supra*. PPL additionally argues that NERI 'will seek PPL's commitment to a proactive plan for rate reduction through implementation of

local, distributed-energy solutions and for managing the electric system to achieve the state's goals of reaching 100% renewable energy by 2030 and net zero emissions by 2050.' But PPL argues that neither it nor the Division can determine the proper confines of any such plan in this proceeding; that decision rests exclusively with the Commission.

The Division finds little difference between NERI's and EDP's disputes against Narragansett and their respective interests regarding interconnection costs. Like with EDP, the Division does not find NERI's interest in this matter to be automatically consistent with the interests of the public. NERI, like EDP, seeks to shift its interconnection costs to ratepayers, a reality that places NERI's interests on a collision course with the interests of ratepayers. Indeed, NERI has openly stated that "NERI's members represent the interests of customer generators, a class that has unique interests…."[194]

NERI maintains that it is its role to "advocate… for a utility future that will most effectively fulfill state [energy] policy." At the same time, NERI argues that two state agencies (the Advocacy Section and OER) and the Attorney General of Rhode Island are not capable of satisfying this role. The Division does not accept this argument. It is incontrovertible that these public bodies function in furtherance of the public interest. To argue that these public agencies and the State's Attorney General will act in contravention of Rhode Island law is ludicrous and unpersuasive.

[194] Tr. 32, 7/15/21.

NERI also asserts that the case law favors interventions and sets "a low bar for participation especially in matters like this of broad and significant import to public policy."[195] In support of this argument, NERI proffers a citation to Blackstone Valley Chamber of Commerce, et al. v. Public Utilities Commission, 452 A.2d 931 (R.I. 1982). However, upon careful examination of this Supreme Court decision, the Division finds no such support for NERI's "low bar" argument. The Blackstone Valley case involves a "standing" to appeal issue and most definitely does not address or establish a "low bar" standard for interventions. Such a clear misrepresentation of the law is perplexing.

NERI also references an argument that was made by the Advocacy Section in the Southern Union case, through which the Advocacy Section recommended that the Division's hearing officer consider potential rate impacts in the context of any Section 39-3-25 review. NERI maintains that it can assist the Division in this regard because its members "seek a plan to avoid infrastructure expenses through distributed energy resources." NERI argues that Rhode Island's public interest is not served by unwarranted infrastructure investments that drive rates higher and higher."[196]

The problem with NERI's arguments, however, is that the rate concerns espoused by the Advocacy Section in the Southern Union case focused on "whether the ability to provide safe and adequate service at the lowest

[195] Tr. 34, 7/15/21.
[196] Tr. 35-38, 7/15/21.

reasonable cost would be jeopardized."[197] In this context, the Advocacy Section was speaking to the "Rate Plan" that would ultimately be filed with the Commission if the Division approved the proposed Southern Union transaction. Specifically, the Advocacy Section recommended that the approval of the acquisition be conditioned on the filing of a subsequent Rate Plan that "will not adversely impact rates for Rhode Island gas and electric customers."[198] The Advocacy Section was not looking for a rate analysis during the Section 39-3-25 review; in fact, it acknowledged that "the costs and benefits associated with the proposed transaction are not well developed at this point...."[199] Instead, it was seeking a commitment from Narragansett that the proposed transaction would not result in increased future rates. In contrast, NERI is seeking a reduction in interconnection costs through actions taken by the Division, not the Commission. Where the Advocacy Section was advocating, generally, for no harm to ratepayers in the Southern Union case, in connection with an ultimate rate review by the Commission, NERI is looking to achieve a rate reduction for renewable energy developers on their interconnection costs and a rate analysis on whether ratepayers could save money by adding more local renewable energy projects to the State's renewable energy portfolio in a proceeding before the Division. The foundation of NERI's position is that its members can save Rhode Island ratepayers money on their utility bills if only they were permitted greater access to Rhode Island's electric grid. Unfortunately, NERI has offered

[197] See In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, Docket No. D-06-13, Order No. 18676, at 16.
[198] Id. at 17.
[199] Id.

no material proof of such a claim, only a promise to seek commitments from PPL. The Division does not see a "public interest" benefit in NERI's planned participation. Furthermore, as made clear in the Southern Union case, the Division will not interfere in rate issues that fall within the Commission's exclusive jurisdiction.

NERI also seeks to intervene in this proceeding to "fully understand PPL's interest in the gas economy and consider and resolve the anti-competitive conflict here and now." NERI argues that it is the public interest to separate the gas and electricity supply businesses in Rhode Island from common ownership in one utility – because promoting the sale of natural gas is inconsistent with the State's electric energy policy.[200] The Division finds these issues significantly outside the scope of the instant review and beyond the Division's legal authority to address. There is no legal requirement that mandates such separate electricity/gas utility ownership or the immediate elimination of natural gas as an energy source. The Division will not allow a discussion on those issues to delay or burden this limited jurisdictional proceeding.

In conclusion, the Division finds NERI's many claims of representing the public interest to be disingenuous and unpersuasive. NERI seeks participation only to advance the financial interests of its members. Additionally, the issues of concern to NERI, such as interconnection costs, infrastructure costs, competition, climate change policy and natural gas sales are all issues outside

[200] Tr. 39-41, 7/15/21.

the scope of this narrow proceeding and clearly beyond the jurisdiction of the Division. The Division has made it clear that it will not permit a usurpation of Commission rate authority under the guise of imposing arguably unlawful rate-related conditions on the proposed Transaction in the context of a Section 39-3-25 review. The Division will also not consider the imposition of conditions on the sale of Narragansett that have no legislative foundation. For all these reasons, the Division shall deny NERI's motion to intervene in this docket.[201]

NRG Retail Companies

The NRG Retail Companies operate in Rhode Island as nonregulated power producers and natural gas marketers. The group states that they have an interest in facilitating the development of Rhode Island's competitive electric and natural gas retail markets and wish to intervene in order to evaluate the Transaction and "analyze whether it could result in preventing retail electric and natural gas customers from obtaining the benefits of properly functioning and effectively competitive retail markets." The NRG Retail Companies argue that any reduction in competition would be "contrary to the public interest," *supra*.

Like with EDP and NERI, Narragansett argues the NRG Retail Companies should be denied because they seek to advance individual or financial interests that are far beyond the scope of the Division's review under R.I. Gen. Laws §39-3-25 and the Division's jurisdiction. Narragansett argues that issues related to

[201] As the Division is denying NERI's participation in this proceeding there is no need to address Narragansett's motion to strike NERI's post-hearing supplemental arguments in favor of its motion to intervention.

"competitive supply are properly heard at the PUC, in another forum other than this particular docket," *supra*. Narragansett points out that the NRG Retail Companies are asking the Division "to 'examine whether operational or policy improvements could be implemented as part of the approved transaction' to advance its interest in competitive retail markets," *supra*. Narragansett adds that denial is also warranted because the NRG Retail Companies' intervention is not consistent with the "public interest" and would "unreasonably broaden the issues in this case" and "unduly delay and prejudice the adjudication of the rights of the Petitioners," *supra*.

PPL argues that the NRG Retail Companies "improperly seek to use this proceeding to advance their own profit-motivated interests and not the public interest." PPL argues that the NRG Retail Companies "seek to advance objectives and policy interests outside the scope of this proceeding and more properly placed before the Commission or in a rulemaking proceeding."[202] PPL asserts that the Commission, not the Division, has jurisdiction over matters affecting customer choice and competitive retail markets; PPL argues that this group is "not seeking to advance the public interest, but, in fact, seeking to impair the careful balance struck by the Commission and existing, properly promulgated rules to further the public interest," *supra*.

The Division has carefully considered the NRG Retail Companies' arguments for intervention in this proceeding and finds no nexus between this group's interest and the public interest. The NRG Retail Companies argue that

[202] Id., p. 14.

they should be permitted to intervene because "they are the only competitive suppliers seeking to intervene here… [and because] the Rhode Island legislature has already determined that competition in the energy sector is in the public interest…."[203] The NRG Retail Companies say that they seek to intervene to ensure that there will not be a diminution of services. However, no decision from the Division connected to this proceeding could adversely affect the business operations or competitiveness of NPPs and/or natural gas marketers doing business in Rhode Island. Therefore, the Division must find that the NRG Retail Companies, instead, endeavor to enhance their competitive standing by seeking commitments from PPL or a conditional-approval decision from the Division. The Division agrees with PPL in its assertion that "[t]o the extent there is a public interest in competition for electric supply or gas supply, that interest is served by the statutes establishing the competitive market and the rules and tariffs promulgated governing the programs through which competitive suppliers participate."[204] Simply stated, the Division sees the NRG Retail Companies effort to influence this proceeding as an attempt to generate a "net benefit" from PPL, which the Division has previously held transcends the scope of these Section 39-3-25 reviews.

As an additional observation, the NRG Retail Companies, like NERI and EDP, argue that their interests are indistinguishable from the "public interest." The Division finds it interesting that the NRG Retail Companies argue that the public interest demands a robust natural gas supply in Rhode Island, while, at

[203] Tr. 49-52, 7/15/21.
[204] PPL Objection, p. 6.

the same time, NERI is arguing that the public interest demands the total elimination of natural gas from the Rhode Island energy portfolio. This incongruity certainly reinforces a finding by the Division that neither of these groups are truly interested in advancing the public interest – only their own financial interests.

Accordingly, the Division shall deny the NRG Retail Companies' motion to intervene in this docket.

The Providence Intervenors

The Providence Intervenors have a singular mission in this matter. They seek to intervene in this proceeding ultimately to compel PPL to bury aerial power lines that are located above India Point Park in Providence. Throughout this decision, the reader will find numerous references to "scope" and "jurisdiction" restrictions and limitations. Though it is abundantly obvious that the Providence Intervenors believe they are pursuing a matter deeply rooted in the "public interest," their cause, and the remedy they seek, is unambiguously outside the scope of this review and completely outside the Division's authority to address and resolve.

The issue being raised by the Providence Intervenors is connected to a siting matter that originated before the EFSB and is presently before the Rhode Island Supreme Court. It is abundantly clear that the Providence Intervenors hope to carry their protracted legal battle into a new forum where they may apply public pressure in an attempt to bring about the desired remedy – the

burial of the E-183 lines in issue. However, this proceeding is not the proper forum for adjudicating the Providence Intervenors' grievances.

A similar matter involving the City of East Providence came before the Division on a motion to intervene in the Southern Union Section 39-3-25 review in 2006. After its intervention request was denied by the Division, the City of East Providence sought a review before the Superior Court. Judge Silverstein concluded that *"[to] permit the intervention here sought would in the opinion of this Court provide unwarranted opportunistic leverage in favor of Plaintiff that would be inconsistent with the proper scope of proceedings before the Division in accordance with the provisions of G.L. 1956, §39-3-25 and would broaden…the scope of hearings contemplated under the last referenced section to the detriment of the petitioners… as well as to the public generally…."* Judge Silverstein added: "[t]his Court believes that an expansive reading of *§39-3-25* is not consistent with the legislative scheme contemplated by the chapters of our General Laws which deal with the Duties of Utilities and Carriers…."[205]

The Division likens the Providence Intervenors' legal theory in support for intervention with the East Providence case, above. Here, like with East Providence, the Division finds that the Providence Intervenors are seeking relief that the Division is unable to grant in a proceeding that demands a narrow scope of review. Accordingly, the Division must deny the Providence Intervenors' motion to intervene.

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[205] See City of East Providence v. Narragansett Electric Co., et al, 2006 WL 1660761 (June 15, 2006).

CONCLUSION

The Division has carefully examined the many requests for party participation in this proceeding and has determined that four (4) of the Movants have failed to satisfy the requisite standards for intervention. The Division did approve five (5) requests for intervention, but with strict limitations. In reaching these findings, the Division was compelled to weigh and balance the interests of the Movants with several related factors, specifically, whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties. The Division is also mindful that injudicious interventions can result in significant delays and disruptions in the orderly adjudication of important regulatory matters.[206] Concerns of a speculative and remote nature, particularly involving issues properly before other agencies and/or the Courts, cannot be permitted to unnecessarily hinder and complicate the adjudication of the matter at hand. The Division believes it has properly and reasonably balanced these factors in this case.

Now, therefore, it is

(24109) ORDERED:

[206] See In re Island Hi-Speed Ferry, LLC, 746 A.2d1240, 1246 (R.I. 2000).

1. That based on the findings contained herein, the motions to intervene filed by the Attorney General, OER, the Acadia Center, CLF, and Green Energy, are hereby granted, subject to the limitations described herein.
2. That the motions to intervene filed by EDP, NERI, the NRG Retail Companies and the Providence Intervenors, are hereby denied.
3. That NERI's Motion to Recuse, is hereby denied.
4. That the Providence Intervenors' Motion to Strike, is hereby denied.

Dated and Effective at Warwick, Rhode Island on August 19, 2021.

Division of Public Utilities and Carriers

John Spirito, Jr., Esq.
Hearing Officer

APPROVED:

Linda George, Esq.
Administrator