

# **EXHIBIT O**

**In The Matter Of:**  
*PPL/NARR. ELECTRIC PETITION*  
*DOCKET NO. D-2021-09*

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*December 15, 2021*

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*A-1 COURT REPORTERS, INC.*  
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<p>1 STATE OF RHODE ISLAND</p> <p>2 DIVISION OF PUBLIC UTILITIES AND CARRIERS</p> <p>3</p> <p>4</p> <p>5 HEARING IN RE:</p> <p>6</p> <p>7 PETITION OF PPL CORPORATION, PPL RHODE</p> <p>8 ISLAND HOLDINGS, LLC, NATIONAL GRID USA,</p> <p>9 AND THE NARRAGANSETT ELECTRIC COMPANY FOR</p> <p>10 AUTHORITY TO TRANSFER OWNERSHIP OF THE</p> <p>11 NARRAGANSETT ELECTRIC COMPANY TO PPL</p> <p>12 RHODE ISLAND HOLDINGS, LLC AND RELATED</p> <p>13 APPROVALS</p> <p>14</p> <p>15 DOCKET NO. D-21-09</p> <p>16 -----/</p> <p>17</p> <p>18 DECEMBER 15, 2021</p> <p>19 10:00 A.M.</p> <p>20</p> <p>21 89 JEFFERSON BOULEVARD</p> <p>22 WARWICK, RHODE ISLAND</p> <p>23</p> <p>24 BEFORE JOHN SPIRITO, ESQ., HEARING OFFICER</p>	<p>1 I-N-D-E-X</p> <p>2</p> <p>3 PAGE NO.</p> <p>4</p> <p>5 BETHANY JOHNSON</p> <p>6 Continued Cross-Examination by Mr. Wold 8</p> <p>7 Cross-Examination by Ms. Parenteau 10</p> <p>8 Cross-Examination by Mr. Webster 28</p> <p>9 Cross-Examination by Mr. Rhodes 31</p> <p>10</p> <p>11 GREGORY DUDKIN</p> <p>12 Direct Examination by Mr. Ramos 37</p> <p>13 Cross-Examination by Mr. Wold 47</p> <p>14 Cross-Examination by Mr. Vaz 62</p> <p>15 Cross-Examination by Mr. Webster 80</p> <p>16 Cross-Examination by Mr. Rhodes 85</p> <p>17 Cross-Examination by Ms. Curran 94</p> <p>18 Redirect Examination by Mr. Ramos 103</p> <p>19 Recross-Examination by Mr. Webster 111</p> <p>20</p> <p>21 TODD JIROVEC</p> <p>22 Direct Examination by Mr. Petros 115</p> <p>23 Cross-Examination by Mr. Vaz 122</p> <p>24</p> <p>25 DANIEL DANE JOHN REED</p> <p>26 Direct Examination by Mr. Ramos 129</p> <p>27 Cross-Examination by Mr. Wold 139</p> <p>28 Redirect Examination by Mr. Ramos 152</p> <p>29</p> <p>30 GREGORY L. BOOTH</p> <p>31 Direct Examination by Ms. Hetherington 160</p> <p>32 Cross-Examination by Mr. Petros 201</p> <p>33</p> <p>34</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR PPL CORPORATION AND PPL RHODE ISLAND</p> <p>4 HOLDINGS, LLC:</p> <p>5 HINCKLEY ALLEN</p> <p>6 BY: ADAM M. RAMOS, ESQ.</p> <p>7 JERALD J. PETROS, ESQ.</p> <p>8</p> <p>9 FOR NATIONAL GRID USA AND NARRAGANSETT</p> <p>10 ELECTRIC:</p> <p>11 KEEGAN WERLIN, LLP</p> <p>12 BY: ROBERT J. HUMM, ESQ.</p> <p>13 CHERYL KIMBALL, ESQ.</p> <p>14</p> <p>15 FOR THE DIVISION'S ADVOCACY SECTION:</p> <p>16 CHRISTY HETHERINGTON, ESQ.</p> <p>17 LEO WOLD, ESQ.</p> <p>18</p> <p>19 FOR THE ATTORNEY GENERAL:</p> <p>20 NICHOLAS VAZ, ESQ.</p> <p>21 TIFFANY PARENTEAU, ESQ.</p> <p>22</p> <p>23 FOR THE ARCADIA CENTER:</p> <p>24 HENRY WEBSTER, ESQ.</p> <p>25</p> <p>26 FOR THE GREEN ENERGY CONSUMERS ALLIANCE:</p> <p>27 JAMES RHODES, ESQ.</p> <p>28</p> <p>29 FOR THE CONSERVATION LAW FOUNDATION:</p> <p>30 MARGARET CURRAN, ESQ.</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p>	<p>1 (COMMENCED AT 10:02 A.M.)</p> <p>2 THE HEARING OFFICER: I'd like to</p> <p>3 go back on the record. Good morning. I'd</p> <p>4 like to take appearances for the record,</p> <p>5 please.</p> <p>6 MR. PETROS: Good morning, Mr.</p> <p>7 Hearing Officer. Jerry Petros for PPL.</p> <p>8 MR. RAMOS: Adam Ramos also for</p> <p>9 PPL.</p> <p>10 MS. HETHERINGTON: Good morning.</p> <p>11 Christy Hetherington for the Advocacy</p> <p>12 Section.</p> <p>13 MR. WOLD: Leo Wold for the</p> <p>14 Advocacy Section.</p> <p>15 MR. HUMM: Good morning. Robert</p> <p>16 Humm for National Grid USA and the</p> <p>17 Narragansett Electric Company.</p> <p>18 MS. KIMBALL: And Cheryl Kimball</p> <p>19 for National Grid.</p> <p>20 MR. WEBSTER: Hank Webster for</p> <p>21 Arcadia Center, and as I noted yesterday,</p> <p>22 Mr. Hearing Officer, I might be leaving at</p> <p>23 some point today, so I'll try to be as</p> <p>24 undisruptive as possible.</p>

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1 MR. VAZ: Nicholas Vaz for the  
2 Attorney General's office.  
3 MS. PARENTEAU: Tiffany Parenteau  
4 for the Attorney General's office.  
5 MR. RHODES: Jamie Rhodes on behalf  
6 of Green Energy Consumers Alliance.  
7 MS. CURRAN: Meg Curran for the  
8 Conservation Law Foundation. I'm joined  
9 today by my colleague James Crowley. I also  
10 will have to leave later this afternoon for  
11 the Energy Facility Siting Board matter.  
12 Also these microphones I think need a new  
13 battery.  
14 THE HEARING OFFICER: All right.  
15 Let the record reflect that I've passed out  
16 an updated exhibit list. All the attorneys  
17 should have an updated copy. And I think we  
18 left off with Ms. Johnson's testimony,  
19 cross-examination of Ms. Johnson by Mr.  
20 Wold.  
21 MR. RAMOS: Mr. Hearing Officer, we  
22 do have one administrative matter, if you  
23 don't mind.  
24 THE HEARING OFFICER: Okay.

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1 MR. RAMOS: As you recall, I think  
2 each of the first two days of the hearing  
3 we've discussed one of the attachments that  
4 we sought confidential treatment for that  
5 the Attorney General had concern because it  
6 had only been provided to the Division and  
7 not to the other parties on the basis of  
8 third-party confidentiality concerns, and we  
9 discussed sharing a summary of that document  
10 with Mr. Vaz to see if that resolved those  
11 concerns. I had a discussion with Mr. Vaz  
12 this morning, showed him a summary, and the  
13 resolution of that is that we would agree  
14 and stipulate that the document which is  
15 Attachment PPL-DIV 1-11-18 can be removed  
16 from the record and not be considered as  
17 part of this proceeding.  
18 THE HEARING OFFICER: Okay.  
19 MS. HETHERINGTON: If I may, just  
20 one additional clarification. What has been  
21 marked on the exhibit list as Exhibit 34 for  
22 the Advocacy Section with regard to Docket  
23 4600, I think technically we did not move to  
24 have it admitted in full. I see that it is.

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1 I just wanted to confirm that, indeed, it is  
2 admitted as a full exhibit. We did not move  
3 to have it so, and I wondered if there were  
4 any objections, and if not, we wanted to  
5 confirm that it is full.  
6 THE HEARING OFFICER: Okay. My  
7 mistake. Any objections? All right. So  
8 marked.  
9 MS. HETHERINGTON: Thank you.  
10 THE HEARING OFFICER: Ms. Johnson,  
11 I'll remind you that you're still under oath  
12 from yesterday.  
13 MR. PETROS: I think it's Mr. Vaz.  
14 THE HEARING OFFICER: I thought Mr.  
15 Wold was still questioning.  
16 MR. PETROS: He had finished.  
17 MR. WOLD: I had pretty much  
18 completed my questioning. I do have one or  
19 two more questions if now is the appropriate  
20 time just to finish up.  
21 THE HEARING OFFICER: I thought you  
22 were still questioning her, so --  
23 MR. WOLD: No, I had pretty much  
24 wrapped up, but unfortunately, I kept

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1 thinking over things that I may not have  
2 asked over the evening. I have one or two.  
3 BETHANY JOHNSON (Resumed)  
4 CONTINUED CROSS-EXAMINATION BY MR. WOLD  
5 Q. I just wanted to ask you, we went through a  
6 series of hypothetical calculations  
7 yesterday with respect to that \$65 million  
8 component and you provided us with a very  
9 high level estimate with respect to that  
10 figure and we talked about the depreciation  
11 expense and then we talked about the equity  
12 return. Is there an additional return on  
13 debt that also would get factored into the  
14 revenue requirement?  
15 A. Yes. In an actual revenue requirement in  
16 a rate case there would be other components,  
17 including taxes. We were discussing -- you  
18 had asked about the return on equity, so  
19 that was what we talked through and what we  
20 calculated. Certainly in a base  
21 distribution rate case additionally -- the  
22 example was a bit more narrow than what we  
23 typically talked through in a distribution  
24 rate case where there would both be



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<p>1 increases and decreases that would happen.</p> <p>2 Q. The return on or return for debt you would</p> <p>3 use a different interest rate. We had used</p> <p>4 I think eight percent for the return on</p> <p>5 equity, but for the return on debt would it</p> <p>6 be fair to use something like two percent</p> <p>7 for that return, and then you would</p> <p>8 calculate it based on the same \$65 million</p> <p>9 figure, but then you would utilize the</p> <p>10 capital structure to -- assuming, as we did</p> <p>11 yesterday, a 50/50 percent of equity and</p> <p>12 debt, if you allocate 50 percent of two</p> <p>13 percent of 65 million for the return on</p> <p>14 debt, and if I'm misspeaking, just let me</p> <p>15 know and take us through that calculation if</p> <p>16 you would.</p> <p>17 A. Yes. The calculation would be the same,</p> <p>18 and if you were assuming a two percent cost</p> <p>19 of debt, then, again, you would do the same</p> <p>20 calculation that we did yesterday, but for</p> <p>21 the eight percent you would use two percent.</p> <p>22 Q. Okay. And that's also the same for the</p> <p>23 other components, namely, for AMF and grid</p> <p>24 mod, too. You go through it the same way</p>	<p>1 process in a little more detail than what</p> <p>2 was in the testimony for Pennsylvania.</p> <p>3 A. Sure. In Pennsylvania we use a -- we use</p> <p>4 three test years. There's an historic test</p> <p>5 year, a future test year and what we refer</p> <p>6 to as the fully projected test year. To</p> <p>7 start out, it's similar with the historic</p> <p>8 test year in that the utility provides the</p> <p>9 most recent -- or 12 months of data for the</p> <p>10 fiscal year. There are regulations around</p> <p>11 timing, so PPL Electric typically files in</p> <p>12 March of -- say we're going to file a case</p> <p>13 in 2022, we would file in March -- and</p> <p>14 that's hypothetical. We would file in March</p> <p>15 using an historic test year of 2021, so that</p> <p>16 would be the 12 months for that calendar</p> <p>17 year. We would also provide all of the same</p> <p>18 information that we do for an historic test</p> <p>19 year, we would file that for 2022 which is</p> <p>20 the future test year. And then for the</p> <p>21 fully projected future test year we, again,</p> <p>22 file all of the same data for what would be</p> <p>23 2023. And in Pennsylvania the rates are</p> <p>24 based on -- are based on that 2023 data.</p>
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<p>1 except you use two percent instead of the</p> <p>2 eight percent and you'd use the same capital</p> <p>3 structure, is that correct?</p> <p>4 A. Yes, that's generally the ratemaking</p> <p>5 calculation.</p> <p>6 MR. WOLD: Okay. Thank you.</p> <p>7 That's all the questions I have.</p> <p>8 THE HEARING OFFICER: Thank you.</p> <p>9 Mr. Vaz?</p> <p>10 MR. VAZ: Actually, I'm go to let</p> <p>11 Attorney Parenteau speak.</p> <p>12 MS. PARENTEAU: Good morning, Miss</p> <p>13 Johnson.</p> <p>14 THE WITNESS: Good morning.</p> <p>15 CROSS-EXAMINATION BY MS. PARENTEAU</p> <p>16 Q. So today we'd like to just go over to gain a</p> <p>17 better understanding of the Pennsylvania</p> <p>18 regulatory structure and how you understand</p> <p>19 the differences with it between the Rhode</p> <p>20 Island regulatory structure and also just a</p> <p>21 few clarifications from your testimony.</p> <p>22 A. Okay.</p> <p>23 Q. So if you could start by just giving us a</p> <p>24 description of the typical ratemaking</p>	<p>1 So we do the similar adjustments to</p> <p>2 what happens to develop the rate year in</p> <p>3 Rhode Island, however, we actually do that</p> <p>4 essentially three times. We do the</p> <p>5 ratemaking -- we do those adjustments to the</p> <p>6 historic test year, we do them to the future</p> <p>7 test year, that 2022 data, we do those</p> <p>8 adjustments to 2023 data as well. So we --</p> <p>9 in a way you could say we show three rate</p> <p>10 years compared to Rhode Island and we</p> <p>11 provide what I'd call a walk from year to</p> <p>12 year. It's a bottoms up budget process. So</p> <p>13 we demonstrate what costs may have been in</p> <p>14 the historic test year that don't carry</p> <p>15 through to other years, we eliminate those.</p> <p>16 For costs that would be included in the</p> <p>17 future test year budget, we add those back</p> <p>18 in. And so it's three complete</p> <p>19 comprehensive years of financial data that</p> <p>20 we provide in Pennsylvania, and again, that</p> <p>21 fully projected future test year is what</p> <p>22 forms the basis of rates.</p> <p>23 So we have to justify that data,</p> <p>24 that budget in the future as well as</p>

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1 providing the essentially two years prior to  
2 demonstrate how we got there and just the --  
3 again, the walk and the comparison year over  
4 year.  
5 Q. In terms of opportunities for stakeholder  
6 involvement during those proceedings, when  
7 does that happen?  
8 A. So initially upfront there's -- because  
9 of the different procedural legal rules,  
10 which I'm not an attorney so I won't attempt  
11 to go further than that, but we don't  
12 typically engage stakeholders prior to  
13 filing, filing our rate case. Once that  
14 rate case is filed and -- let me backup.  
15 While we typically file at the end  
16 of March, there is a notification that must  
17 happen 30 days prior to the utility filing.  
18 So we send out a letter notifying the  
19 Commission and other statutory parties that  
20 we will be filing a rate case in  
21 approximately 30 days. So that notification  
22 would happen at the end of February, and  
23 then once we file, or actually the day of  
24 filing we have -- and this is not required,

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1 but we typically hold a -- what we call a  
2 kickoff meeting which is essentially  
3 notification that we have filed or about to  
4 file basically in that instant and provide  
5 any key highlights of what the -- what the  
6 highlights are of the case, of our proposal.  
7 Once the case is filed, there is a discovery  
8 process. In Pennsylvania, because of the  
9 size of our company, there's basically an  
10 automatic suspension period for nine months  
11 for investigation, and similar to Rhode  
12 Island, parties intervene in the case and  
13 work through discovery questions. We have  
14 public hearings and throughout that time we  
15 are hopefully negotiating with parties to  
16 see if we can align on settlement. We have  
17 evidentiary hearings that we participate in.  
18 And then there's, of course, main briefs,  
19 reply briefs, and that's all before an  
20 administrative law judge -- the  
21 administrative law judge issues a  
22 recommended decision and eventually that  
23 gets to the Public Utilities Commission who  
24 issues the final order in the case.

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1 Q. And once the AL judge recommends a proposed  
2 order, is there opportunity for further  
3 comment from intervenors or parties or does  
4 it just go straight to the Commission?  
5 A. No, there is opportunity for comment.  
6 There's also exceptions and reply exceptions  
7 that are available throughout the case and,  
8 of course, an appeal process if necessary.  
9 Q. So how does that compare to your  
10 understanding of the order timing in a Rhode  
11 Island rate proceeding?  
12 A. My understanding in a Rhode Island rate  
13 proceeding is certainly different from  
14 Pennsylvania in terms of stakeholder  
15 engagement. I understand there's engagement  
16 essentially prior to filing the case as well  
17 as throughout the discovery process and then  
18 kind of I think similar as the case  
19 progresses.  
20 Q. And do you have any understanding of how  
21 orders develop in Rhode Island at the end or  
22 --  
23 A. I don't think I can speak to that quite  
24 yet.

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1 Q. So what about the standard in Pennsylvania  
2 that is used when you're developing your  
3 rate filings? Do you take a -- are you part  
4 of determining and applying that when you  
5 prepare the rate filings?  
6 A. In terms of prudence and reasonableness?  
7 Q. Yes.  
8 A. That's public interest. That's all part  
9 of what we're providing in our rate case.  
10 One of the documents that we provide, we  
11 call it a statement of reasons, and I would  
12 say that's sort of the -- really, the  
13 summary of the case that walks through why  
14 are we looking for this, why is it  
15 beneficial to customers, what generally are  
16 our investments that we're making and  
17 seeking cost recovery for, what  
18 accomplishments have we had that are  
19 providing benefits customers that we believe  
20 justifies why we're seeking cost recovery.  
21 Q. And it's your understanding that it's the  
22 same, similar in Rhode Island for the rates?  
23 A. Similar. I would say similar. I mean,  
24 certainly, again, from a ratemaking

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<p>1 perspective reasonableness, prudence, fair 2 return to the utility, public interest of 3 the customers and certainly somewhat more 4 recently in Rhode Island -- we talked a 5 little bit about this yesterday, is the 6 Rhode Island benefit/cost test. 7 Q. And also based on your understanding that 8 you may have on the standard in this 9 proceeding, do those standards differ, the 10 standard in this proceeding with the 11 standard from the rate proceeding? 12 MR. RAMOS: Objection. 13 MS. PARENTEAU: Just your 14 understanding. If she doesn't know -- I 15 just want to know if she has an 16 understanding of it. That's all. 17 THE HEARING OFFICER: If she can 18 answer. 19 A. I wouldn't feel comfortable answering 20 that. 21 Q. Thank you. With respect to the potential 22 transition costs, your understanding would 23 be that what you just discussed in terms of 24 reasonableness and prudence would be the</p>	<p>1 don't just get to accumulate them and put 2 them in for cost recovery, so I think that 3 provides, I'd say, some potential from 4 including those in base rates. 5 Q. Do you have your testimony with you? 6 A. I do. 7 Q. Take a look at Page 4 of your testimony, 8 please. And there -- Line 18 you discuss 9 PPL's general approach to cost recovery and 10 its treatment of transition costs. That 11 sentence there, can you just -- in the 12 context of that sentence, can you discuss a 13 little bit more about your general approach 14 to cost recovery in the context of that 15 sentence, please? 16 A. Sure. I mean, again, I think it goes to 17 not just the written testimony but the other 18 verbal testimony that you've heard from some 19 of my colleagues as well as the commitments 20 that we made. In terms of what we would be 21 looking for in cost recovery proposals is, 22 again, making sure that we can quantify the 23 costs, that we can defend the costs, that 24 they are reasonable, prudent, in the public</p>
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<p>1 standard that PPL may seek to recover later 2 on? 3 A. Certainly that's part of it. As part of 4 our commitments, which I don't have in front 5 of me, I think we also used some language 6 there regarding how or why we would seek 7 cost recovery for those. 8 The other thing I'll mention, and I 9 want to point out here, this goes I think, 10 again, to some of the concern around 11 recovering costs. We did make the 12 commitment to not file a rate case for three 13 years. And so to the extent that costs are 14 incurred as -- particularly expenses are 15 incurred throughout that three years, one of 16 the requirements for -- under the ratemaking 17 rules is that those costs have to be in your 18 historic test year, they have to be in the 19 test period in which the company is putting 20 forward for base rates. So to the extent 21 that there are costs that the company is 22 incurring from the time of close through 23 what would be that -- or rather up to that 24 historic test period, those expenses, we</p>	<p>1 interest, they're not duplicative, they -- I 2 believe the language in the commitments -- 3 actually I think I already said this, 4 quantifiable, verifiable. We are -- and 5 again, we've made some commitments here. 6 I'll go back to the rate case 7 commitment that -- the stay-out for three 8 years. What we're trying to do here I think 9 is provide some reassurance that we 10 understand the concern that the parties have 11 raised on behalf of Rhode Island customers. 12 We're trying to be responsive to that in 13 terms of potential risk. But again, I think 14 from a cost recovery perspective, our 15 philosophy for Rhode Island isn't different 16 from our cost recovery philosophy for 17 Pennsylvania and our other jurisdictions. I 18 think we're really looking to make sure that 19 we're making the right investments and doing 20 right by the customers. 21 Q. Do you see a stay-out also as a way of 22 potentially protecting ratepayers from harm 23 in the meantime following the transition? 24 Do you think it can function in that</p>

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1 respect?

2 A. Well, I don't believe that the

3 transaction will cause harm to Rhode Island

4 customers, so I'll preface my response with

5 that. I'd say to the extent that one

6 perceives harm, even if approved, I think

7 what the stay-out provision does is provide

8 rate stability throughout the transition

9 period for customers.

10 Q. And you mentioned the word duplicative and

11 there's words -- incremental and like for

12 like, and if somebody is not familiar with

13 the regulatory framework and not used to

14 hearing rate filings, someone in the public

15 that might be watching this, can you just

16 provide either definitions that PPL may use

17 for that or an example to better explain

18 what that would mean, what those words would

19 mean?

20 MR. RAMOS: Objection. We did this

21 for 20 minutes yesterday.

22 THE HEARING OFFICER: Overruled.

23 A. So I will refer to I think my answer from

24 yesterday regarding the like for like and

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1 duplicative. But if I were -- I use the

2 example often with folks to try to explain

3 things like you were explaining it to my

4 mom, or at least that's how I explain

5 things, certainly not from a utility

6 background.

7 So how I would explain the cost

8 recovery is, again, to the extent that

9 customers may have already paid for these

10 costs, to the extent that PPL is providing a

11 widget that National Grid has already

12 provided, it's not doing anything more for

13 the customer, it's not making their

14 reliability better, it's not really

15 providing anything new for them, then the

16 company will not be seeking cost recovery

17 for that. I think that's how I would

18 attempt to explain it.

19 Q. And in terms of incremental, can you think

20 of any examples for recent PPL filings where

21 there's been a showing of an incremental

22 benefit that you could provide as an

23 example?

24 A. I think our last rate case was a little

Page 23

1 while ago. We've had steady rates for quite

2 a few years.

3 Q. I appreciate your consideration of the

4 question.

5 A. I think -- and I don't know if this will

6 be specific enough, and it might be

7 difficult for me to get too specific because

8 I'm not an engineer, but I'd say in

9 Pennsylvania, and you've heard from some of

10 my colleagues, about what's referred to as

11 grid mod, and we don't have specific or

12 separate plans in Pennsylvania for that, so

13 our costs for -- largely for our smart grid

14 system and the devices on the system have

15 been recovered through base rates. And so I

16 think there what I would describe as an

17 incremental benefit in some of those systems

18 or costs and even to the extent that we

19 would seek cost recovery for things that

20 we've invested in since our last rate case,

21 there it's really about reliability and

22 improving reliability for customers, and so

23 an incremental benefit to some of the

24 equipment that we've invested in there is

Page 24

1 that it's -- it keeps the power on longer,

2 it keeps the -- not necessarily longer but

3 through different events, have fewer outages

4 for customers during what's referred to as

5 blue sky days, during storm events, provides

6 better -- just better service.

7 Also, to the extent that we've

8 invested in things, as another example,

9 customer service systems like an IVR system

10 or website functionality for customers, it's

11 easier for them to go on, they have access

12 24/7, and to the extent that that didn't

13 exist before, that's a new benefit, right,

14 that's something that's making their lives

15 easier, giving them more access to

16 information, and so I would say that's an

17 incremental benefit to customers that didn't

18 exist prior.

19 Q. Thank you. You mentioned that it's been a

20 few years since your last rate filing. Can

21 you just discuss what are normal drivers for

22 PPL moving to file a new full rate case?

23 A. I think I discussed in my testimony

24 there's a number of drivers. Of course, one

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<p>1 of them is financial, that's not necessarily</p> <p>2 the first one, but we also look at what's</p> <p>3 happening in the state and the policies of</p> <p>4 the state, what are -- what's happening with</p> <p>5 customers, what are other rules by which --</p> <p>6 currently within our tariff that we would</p> <p>7 seek to change that may provide benefits to</p> <p>8 customers, and in Pennsylvania that's all</p> <p>9 done through a base rate case. So I think</p> <p>10 those are the things that -- just some of</p> <p>11 the things in addition to what may be</p> <p>12 mentioned in my testimony that we consider</p> <p>13 when we look at filing a distribution base</p> <p>14 rate case in Pennsylvania.</p> <p>15 Q. I believe it was during Mr. Bonenberger's</p> <p>16 testimony he was being asked about</p> <p>17 regulatory assets on the books, and I</p> <p>18 believe he said you might be able to explain</p> <p>19 a little bit better how that fits into the</p> <p>20 rate proceeding. Would you be able to?</p> <p>21 A. Is there a specific or just generally?</p> <p>22 Q. Just in general.</p> <p>23 A. So a regulatory asset is typically</p> <p>24 something that sits on the accounting books</p>	<p>1 he mentioned, but --</p> <p>2 A. Could you be more specific in what you're</p> <p>3 looking for on that? It might be I'm asking</p> <p>4 because it may be better for Mr. Jirovec to</p> <p>5 answer.</p> <p>6 Q. I believe it may have been in terms of the</p> <p>7 cost sharing analysis, a service cost</p> <p>8 sharing.</p> <p>9 A. Oh, from an allocation --</p> <p>10 Q. From an allocation perspective. Sorry.</p> <p>11 A. Okay. I think that was around the -- I</p> <p>12 think it may have been mentioned around a</p> <p>13 three-factor allocation methodology that PPL</p> <p>14 uses. So PPL has a three-factor allocation</p> <p>15 methodology, and what that looks at, it's a</p> <p>16 way for costs that aren't able to be</p> <p>17 directly assigned to the utility, it's a way</p> <p>18 for -- a calculation for those costs to be</p> <p>19 allocated.</p> <p>20 And so there's three factors that</p> <p>21 we use, it's employee head count,</p> <p>22 capitalization and O&amp;M. And so we look at</p> <p>23 that for each of the functions or businesses</p> <p>24 that those costs need to be allocated to,</p>
Page 26	Page 28
<p>1 of the utility and it's really -- it's</p> <p>2 called a regulatory asset because it's</p> <p>3 something that the company hasn't -- cost</p> <p>4 that the company looks to seek, would seek</p> <p>5 cost recovery from customers for but hasn't</p> <p>6 yet, kind of like reserved on the books, if</p> <p>7 you will. And there's different mechanisms</p> <p>8 and ways that things get onto -- get to be a</p> <p>9 regulatory asset. At least in Pennsylvania,</p> <p>10 generally there needs to be a rule or</p> <p>11 regulation or prior Commission approval for</p> <p>12 PPL Electric to be able to put that</p> <p>13 regulatory asset on its books. So in cases</p> <p>14 where we have that approval, it's usually,</p> <p>15 I'd say, kind of a timing difference than</p> <p>16 from when those costs are incurred versus</p> <p>17 when the company is permitted to seek cost</p> <p>18 recovery for those.</p> <p>19 Q. And also just generally speaking another</p> <p>20 thing that I believe he said you could</p> <p>21 provide a little more explanation was just</p> <p>22 in general the service cost analysis and how</p> <p>23 that's done, how that's looked at. I</p> <p>24 believe that's what I have in my notes what</p>	<p>1 and based on that math, that's ultimately</p> <p>2 how they get there.</p> <p>3 Q. And I believe it was said that that's part</p> <p>4 of the synergies that PPL believes they'll</p> <p>5 be able to use is some of those shared</p> <p>6 service costs. Is that --</p> <p>7 A. That's correct.</p> <p>8 MS. PARENTEAU: Thank you. I</p> <p>9 believe that's all I have. Thank you.</p> <p>10 THE WITNESS: You're welcome.</p> <p>11 THE HEARING OFFICER: Mr. Webster?</p> <p>12 MR. WEBSTER: How are you?</p> <p>13 THE WITNESS: Good.</p> <p>14 CROSS-EXAMINATION BY MR. WEBSTER</p> <p>15 Q. Yesterday, when speaking with Mr.</p> <p>16 Bonenberger, I referenced the 2021 PPL</p> <p>17 climate assessment report entitled Energy</p> <p>18 Forward. Are you familiar with that report?</p> <p>19 A. Vaguely. I mean, I'm aware that PPL has</p> <p>20 one, but I did not participate in the</p> <p>21 preparation of it.</p> <p>22 Q. Your position is director of regulatory</p> <p>23 affairs, is that correct?</p> <p>24 A. That's correct.</p>

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<p>1 Q. And in your testimony you submit that you're 2 responsible for utility and energy policy. 3 A. Yeah. I should say a member of my team 4 has provided inputs to it, so I may have 5 misspoken there. I personally, but with 6 oversight of my team we provide input. 7 Q. Well, in your estimation, then, given the 8 familiarity you do have with it, why did 9 that report lack a discussion of reducing 10 greenhouse gas emissions associated with the 11 use of gas in buildings? 12 A. I can't speak to that. 13 Q. Given your position, are you familiar with 14 Rhode Island's Act on Climate law enacted in 15 2021? 16 A. Yes. 17 Q. And do you recognize that the law mandates 18 economy-wide greenhouse gas emissions 19 reductions? 20 A. I'm aware of that. 21 Q. Do you recognize the law also states that 22 addressing the impacts on climate change 23 shall be deemed within the powers, duties 24 and obligations of all state departments,</p>	<p>1 and it's probably going to sound like a 2 parrot of his testimony, but the company is 3 very interested in working with stakeholders 4 to put together what those plans are going 5 to look like. 6 Q. And the last one is maybe the softball. You 7 personally, do you feel that it's important, 8 since you raised it? 9 A. Yes. I did walk into that, didn't I? 10 Yes, of course. 11 MR. WEBSTER: Thank you. I think 12 that's all the questions I have. 13 THE WITNESS: Thank you. 14 THE HEARING OFFICER: Thank you. 15 Mr. Rhodes. 16 CROSS-EXAMINATION BY MR. RHODES 17 Q. I just have a couple questions. I recognize 18 I am not expert in base case -- base rate 19 cases or the construction thereof, so I 20 apologize if my questions are either 21 misphrased, or if I get terms wrong, please 22 correct me on that. But in your testimony 23 previously I believe you said that the -- in 24 Rhode Island, and I understand this is</p>
Page 30	Page 32
<p>1 agencies, commissions, councils, 2 instrumentalities, including quasi-public 3 agencies? 4 A. I have read that. 5 Q. Do you recognize that the Public Utilities 6 Commission, the Division, the Energy 7 Facility Siting Board and others would be 8 included in that grouping? 9 A. Yes, I understand that. 10 Q. And so in your position that would mean that 11 the plans that are designed and filed by PPL 12 Rhode Island, assuming this transaction goes 13 through, would benefit from being crafted 14 with the Act on Climate in mind? 15 A. Yes. I certainly think that it would be 16 taken into consideration. 17 Q. And do you agree that reducing greenhouse 18 gas emissions is in the public interest? 19 A. For me personally or for the company? I 20 mean, either way, the answer is yes. 21 Q. Let's just get that clear on the record. 22 Let's do the company first. 23 A. The answer is yes, of course. I mean, as 24 Mr. Bonenberger testified to, the company --</p>	<p>1 consistent with the last base rate case, is 2 that the return on equity is eight percent 3 for the current, or is that -- 4 A. No. I believe that's what Mr. Wold was 5 using in his example. 6 Q. Do you know what the return on equity is in 7 Rhode Island, then? 8 A. It's just above nine percent. I can't 9 remember exactly what it is. I can't 10 remember exactly what it is. It's a little 11 over nine percent. 12 Q. The decimal points I'm not going to ask for. 13 A. There's two numbers. I can't remember 14 which order they go in. 15 Q. Are you familiar with the same return on 16 equity in Kentucky and Pennsylvania for 17 their ratemaking process? 18 A. I am not -- I don't remember offhand for 19 Kentucky, and in Pennsylvania our last 20 return -- the return on equity from our last 21 base rate case, it's what we call black box 22 settlement, the company and the parties 23 agreed to all terms. So there was no 24 determined ROE coming out of that rate case.</p>

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1 The Pennsylvania Public Utility Commission  
2 does issue a quarterly report where they  
3 look at -- they look at -- well, the utility  
4 submits a quarterly financial report and  
5 then the Commission consolidates all of the  
6 input from the utility and issues their own  
7 report, and so that's issued on a quarterly  
8 basis, and what they're issuing right now  
9 for a reasonable return on equity for  
10 electric companies is 9.45 percent.  
11 Q. So similar to, but maybe not exactly the  
12 same return.  
13 A. Yeah. I would say they're approximately  
14 the same.  
15 Q. And you don't have the same information for  
16 Kentucky?  
17 A. I do not.  
18 MR. RHODES: Could I issue that as  
19 a data request for the return on equity?  
20 THE HEARING OFFICER: Yes.  
21 Q. I'm not -- this might be outside the scope  
22 here, but I was also -- given that you've  
23 already closed on the transaction for WPD in  
24 the UK, but I was also curious if there was

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1 a similar structure for those operations and  
2 whether -- I was curious if you are familiar  
3 with that ratemaking process and if there's  
4 a similar provision for rate of return on  
5 equity in the UK.  
6 A. So I can speak to it very generally.  
7 Their process is very different and I can't  
8 get into the details of it, I'm just not as  
9 educated on that, but there is a return on  
10 equity component. I don't recall what it is  
11 or necessarily -- they have different --  
12 they have a different ratemaking structure  
13 and calculation, so I couldn't speak to how  
14 exactly that fits in or compares, but  
15 there's certainly a return on equity  
16 component.  
17 Q. Final question for the potential -- the  
18 expectation that you'll file a future base  
19 rate case in Rhode Island. My understanding  
20 would be that as part of that you would be  
21 filing a proposed rate of return on equity  
22 for that future rate case.  
23 A. Yes.  
24 Q. Can you describe what components or how the

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1 company would come up with a proposal for  
2 that rate of return?  
3 A. I don't know that I'm necessarily  
4 comfortable speaking to that in detail. I  
5 mean, certainly there's an extensive study  
6 that goes into determining what the proposed  
7 return on equity would be. That involves  
8 not only looking at -- it looks at the  
9 industry and other comparable companies, it  
10 looks at the utility, how the utility is  
11 positioned, and that's probably about as far  
12 as I can go on that. But often utilities  
13 present specific return on equity experts in  
14 the case to defend that.  
15 Q. Do you intend to follow Narragansett  
16 Electric's current practice of adopting the  
17 way that they have done that or do you  
18 expect that the change in the corporate  
19 structure would lead to an alternative  
20 process for making that proposal in Rhode  
21 Island?  
22 A. In terms of determining what the cost of  
23 equity would be?  
24 Q. Yes.

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1 A. I think generally -- I mean, there's  
2 certainly differences in how utilities --  
3 how utilities ultimately get to the end  
4 number, but generally, the methodology is  
5 consistent in terms of, again, looking at  
6 comparable utilities, looking at the  
7 individual utility's position, so I would  
8 say it would be largely consistent.  
9 MR. RHODES: Thank you. No further  
10 questions.  
11 THE HEARING OFFICER: Thank you.  
12 Ms. Curran?  
13 MS. CURRAN: Sorry. I don't have  
14 any questions.  
15 THE WITNESS: Don't apologize.  
16 THE HEARING OFFICER: Any redirect?  
17 MR. RAMOS: No redirect.  
18 THE HEARING OFFICER: Thank you,  
19 Ms. Johnson.  
20 THE WITNESS: Thank you.  
21 THE HEARING OFFICER: Next witness?  
22 MR. RAMOS: PPL calls Gregory  
23 Dudkin.  
24 GREGORY DUDKIN (Sworn)

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<p>1 DIRECT EXAMINATION BY MR. RAMOS 2 THE COURT REPORTER: Would you 3 state your full name for the record, please? 4 THE WITNESS: Gregory Dudkin. 5 Q. Good morning, Mr. Dudkin. 6 A. Good morning. 7 Q. Could you tell me who your current employer 8 is? 9 A. PPL Services Corporation. 10 Q. And what is your position with PPL Services 11 Corporation? 12 A. Executive Vice President and chief 13 operating officer. 14 Q. And what are your responsibilities in that 15 position? 16 A. I oversee the three utilities of PPL, 17 that's PPL Electric Utilities in 18 Pennsylvania, Kentucky Utility -- Kentucky 19 Utilities, Louisville Gas and Electric in 20 Kentucky, also the chief information 21 security officer reports to me, and as part 22 of this effort I'm also responsible for the 23 integration management office. 24 Q. Thank you. And could you describe a little</p>	<p>1 delivery for 1.4 million customers, and 2 during that time we were fortunate to win a 3 number of awards for customer service, for 4 our innovations. We've been a leader, as 5 many witnesses have talked about, in 6 deploying smart grid but also innovative in 7 customers experience as well. And in April 8 of this past year I was promoted to chief 9 operating officer. 10 Q. Thank you. Now Mr. Dudkin, as part of this 11 proceeding did you submit prefiled direct 12 testimony in connection with the initial 13 petition in this matter? 14 A. I did. 15 Q. And do you have a copy of that testimony 16 before you? 17 A. I do. 18 MR. RAMOS: And I'll note that that 19 testimony has been marked as a part of Joint 20 Petitioners Exhibit 1 for the record. 21 Q. Have you had an opportunity to review that 22 testimony in advance of the hearing today? 23 A. Yes. 24 Q. And were the answers that you gave to the</p>
Page 38	Page 40
<p>1 bit about your utility industry experience? 2 A. Sure. After graduating college with an 3 engineering degree I went to work for PECO 4 Energy which is Philadelphia-based utility, 5 had a number of positions there rising up to 6 executive positions in the transmission and 7 distribution end of the business as well as 8 in charge of gas field operations as well as 9 customer service. At PECO Energy I was 10 responsible for the safe delivery and 11 reliable delivery of electric and gas 12 service to 1.6 of million electric customers 13 and 400,000 gas customers. 14 From there I went to work for 15 Commonwealth Edison which is an electric 16 utility in Chicago where I was -- I headed 17 up the transmission distribution group 18 there, responsible for the safe delivery of 19 service to over 4 million customers. I went 20 to PPL in 2009. I was Senior Vice President 21 of transmission distribution there, was 22 promoted in 2012 to be President of PPL 23 Electric Utilities and, again, responsible 24 for the safe delivery of -- and reliable</p>	<p>1 questions contained in that testimony true 2 and accurate at the time that you gave them? 3 A. Yes. 4 Q. And do you adopt that testimony under oath 5 here today? 6 A. I do. 7 MR. RAMOS: I would ask that Mr. 8 Dudkin's portion of Joint Petitioners 9 Exhibit 1 be admitted in full. 10 THE HEARING OFFICER: Any 11 objections? 12 MS. HETHERINGTON: None. 13 THE HEARING OFFICER: So marked. 14 MR. RAMOS: And Mr. Hearing 15 Officer, I note that that completes all of 16 the direct testimony from that exhibit. I 17 would also move that the petition itself be 18 entered in full as well. 19 THE HEARING OFFICER: Any 20 objections? So marked. 21 Q. Thank you, Mr. Dudkin. I'm going to show 22 you Joint Petitioners Exhibit 2 and Joint 23 Petitioners Exhibit 3 which have been marked 24 as -- which are the statement of existing</p>



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<p>1 and additional commitments and also the 2 supplement to that statement. Mr. Dudkin, 3 have you had an opportunity to review the 4 content of those two documents? 5 A. I have. 6 Q. And to the extent that those documents 7 contain additional or new information beyond 8 what was set forth in your direct testimony, 9 do you adopt the content of those statements 10 of commitments under oath? 11 A. Yes, I do. 12 Q. Thank you. I just have a couple more 13 questions for you, Mr. Dudkin. You 14 mentioned that during the time that you've 15 been at PPL, PPL had been fortunate enough 16 to win certain awards. Do you recall that 17 testimony? 18 A. Yes. 19 Q. And I believe you mentioned some of those 20 awards in your direct testimony, is that 21 correct? 22 A. Yes. 23 Q. And I believe Mr. Bonenberger maybe added 24 some additional ones in rebuttal testimony.</p>	<p>1 MR. RAMOS: Thank you very much, 2 Mr. Hearing Officer. 3 Q. Now Mr. Dudkin, you have before you what has 4 now been marked as PPL and PPL Rhode Island 5 Holdings Joint Exhibit 9, and this is a 6 response to a data request and it includes a 7 settlement response. Do you see that? 8 A. Yes. 9 Q. And it refers to an attachment, right? 10 A. Yes. 11 Q. And that attachment begins on the following 12 page, correct? 13 A. Yes. 14 Q. If you recall, on Monday, when Mr. Sorgi was 15 testifying, he had indicated that there had 16 been agreement on amended terms to the 17 transition services agreement. 18 A. Correct. 19 Q. Does this attachment reflect that amended 20 transition services agreement? 21 A. It does. 22 Q. And one of the things that Mr. Sorgi had 23 testified to was that the amended language 24 of the transition services agreement</p>
Page 42	Page 44
<p>1 A. Yes. 2 Q. Are there any other awards that PPL has been 3 fortunate enough to win since the filing of 4 Mr. Bonenberger's rebuttal testimony? 5 A. Yes, we were. For J.D. Power we won two 6 more awards for business customer 7 satisfaction, both Kentucky Utilities and 8 PPL Electric Utilities won that, and we just 9 found out yesterday that both PPL Electric 10 Utilities and Kentucky Utilities won the 11 residential J.D. Power awards, and that's 12 ten straight years for PPL Electric 13 Utilities and six straight years for 14 Kentucky Utilities. 15 Q. Thank you. I'm going to show you another 16 document which we'll mark as an exhibit. I 17 believe this is -- I'll have the Hearing 18 Officer do it. I don't want to make a 19 mistake. 20 THE HEARING OFFICER: The proposed 21 exhibit is Division Data Request and 22 Response 2-20, revision on June 20, 2021, 23 and that will be marked as PPL and PPL Rhode 24 Island Holdings Joint Exhibit 9 for ID.</p>	<p>1 provided a mechanism whereby the -- it could 2 be extended at the option of PPL if 3 necessary at the conclusion of the 4 transition service term. Do you recall 5 that? 6 A. Yes. 7 Q. If I could turn your attention to Section 8 3.1 of the transition services agreement, 9 and that's on Page 18 of 30 of the 10 attachment but it's got a page number 10 at 11 the bottom. Are you there? 12 A. Yes. 13 Q. Could you just explain what the language is 14 in Sections 3.1(a) and 3.1(b) that provides 15 that ability for PPL to extend the 16 transition services agreement at its option? 17 A. Yes. It says that -- well, Rover shall 18 have the right upon written notice to 19 service provider at least 180 days prior to 20 the date set forth in Exhibit A provided 21 that if the date set forth in Exhibit A is 22 less than or equal to the 180 days after the 23 date hereof, that such written notice must 24 be delivered within ten business days of the</p>

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<p>1 date hereof to extend such date with respect 2 to any transition services and if reasonably 3 expected to be necessary to complete the 4 successful transition to Pluto. 5 Q. And what is the intent behind that language? 6 A. The intent is to allow if, for whatever 7 reason, we need to extend the TSAs beyond 8 the 24 months, we can request that. We just 9 need to do it 180 days in advance of the 10 24-month term. 11 Q. What does Rover refer to? 12 A. Narragansett. 13 Q. And what does Pluto refer to? 14 A. PPL. 15 Q. And this provides Rover with the option that 16 you just described? 17 A. Correct. 18 Q. And the transition services agreement is 19 between which parties? 20 A. It's -- well, it's between Rover and 21 Newquay. 22 Q. And who is Newquay? 23 A. Newquay is National Grid. 24 MR. RAMOS: So this is fun with</p>	<p>1 morning. 2 CROSS-EXAMINATION BY MR. WOLD 3 Q. I wanted to ask you in the chain of command 4 from the individuals of PPL we've heard from 5 today, Mr. Sorgi is the CEO? 6 A. Correct. 7 Q. And you're No. 2, is that correct? 8 A. That's correct. 9 Q. And then Mr. Bonenberger is further down the 10 chain? 11 A. He reports to me, yes. 12 Q. And Mr. Bellar also reports to you? 13 A. Correct. He's within my organization. 14 He actually reports to John Crockett who's 15 the President of Kentucky. 16 Q. You had mentioned on Page 12 of your 17 testimony, and if you go down to the bottom 18 of that page -- I'll wait for you to get it. 19 A. Yes. 20 Q. You indicate that most recently PPL Electric 21 Utilities was named Energy Star Partner of 22 the Year for 2021 by the Environmental 23 Protection Agency and the Department of 24 Energy based on energy savings we</p>
Page 46	Page 48
<p>1 words. 2 THE HEARING OFFICER: Very 3 creative. 4 Q. And the language that you referred to in 5 Section 3.1(a), that also -- similar 6 language also appears in Section 3.2 as 7 well, correct? 8 A. That's correct. 9 Q. And that applies to the complete 24-month 10 term as opposed to the individual terms of 11 the TSAs, correct? 12 A. Correct. 13 MR. RAMOS: I'd like to move that 14 PPL and PPL Rhode Island Joint Exhibit 9 be 15 entered full. 16 THE HEARING OFFICER: Hearing no 17 objections, so marked. 18 MR. RAMOS: And I have no further 19 questions for Mr. Dudkin at this time. He 20 is available for cross-examination. 21 THE HEARING OFFICER: Mr. Wold? 22 MR. WOLD: Good morning, Mr. 23 Dudkin. How are you? 24 THE WITNESS: All right. Good</p>	<p>1 accomplished through our residential energy 2 efficiency programs, correct? 3 A. Correct. 4 Q. But with respect to that award, PPL is not 5 the only company that gets named that 6 particular award for that particular year, 7 is that right? 8 A. That's correct. 9 Q. All right. So there are other companies 10 that get named that award. Do you know how 11 many other companies get named that award? 12 A. No. 13 THE HEARING OFFICER: The document 14 provided by Mr. Wold is titled Partner of 15 the Year 2021 Energy Star Award Winners. 16 This will be marked as Advocacy Section 17 Exhibit 35 for ID. 18 Q. So Mr. Dudkin, if you take a look at Exhibit 19 35, it lists the Energy Star Partners of the 20 Year for 2021 and it shows that there are 21 over 150 organizations that get named for 22 that particular award, is that correct? 23 A. Yes. 24 Q. Okay. And if you turn to Page 11, and I</p>

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1 numbered the pages at the top right-hand  
2 corner, and then if you also turn to Page  
3 22, you'll see on Page 22 PPL Electric  
4 Utilities indeed was named Partner of the  
5 Year for 2021, is that correct?  
6 A. That's correct.  
7 Q. And you can see, if you go back to Page 11,  
8 you'll see Narragansett, National Grid Rhode  
9 Island was named a Partner of the Year  
10 Sustained Excellence for four particular  
11 years, correct?  
12 A. Correct.  
13 Q. And PPL was only -- has only been named that  
14 -- received that particular award for one  
15 year and that was in 2021, correct?  
16 A. Correct.  
17 Q. Now, you had mentioned when you were  
18 providing some answers to Mr. Ramos that you  
19 were -- I believe you said you're the  
20 President of PPL Service Corporation, is  
21 that correct?  
22 A. No.  
23 Q. Or of the service company.  
24 A. I work in the PPL Services.

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1 Q. Did you -- were you here in the room when  
2 Mr. Bonenberger -- I asked him some  
3 questions about the service company and how  
4 it related to the electric company? Do you  
5 recall that?  
6 A. I do remember, yes.  
7 Q. And I had asked him about -- regarding the  
8 transfer of billing and statement  
9 remittance, and I had asked him if the  
10 billing and payment remittance function was  
11 going to be transferred from National Grid  
12 to the service company, correct?  
13 A. Correct.  
14 Q. And he said that it was, right?  
15 A. Yes.  
16 Q. And I also asked him whether the billing and  
17 service company performed the same function  
18 for PPL Electric in Pennsylvania, correct?  
19 A. Correct.  
20 Q. And he affirmed that.  
21 A. Yes.  
22 Q. What he said was accurate and true, is that  
23 correct?  
24 A. Yes.

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1 Q. Now on Page 7 of your testimony, Lines 19  
2 through 20, if you go down to the bottom  
3 there, it also indicates that in 2020 PPL  
4 Electric Utilities ranked among large  
5 electric utilities in the Eastern US for  
6 residential customer satisfaction for the  
7 ninth year in a row, correct?  
8 A. Correct.  
9 Q. And having received that nine years in a  
10 row, I would assume that in 2018 and 2019  
11 you would have also received that same  
12 award, correct?  
13 A. Yes.  
14 Q. Now, in connection with that award you had a  
15 problem in Pennsylvania with PPL Electric  
16 Utilities and their failure to bill multiple  
17 residential customers between June of 2018  
18 and April of 2019 with respect to the  
19 failing to bill for over multiple  
20 consecutive billing cycles, is that correct?  
21 A. I don't recall.  
22 Q. You don't.  
23 THE HEARING OFFICER: Okay. This  
24 is a document dated February 7th, 2020. It

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1 appears to be a letter from Christopher  
2 Andreoli to the Pennsylvania Public  
3 Utilities Commission.  
4 MR. WOLD: That's correct.  
5 Q. And attached to the letter there's a  
6 settlement agreement, and the settlement  
7 agreement concerns the billing issue that  
8 was the subject of an investigation in  
9 Pennsylvania by the Commission of Bureau  
10 Investigation and Enforcement regarding the  
11 failure of Pennsylvania Electric Utilities  
12 to provide notice of bills to customers,  
13 multiple customers over multiple consecutive  
14 billing cycles, correct?  
15 A. I'm sorry. Could you -- I was reading.  
16 Q. No problem. I just said the attachment to  
17 the letter that was -- I believe it was  
18 Advocacy Section 38.  
19 THE HEARING OFFICER: 36.  
20 Q. For identification, and there's a settlement  
21 agreement, and the settlement agreement  
22 concerns the review or investigation of the  
23 Commission of Bureau and Investigation and  
24 Enforcement of Pennsylvania Electric

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<p>1 Utilities for the company's alleged failure 2 to bill for multiple consecutive billing 3 cycles, failure to provide notice to 4 customers, is that right? 5 A. Yes. 6 Q. Okay. And that settlement agreement 7 occurred, am I correct, during the rollout 8 of PPL Electric Utilities' second generation 9 AMI project, is that right? 10 A. Let me just take a look at the dates 11 here. 12 Q. Sure. 13 A. So we were rolling out AMI, but I don't 14 know if that was the root cause of this 15 issue. 16 Q. So in connection with the settlement 17 agreement, if you turn to Page 4 of the 18 settlement agreement, it indicates that 19 multiple customers ultimately were on -- 20 that PPL Electric failed to bill multiple 21 customers during the period that I 22 mentioned, June 2018 to April 2019, and that 23 they did, in fact, receive very large makeup 24 bills from PPL Electric Utilities, correct?</p>	<p>1 but I thought, since Mr. Dudkin is familiar 2 with it, he could perhaps just give a brief 3 summary of the settlement. 4 THE HEARING OFFICER: Mr. Dudkin, 5 can you summarize this? 6 THE WITNESS: I'm not familiar with 7 this settlement. 8 THE HEARING OFFICER: All right. 9 The document speaks for itself. 10 Q. Are you aware that the Pennsylvania Public 11 Utility Commission Or Public Service 12 Commission ultimately -- it's Pennsylvania 13 Public Utility Commission, ultimately issued 14 an order approving the settlement, Mr. 15 Dudkin? 16 A. I'm not aware. 17 THE HEARING OFFICER: This is a 18 Pennsylvania PUC decision dated August 5th, 19 2021, and this will be marked as Advocacy 20 Section 37. 21 Q. Mr. Dudkin, have you seen that order of the 22 Pennsylvania Public Utility Commission? 23 A. I see it right here. 24 Q. You have seen it, but you haven't seen it</p>
Page 54	Page 56
<p>1 MR. RAMOS: Objection. It 2 mischaracterizes Page 4 of this document. 3 THE HEARING OFFICER: Sustained. 4 Q. Mr. Dudkin, if you take a look at Page 4, 5 the complaint that was resolved, in 6 fairness, by PPL Electric Utilities, what 7 does it say that the PPL Electric Utilities 8 did and ultimately agreed that it did 9 relative to the failure to bill multiple 10 customers over that period of time that I 11 indicated? 12 MR. RAMOS: Objection. I don't 13 know why he would have to tell him what this 14 document says. 15 THE HEARING OFFICER: Mr. Wold, 16 what page? Page 4? 17 MR. WOLD: That's right. 18 THE HEARING OFFICER: You want a 19 summary of what's on Page 4? 20 MR. WOLD: I didn't want to put 21 words in Mr. Dudkin's mouth since the 22 objection had been sustained, so I can read 23 from parts of the paragraph or I could try 24 to just elicit what the settlement is about,</p>	<p>1 before today, is that correct? 2 A. I have not seen it before, correct. 3 Q. Now this was -- it was a billing issue, and 4 my understanding is is that Narragansett is 5 going to be billing -- the billing function 6 of Narragansett is going to be transferred 7 to the service company of PPL, correct? 8 A. Can you just say that again? 9 Q. Under -- there's a TSA and Narragansett has 10 certain billing services that are performed 11 for Narragansett by the service company of 12 National Grid, and under the TSA that 13 function is going to be transferred to PPL 14 Electric Utilities Service Company, correct? 15 A. Certain of the billing functions will, so 16 the bill print and mailing of the bill will 17 be out of the service company. 18 Q. And there was a snafu in connection with the 19 ability of the service company as reflected 20 in the settlement and agreement due to 21 technical issues to provide the notice to 22 customers over a period of time that I 23 previously indicated, correct? 24 MR. RAMOS: Objection.</p>

<p style="text-align: right;">Page 57</p> <p>1 THE HEARING OFFICER: So I'm trying 2 to understand where you're going with this 3 line of questioning. The witness is not 4 familiar with this. So if you're going to 5 ask him for detail concerning this 6 agreement, he's already answered that he 7 doesn't know. 8 MR. WOLD: I'm not asking him for 9 the agreement, details of the agreement. 10 I'm indicating to him that if he is 11 familiar -- because he testified prior to 12 our discussing the order and opinion that 13 he's familiar with the function of the 14 service company relative to the billing and 15 payment remittance functions that the 16 Pennsylvania Electric Utilities Service 17 Company, PPL Services would be obtaining 18 from National Grid. So it's exactly the 19 same function that is the subject of this 20 billing dispute and resolution that was 21 issued. 22 THE HEARING OFFICER: So you're not 23 asking him details about this decision. 24 MR. WOLD: Well, I'm asking him not</p>	<p style="text-align: right;">Page 59</p> <p>1 bad as what happened in Pennsylvania. 2 Q. Well, Mr. Dudkin, would you concede that 3 there was a problem in Pennsylvania in 2018 4 and 2019 apart from these documents? 5 A. It looks like that we didn't bill five 6 customers for a period of time. 7 Q. And so there was a problem. And that was a 8 problem that was -- would have been some 9 kind of lack of coordination between or at 10 least the responsibility of PPL Services 11 Company that provides that function to PPL 12 Electric, correct? 13 MR. RAMOS: Objection. 14 THE HEARING OFFICER: So the 15 witness has admitted that there was some 16 issue in Pennsylvania. I think that's not 17 in dispute. So -- what's your question, Mr. 18 Wold? 19 Q. So there was a problem that transpired in 20 Pennsylvania, correct, and the service 21 company, because it provides the billing 22 function to Pennsylvania -- PPL Electric, 23 would have been responsible for that 24 problem, correct?</p>
<p style="text-align: right;">Page 58</p> <p>1 the subject of the particular billing 2 problem, but I'm asking him as to what -- 3 you know -- 4 Q. In short, Mr. Dudkin, why should ratepayers 5 in Rhode Island be confident that a similar 6 snafu will not occur when the Narragansett 7 Electric billing payment and remittance 8 functions are transferred from National Grid 9 to PPL Service Company? 10 MR. RAMOS: Objection. And my 11 objection is based on the characterization 12 of these documents contained within the 13 question. 14 THE HEARING OFFICER: So you're 15 asking the witness to give an opinion as to 16 whether or not there's going to be a similar 17 snafu, as you used the word, in Rhode Island 18 when he's not familiar with what happened in 19 this case. So you're asking him for a 20 comparison on an issue that he's not 21 familiar with. If you want to get into what 22 his plan is for operating in Rhode Island, 23 that's a little different than asking if 24 what he's going to do in Rhode Island is as</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Not necessarily. I don't know what the 2 root cause of the problem was. I don't know 3 what caused the problem. 4 Q. But you do know there was a problem, 5 correct? 6 A. From these documents it looks that way. 7 Q. Do you want to take some time to look at the 8 documents, because the problem is described 9 within those documents in fair amount of 10 detail. Do you want to take a brief recess 11 and look at the documents? 12 A. I guess I can. 13 MR. RAMOS: I object to the notion 14 that there's relevancy to these documents, 15 but if Mr. Dudkin can read them and know 16 what's in them, I don't mind a brief recess 17 for him to read. 18 THE HEARING OFFICER: We'll take a 19 15-minute recess. 20 (RECESS) 21 THE HEARING OFFICER: Okay, Mr. 22 Wold. Please continue. 23 Q. So Mr. Dudkin, you had an opportunity to 24 review the settlement agreement and the</p>

<p style="text-align: right;">Page 61</p> <p>1 order, and the only question I had to ask 2 you is there was an issue in Pennsylvania, 3 as we talked about, and the same functions 4 being transferred over to PPL Service 5 Company relative -- due to this transaction, 6 and I want to ask you, with PPL going to be 7 embarking on an AMI rollout for Rhode 8 Island, isn't there a concern that a similar 9 billing issue with the transfer occurring 10 almost at the same time as the AMI rollout, 11 there would be a similar concern of billing 12 problems might arise in Rhode Island? 13 A. From my review of the document, I'd like 14 to really just point to two things. On Page 15 12 it shows that, "The record does not show 16 a widespread issue with regard to PPL's 17 compliance with the Commission's billing 18 frequency regulations at issue in this 19 matter. Rather, we find that the record 20 demonstrates that the violations may be 21 classified as more isolated and not frequent 22 or recurrent violations by PPL." So that 23 would indicate this is sort of a one-off. 24 When I took a look at the cause of the</p>	<p style="text-align: right;">Page 63</p> <p>1 operations has allowed it to make these 2 significant investments for the benefit of 3 customers without increasing operational 4 costs and while maintaining affordable rates 5 for customers. Did I read that correctly? 6 A. Yes, you did. 7 Q. How does PPL expect to invest in the 8 upgrades we've talked about with respect to 9 technology and infrastructure while removing 10 Rhode Island from Grid's regional system 11 that it currently operates within without 12 increasing the operational costs? For 13 instance, the facilities that we've talked 14 about being built, the operation, the O&amp;M 15 costs and the general maintenance costs will 16 now be held entirely on the back of 17 ratepayers in Rhode Island as opposed to 18 being split between the region. So can you 19 speak to those issues? 20 A. Just I'd say generally our focus, the way 21 we are going to be organized in Rhode Island 22 is to have basically customer-facing parts 23 of the organization be located in Rhode 24 Island. I think there's a tremendous</p>
<p style="text-align: right;">Page 62</p> <p>1 issue, it appears to be due to a backlog of 2 meter change orders. When we were replacing 3 meters, the meter records didn't get into 4 the billing system. That is a 5 responsibility that in Rhode Island's case 6 will remain in Rhode Island. That does not 7 go to the service company. 8 Q. That would not go to the service company? 9 A. That's correct. 10 MR. WOLD: All right. Thank you 11 very much, Mr. Dudkin. That's all the 12 questions I have. 13 THE HEARING OFFICER: Mr. Vaz? 14 MR. VAZ: Good morning, Mr. Dudkin. 15 THE WITNESS: Good morning. 16 CROSS-EXAMINATION BY MR. VAZ 17 Q. Am I correct that you have your testimony in 18 front of you? 19 A. I do. 20 Q. Can we start by going to Page 11, please? 21 A. Yes. 22 Q. Thank you. Beginning on Line 17 of that 23 page, you talk about PPL's commitment to 24 efficient and effective management of its</p>	<p style="text-align: right;">Page 64</p> <p>1 benefit for that. I've been extremely 2 impressed by the Rhode Island employees that 3 I've met here, how committed they are to 4 Rhode Island, and I talked to one employee 5 that I think is a seventh generation Rhode 6 Islander. They have a tremendous amount of 7 pride and commitment to the people of Rhode 8 Island. So for me, as a business leader, I 9 think it's important to leverage that. So 10 that's a very important part of our 11 organizational structure. We do, however, 12 also -- for support services we do try to 13 get economies of scale by things like supply 14 chain IT. With that structure that we've 15 deployed in PPL Electric Utilities when I 16 compare our costs, and you can go on 17 publicly available FERC information, our 18 costs per customer are very competitive and, 19 in fact, they compare favorably to National 20 Grid's. 21 So we've been able to operate an 22 organization in the structure that I 23 described very, very efficiently. We 24 believe we can bring that same approach to</p>

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1 Rhode Island to basically keep costs down  
2 and provide some opportunity to invest while  
3 mitigating rate increases. It says in the  
4 testimony, I believe, that we were able to  
5 maintain our operation and maintenance costs  
6 flat from 2011 to 2020, and Ms. Johnson  
7 talked about us not going in for a rate case  
8 since -- we went in for a rate case in 2015  
9 and it became effective January 1st of 2016,  
10 so we've been able to run a very efficient  
11 operation for a very long time. We intend  
12 to employ that same discipline here.  
13 Q. Okay. And with respect to those  
14 efficiencies that you expect PPL to be able  
15 to integrate, has PPL identified areas where  
16 National Grid is currently less efficient  
17 specifically?  
18 A. Well, I would say there was some  
19 discussion about grid mod, for example.  
20 National Grid is embarking on grid mod.  
21 We've been embarking for a long time, 2009  
22 for 2010. We believe that the heart of grid  
23 mod is basically a technology platform that  
24 is able to make our grid smart, if you will.

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1 We believe we can deploy that to Rhode  
2 Island at a fraction of the cost that we had  
3 to in Pennsylvania. So I think from a  
4 technology perspective we have a suite of  
5 platforms that I think are really world  
6 class. We'll be able to deploy those in  
7 Rhode Island for the betterment of Rhode  
8 Island customers very, very cost  
9 effectively.  
10 Q. And you might not know the answer to this,  
11 but do you know if there are any documents  
12 or reports prepared by PPL to show how that  
13 might affect rates in Rhode Island or what  
14 the expected benefits of that might be in a  
15 dollars and cents sort of way?  
16 A. I do not.  
17 Q. To the extent that there may be such  
18 documents, do you think PPL would be able to  
19 locate that? I guess I can also just ask to  
20 enter a record request for any such document  
21 that may exist.  
22 THE HEARING OFFICER: Any  
23 objections?  
24 MR. RAMOS: I didn't hear what the

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1 --  
2 THE HEARING OFFICER: Why don't you  
3 repeat the request, please?  
4 MR. VAZ: Sure. To the extent that  
5 there are expected efficiencies from the  
6 upgraded systems that Mr. Dudkin was just  
7 testifying about, the question was -- the  
8 initial question was whether PPL has  
9 internally found any reports or prepared any  
10 reports that show what types of savings that  
11 might mean for ratepayers in Rhode Island.  
12 So if any such documents exist, we would  
13 like to have those produced.  
14 MR. RAMOS: Okay. He can make the  
15 record request and we'll see if any  
16 documents exist in response.  
17 MR. VAZ: That's the best I can ask  
18 for.  
19 THE HEARING OFFICER: Thank you.  
20 Q. Mr. Dudkin, you had also mentioned that you  
21 believe there are many benefits to having  
22 facilities located in Rhode Island, and I  
23 assume that has to do with both the proposed  
24 operations on the gas side and on the

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1 electric side which would be moving from the  
2 regional facilities that National Grid  
3 currently utilizes and now would be  
4 stand-alone in Rhode Island, is that  
5 correct?  
6 A. That's correct.  
7 Q. Could you expound on what those benefits  
8 might be other than the general geographic  
9 benefits that I assume you heard Mr.  
10 Bonenberger talking about when we spoke with  
11 him?  
12 A. Yes. I think it goes to what I talked  
13 about before, it's that focus on Rhode  
14 Island both from a control center point of  
15 view, gas control and distribution control.  
16 When you have people that are focused 100  
17 percent on a particular customer base, and  
18 again, I've seen that from talking to  
19 National Grid Rhode Island employees, they  
20 want to really do well by the customer, and  
21 that -- you can't buy that, that is in their  
22 bones and I think the customers will get the  
23 benefit, of that focus and energy and  
24 commitment to the customer.

<p style="text-align: right;">Page 69</p> <p>1 Q. So is it fair to say, and I don't want to 2 mischaracterize what you're saying, but is 3 it fair to say it's more like an tangible 4 that you're talking about? 5 A. Well, so it's -- if culture is 6 intangible, but it results in better 7 results. So I would say that that focus 8 results in better -- I would expect better 9 customer satisfaction, better reliability, 10 better gas service because of that focus. 11 It's not just intangible. I believe it will 12 end up with better results for the 13 customers. 14 Q. So maybe unquantifiable. Would that be 15 fair? 16 A. Maybe. 17 Q. Okay. Can we look at Page 13 of your 18 testimony? In response to the question 19 that's posed on Line 3 of that page you 20 outline the four main prongs of PPL's clean 21 energy transition strategy. Do you see 22 that? 23 A. Yes, I do. 24 Q. And you're familiar with that general</p>	<p style="text-align: right;">Page 71</p> <p>1 deployed in Rhode Island and help really 2 meet -- have Rhode Island meet its 3 decarbonization goals. So we think that we 4 can bring a lot to the table, and because 5 we're the primary utility, or hopefully will 6 be the primary utility in the state, we can 7 work with the PUC, the Division, all of the 8 folks in this room to figure out the best 9 path forward. 10 That goes also to the gas plan. We 11 understand the questions about the long-term 12 strategy around gas. We really welcome the 13 opportunity to work with everyone on 14 figuring out what that path is so we can be 15 on the same page and work to achieve those 16 goals. So we really believe we can be a 17 great partner for the state in helping the 18 state achieve its goals. 19 Q. Okay. And with respect to that -- actually, 20 the next question that does begin on Page 13 21 and goes on to Page 14 of your testimony 22 talks about things that PPL is currently 23 doing. But on Page 14 it notes, and it 24 begins on Line 10, that, "Our experience in</p>
<p style="text-align: right;">Page 70</p> <p>1 commitment that PPL currently has? 2 A. Yes. 3 Q. Can you outline -- we've talked a lot about 4 how Rhode Island is considerably more 5 aggressive with respect to climate change 6 issues and environmental goals and their 7 energy sector compared to some of the 8 jurisdictions where PPL currently operates. 9 Can you speak to how PPL plans to effectuate 10 these same goals and how those might change 11 in a place such as Rhode Island, or 12 specifically in Rhode Island I guess, not 13 just a place like Rhode Island. 14 A. Well, so actually I think the leadership 15 team is really excited about the prospects 16 of coming to Rhode Island. We really 17 believe that we bring a lot to the table. 18 So we talk quite a bit about smart 19 grid. We believe that in deploying a smart 20 grid and we believe that obviously the PUC 21 will determine the pace of the rollout, but 22 we believe we can get a smart grid up and 23 running very quickly here and that will 24 enable more renewable generation to be</p>	<p style="text-align: right;">Page 72</p> <p>1 this area will serve Rhode Island well as 2 the state pursues clean energy ambitions of 3 net zero by 2050 and potentially drives for 4 100 percent renewable energy by 2030." So 5 with respect to that potential commitment by 6 2030 for 100 percent renewable energy, I 7 assume that references the previous 8 Governor's position and the position 9 currently being addressed potentially by 10 Governor McKee. Are you aware of how PPL 11 plans to work towards that should the 12 Governor move forward? 13 A. We don't have specific plans right now, 14 but our intent is to, again, work with the 15 different stakeholders in the state to 16 figure out how we can support that going 17 forward. 18 Q. So we had spoken about the physical 19 facilities that PPL plans to have in Rhode 20 Island. We spoke about them also with Mr. 21 Bonenberger. So my understanding is that a 22 Lincoln facility that's currently used for 23 backup on the electric side of things will 24 be converted to be a primary facility for</p>



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<p>1 PPL should it come into Rhode Island, is 2 that correct? 3 A. That's correct. 4 Q. Okay. So this may be a good question, or 5 not a good question, I guess, you're going 6 to have to tell me, but is there going to be 7 a backup? 8 A. Yes, there is going to be a backup. 9 Q. What's the plans for that? 10 A. I believe it's going to be in 11 Pennsylvania. 12 Q. Would that be something that Rhode Island 13 ratepayers would be asked to pay for? 14 A. Not if it's duplicate or without a 15 customer benefit. 16 Q. Can you explain more about what might be 17 duplicative? I'm trying to understand. 18 A. So I'm not an accountant or rate maker, 19 so I'm probably not the best person to talk 20 about that. 21 Q. Okay. So there's no set plan on what the 22 backup would be as of now, like, there's no 23 facility that can be identified, is that 24 correct?</p>	<p>1 Q. Okay. Does PPL have a position about the 2 characterization of lines coming from 3 offshore wind and how they plan to address 4 that? 5 A. I'm not sure I understand the question. 6 MR. VAZ: I can try to rephrase. 7 Q. Has PPL given consideration to the issues 8 that have been brought up in the Block 9 Island wind and how they might categorize 10 lines distributing power from offshore wind? 11 It's fine to say you don't know. 12 A. I don't know. 13 Q. Okay. We had spoken about customer service 14 as well, and I'm not sure if -- I think we 15 received an answer that generally customer 16 service, as it affects Rhode Island 17 customers, would be handled via phone as far 18 as, like, day-to-day questions and billing 19 questions and concerns, that type of thing. 20 But are you aware of any plans to have 21 in-person customer service where people 22 could walk into a facility should PPL take 23 over and speak to somebody? 24 A. There are -- I believe Mr. Bonenberger</p>
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<p>1 A. I believe there is. I just don't have 2 the specifics about it. 3 Q. Okay. Might someone who's testifying after 4 you have that information? 5 A. No. Dave Bonenberger who testified 6 before me would have it. 7 MR. VAZ: Can we just enter that as 8 a record request, a data request, that we 9 receive information concerning the facility 10 that's going to be used as a backup as well 11 as what it currently does so that we can 12 compare to the backup facility that is being 13 used by Rhode Island currently, a 14 description of that? 15 THE HEARING OFFICER: Yes. 16 MR. VAZ: Thank you. 17 Q. Are you familiar with the issues surrounding 18 the Block Island wind farm and the 19 characterization of the power lines? It's 20 been in the news in Rhode Island, the 21 potential -- it's been called by the papers 22 as a windfall of \$46 million. Do you know 23 what I'm talking about generally? 24 A. I've heard about it generally.</p>	<p>1 testified yesterday that there currently are 2 not any plans for that. 3 Q. I just wanted to confirm. I believe that is 4 what he said. 5 A. Yes. 6 Q. And you had talked about as far as the 7 service company in Pennsylvania taking over 8 billing operations, you had mentioned 9 specifically bill print and mailing would be 10 taken over. Can you just clarify what 11 billing functions would not be taken over by 12 the Pennsylvania Service Company and what 13 PPL entity might be taking those over? 14 A. Well, in the matter of this Public 15 Utility complaint, within Rhode Island there 16 would still be customer service agents, 17 folks that would put billing information 18 into the customer system. That's what this 19 issue was. Those would all be Rhode Island 20 employees. 21 Q. And what specific functions would happen in 22 Pennsylvania? I know that you already said 23 that it would be bill print and mailing, but 24 would there be anything else?</p>

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1 A. With regard to billing, no, other than --  
2 excuse me -- other than support of the IT  
3 infrastructure.  
4 Q. Okay. Can you just expound on that? I'm  
5 not a big IT guy.  
6 A. Yeah. So it would be -- we'd have a  
7 customer communications system that would  
8 have all the customer information that would  
9 be supported in Pennsylvania.  
10 Q. And do you know if the Pennsylvania Service  
11 Company uses the same billing system as the  
12 Grid billing system?  
13 A. It is a -- they are different versions  
14 but a similar billing system.  
15 Q. So there would be no increased  
16 functionality-wise?  
17 A. So probably not too much increased  
18 functionality, just on the plain billing  
19 system. What we intend to do, though, is  
20 improve the infrastructure of it, the  
21 architecture of it, make it more robust.  
22 Q. So nothing would change as far as ability to  
23 pay online or ability to pay --  
24 A. Well, that's another. So I believe what

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1 we can bring to the table on that side, so  
2 the base billing system is pretty much the  
3 same. Some of the things that we've  
4 innovated with in Pennsylvania is improved  
5 website and IVR capabilities so that  
6 customers can do more self-service, and  
7 we've gotten -- I would say we've gotten  
8 great response from our customers with  
9 regard to that. So they find it much easier  
10 to conduct business on a self-service basis.  
11 So we would look to bring those capabilities  
12 to folks in Rhode Island as well. But  
13 they're built on top of what I was talking  
14 about, the customer communication system.  
15 Q. And as far as communications with customers,  
16 I'm just curious, does the system include --  
17 that PPL would employ, does it include text  
18 messages and e-mails, things that National  
19 Grid currently has?  
20 A. Yes.  
21 Q. And then I'm just going to ask you in case  
22 you know, but has PPL done any customer  
23 outreach or customer studies here in Rhode  
24 Island about the transactions in general,

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1 like, reaching out to Rhode Island  
2 ratepayers and doing some type of study on  
3 their general understanding or their  
4 expectations?  
5 A. We have not as yet.  
6 Q. Is there a plan for any type of outreach  
7 post-transaction were it to be approved?  
8 A. Absolutely.  
9 Q. Do you know what that would look like?  
10 A. I don't have the details of that right  
11 now, no.  
12 Q. But it is people's intention to notify  
13 customers and to explain the changes?  
14 A. Absolutely. Yeah. We have a whole -- I  
15 don't have the details of the plan, but we  
16 have a whole plan for outreach and brand  
17 launch and all of that on a going forward  
18 basis.  
19 Q. Would that be something that could be  
20 provided?  
21 A. We do have the plan, so --  
22 MR. VAZ: Can we enter that as a  
23 data request also, just to receive the plan  
24 for post-transaction customer outreach?

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1 THE HEARING OFFICER: Sure, to the  
2 extent that they exist, yes.  
3 MR. VAZ: That's all I have for  
4 you. Thank you very much.  
5 THE HEARING OFFICER: Mr. Webster?  
6 MR. WEBSTER: Good morning, Mr.  
7 Dudkin. How are you?  
8 THE WITNESS: Good.  
9 CROSS-EXAMINATION BY MR. WEBSTER  
10 Q. When speaking with previous witnesses, I had  
11 referenced the 2021 PPL climate assessment  
12 report entitled Energy Forward. Are you  
13 familiar with that report?  
14 A. I am.  
15 Q. In your position were you involved with the  
16 creation of that report or the 2017  
17 predecessor to that report?  
18 A. I was involved in the review of the  
19 report.  
20 Q. Of the 2021?  
21 A. Correct.  
22 Q. And were you able to monitor the hearings  
23 over the past two days leading up to today?  
24 A. Yes.

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<p>1 Q. We've heard from many of the company's top 2 executives that were chosen to present 3 testimony to Rhode Island that -- and it 4 seems that only about half of them have more 5 than a passing familiarity with the -- that 6 companywide climate report. Is that a fair 7 characterization of what we heard from the 8 testimony?</p> <p>9 A. I don't know that it's fair. I think 10 people understand what's in the report.</p> <p>11 Q. I'm not seeking to call anyone out 12 specifically, but -- and I recognize these 13 are all important decisions, the company has 14 lots of competing priorities, but several 15 witnesses indicated that they were only 16 slightly familiar with it. I can't remember 17 the exact language, but we proceeded down a 18 line of questioning where it was clear that 19 they had not personally engaged in the 20 development of the report and -- do you feel 21 that it's not fair to say that they didn't 22 have more than a passing familiarity with 23 the report, though?</p> <p>24 A. I believe that -- I believe that our</p>	<p>1 Island. Are you familiar with that 2 proceeding?</p> <p>3 A. Yes.</p> <p>4 Q. As the Attorney General's office mentioned 5 yesterday, Narragansett is required to 6 submit its final proposal for Aquidneck 7 Island in April. This is also part of the 8 EFSB order, so it's not just on their good 9 word. Is PPL willing to commit to 10 proceeding along the established timeline in 11 that docket given, if this transaction is 12 approved, it will occur shortly before that 13 plan is filed? It will be a plan that is 14 largely developed by Narragansett under its 15 current corporate ownership, so is that a 16 commitment that PPL is committed to make?</p> <p>17 A. We are familiar with the plan and, if 18 approved, we are prepared to implement the 19 plan.</p> <p>20 Q. And is PPL willing to commit that it will 21 not seek to delay or restart the EFSB 22 proceedings in that matter?</p> <p>23 A. If it's approved, we will not delay it. 24 We will move forward with it.</p>
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<p>1 leaders understand what our principle goals 2 are. That zero by 2050, I think they 3 understand that and many of the components 4 of that.</p> <p>5 Q. Okay. In your estimation why did that 6 report lack a discussion of reducing 7 greenhouse gas emissions associated with the 8 use of gas in buildings?</p> <p>9 A. I would say that I don't know.</p> <p>10 Q. The corporation does operate a distribution 11 gas company, right, an LDC?</p> <p>12 A. Yes.</p> <p>13 Q. Do you agree that reducing greenhouse gas 14 emissions are in the public interest?</p> <p>15 A. Yes.</p> <p>16 Q. And that reducing greenhouse gas emissions 17 in a local distribution company distributing 18 gas is an opportunity to reduce greenhouse 19 gas emissions, that would be within the 20 company's control or certainly the company 21 would be able to influence that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I want to turn to the Energy Facility 24 Siting Board proceeding around Aquidneck</p>	<p>1 Q. If this transaction is approved. There will 2 be another approval for the EFSB plan, so I 3 just want to be clear.</p> <p>4 A. I'm talking about the EF -- if the plan 5 is approved there, we will move forward with 6 it.</p> <p>7 Q. Let me rephrase that, and I recognize I 8 might not have been clear. The plan that 9 we're discussing in the EFSB is the order 10 requires that it be submitted for review and 11 eventual approval or denial or alteration 12 throughout the course of the proceeding. So 13 I'm asking right now if the company, if PPL 14 is willing to commit to not delaying those 15 initial proceedings in April where it needs 16 to submit the plan?</p> <p>17 A. We will commit to not delaying the 18 proceedings.</p> <p>19 MR. WEBSTER: Thank you. I believe 20 that's all the questions I have for you. 21 Thank you.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 THE HEARING OFFICER: Thank you. 24 Mr. Rhodes?</p>

<p style="text-align: right;">Page 85</p> <p>1 CROSS-EXAMINATION BY MR. RHODES 2 Q. I'm going to turn back to I think the 3 Attorney General's office brought this up on 4 Page 13 of your testimony, about PPL's 5 commitment to renewable energy and the 6 environment. I'm going to just paraphrase 7 and pull a couple of things that the four 8 main prongs to your strategy include 9 enabling third-party decarbonization, that 10 includes investing in transmission 11 distribution networks for large-scale 12 connection of DER and delivery of renewable 13 energy, furthering research and development 14 by investing in new clean energy 15 technologies to achieve net zero by 2050, 16 decarbonizing our generation assets in 17 Kentucky and building and acquiring 18 renewable projects across the US, and four 19 is decarbonizing non-generation operations. 20 One of the things that -- my 21 question is is there a reason why energy 22 efficiency efforts and energy efficiency 23 programs is not included in those 24 commitments to renewable energy and the</p>	<p style="text-align: right;">Page 87</p> <p>1 Consumers Alliance asked is with regard to 2 energy efficiency programs and least cost 3 procurement programs for which PPL is 4 currently obligated in Pennsylvania and 5 Kentucky. 6 So I had previously asked Mr. 7 Bellar about the numbers reported here, the 8 statistics and the like for operations in 9 Kentucky, but obviously he was not able to 10 testify as to the accuracy of the 11 information provided for Pennsylvania. But 12 understanding your familiarity with these 13 programs, can you describe in some way PPL's 14 energy efficiency obligations in 15 Pennsylvania? 16 A. Just from a high level. It says here 17 that the energy efficiency program is really 18 set out under Act 129 that was set out in 19 2008. What it sets up is I believe it's two 20 percent of revenue in actually 2006, that's 21 the amount of money that the utility should 22 be investing in energy efficiency and demand 23 side management. In the case of PPL 24 Electric Utilities, that's somewhere around</p>
<p style="text-align: right;">Page 86</p> <p>1 investment, or if they are included, how so? 2 A. I would say this was more of a -- I would 3 say these commitments were more focused on 4 the company. So for example, on No. 4, that 5 includes energy efficiency of our 6 company-owned buildings. So this wasn't 7 really a statement about customers' energy 8 use, but in No. 4 it's a focus on our intent 9 to deploy solar on service centers. We have 10 set up goals on reduction of energy use at 11 all of our facilities. So I would say 12 energy efficiency is in this, but it's 13 primarily focused on company facilities. 14 Q. Are you familiar with the energy efficiency 15 obligation of PPL and its operations in 16 Pennsylvania? 17 A. Yes. 18 Q. I want to refer to -- I apologize here -- 19 Exhibits -- Green Energy Consumers Alliance 20 Exhibits 3 and 4. I don't know if you have 21 them. They've already been entered in, but 22 I can bring copies to you if that would be 23 helpful. And just as a reminder, these 24 are -- the questions that Green Energy</p>	<p style="text-align: right;">Page 88</p> <p>1 \$60 million. And we are actually in Phase 4 2 of this program. We just concluded Phase 3 3 a few months ago. And at a high level the 4 programs are broken into -- we have 5 residential programs, we have commercial 6 programs, low-income programs and also 7 what's called GNE, government non-profit 8 educational programs. And the results of 9 Phase 3 is we exceeded the targets in each 10 of those programs. And now we have a Phase 11 4. That plan was presented to the PUC and 12 approved and we're off and running on that. 13 Q. Can you give a sense as to how PPL decides 14 -- so I understand the two percent of 15 revenue is the amount to be dedicated to 16 this, but how does PPL propose plans for how 17 to allocate that among the different 18 programs? 19 A. Yeah. I would say that I haven't been 20 intimately involved in that process, but it 21 does involve stakeholder involvement and 22 understanding what the needs are, 23 particularly in the low-income side as well 24 as where we think there are economic</p>

<p style="text-align: right;">Page 89</p> <p>1 opportunities for energy efficiency. 2 Q. Is there a public structure that guides that 3 stakeholder engagement or is it just 4 internal to PPL and the folks who have 5 organized it to develop it? 6 A. I don't know the answer. 7 Q. Okay. I ask that question specifically 8 because in Rhode Island we have the Energy 9 Efficiency Resources Management Council, 10 it's a mouthful, but they do important work 11 actually providing a public forum on which 12 to engage in those questions. So I guess my 13 curiosity is around whether PPL had 14 experience facilitating a program whose 15 operational guidance comes from a 16 third-party process and whether -- how that 17 might influence the way that you go about 18 proposing how to spend money in the energy 19 efficiency field. I'm not sure if I asked a 20 question in there. So to rephrase would be 21 how do you expect PPL to adapt to having to 22 work with a third-party government -- 23 essentially, a government-sponsored 24 Resources Management Council?</p>	<p style="text-align: right;">Page 91</p> <p>1 I don't have the details of it. It's a very 2 impressive program. I've talked to the 3 person that's conveying hopefully over to 4 Rhode Island, David -- I forget his last 5 name, M, but he's very, very bright, very 6 committed to energy efficiency programs, 7 very, very knowledgeable. So again, this is 8 one of the things that I think we're excited 9 about is Rhode Island's commitment on these 10 energy issues and we look forward to getting 11 involved. But as far as the details of the 12 program, I'm not familiar with the details 13 here. 14 Q. Would you be able to offer an opinion about 15 the -- how the program or how the goals, 16 ambitions, the goals of the programs are 17 seeking to accomplish compare in 18 Pennsylvania versus in Rhode Island? 19 A. I would say just the dollars invested it 20 appears that Rhode Island's is pretty 21 aggressive comparatively speaking. 22 Q. The other piece I want to just refer back to 23 is the Advocacy Section's Exhibits 32 and 33 24 that were presented yesterday. I don't know</p>
<p style="text-align: right;">Page 90</p> <p>1 A. I look forward to it very much so. I 2 think -- again, we want to be a very close 3 partner in Rhode Island, and to the extent 4 we can get feedback from agencies that 5 really care about this matter, I think it is 6 wonderful. 7 Q. So just to finish up with these data 8 requests, do you feel that the information 9 provided here in describing PPL Electric's 10 work here is a fair and accurate 11 representation of the success or at least 12 performance of the programs in Pennsylvania? 13 A. I'm not familiar with the exact numbers 14 on here. 15 Q. Okay. 16 A. I will assume that they are correct. 17 Q. I'm not presenting any information as to why 18 they're not. I'm just seeking the 19 understanding of it. So what level of 20 familiarity do you have with the energy 21 efficiency obligation of Narragansett 22 Electric and National Grid at this point 23 here in Rhode Island? 24 A. It is a -- what I would say is it's a --</p>	<p style="text-align: right;">Page 92</p> <p>1 that you have them in front of you. They 2 were the 2019 and 2020 State Energy 3 Efficiency Scorecard. I'll be happy to 4 provide those for you as well. So those 5 were entered into evidence yesterday. I'll 6 give you moment just to familiarize yourself 7 with them. 8 A. Okay. 9 Q. So one of the things that was brought up, I 10 believe Mr. Bonenberger brought this up 11 yesterday as well, is the ability for Rhode 12 Island to benefit from the -- I think the 13 word he continually used is synergies, 14 though I find that a little bit vague, I'm 15 not sure what fully encompasses that, but to 16 use a consistent term, the synergies between 17 the work in Kentucky and Pennsylvania with 18 the work in Rhode Island. 19 So when it comes to energy 20 efficiency, I'm not sure if you have the 21 information available, but do you believe 22 that in Rhode Island, Rhode Island 23 ratepayers have benefited from shared 24 operations of energy efficiency programs</p>

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1 with Massachusetts and New York currently  
2 given the high rankings of all three states  
3 currently? Do you see that -- in your  
4 opinion do you believe that we have  
5 benefited from those synergies of work by  
6 National Grid in our neighboring states?  
7 A. I guess I don't know. I don't know  
8 enough to be able to give you an opinion.  
9 Q. Okay. Do you believe that there will be a  
10 set of synergies that we're likely to  
11 benefit from by learning from the  
12 Pennsylvania and Kentucky programs,  
13 specifically energy efficiency programs in  
14 those states, that there's information,  
15 knowledge or experience from those  
16 operations that can be brought to bear to  
17 Rhode Island for the benefit of ratepayers?  
18 A. I believe so, and I also believe there  
19 will be a lot of benefits from Rhode Island  
20 to the other states.  
21 Q. Yes. I happen to agree with your assessment  
22 there. Do you have any way to describe  
23 whether you think it will be a similar set  
24 of benefits that Rhode Island will learn --

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1 will gain from Pennsylvania, Kentucky in  
2 comparison to what we might be currently  
3 experiencing from New York and  
4 Massachusetts?  
5 MR. RAMOS: Objection. He  
6 testified that he didn't know if there were  
7 any benefits.  
8 THE HEARING OFFICER: If he can  
9 answer.  
10 A. I can't speculate at this point.  
11 MR. RHODES: Thank you. That's the  
12 end of my questions.  
13 THE WITNESS: Thank you.  
14 THE HEARING OFFICER: Thank you.  
15 Ms. Curran?  
16 MS. CURRAN: Thank you. Good  
17 afternoon.  
18 THE WITNESS: Good afternoon.  
19 CROSS-EXAMINATION BY MS. CURRAN  
20 Q. I want to ask a few questions, just a very  
21 few. You mentioned in your testimony  
22 something about storage facilities that PPL  
23 or LG&E and KU are involved with.  
24 A. So I'm not sure what you're referring to.

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1 There were some gas storage facilities, but  
2 also there was --  
3 Q. Utility-scale storage.  
4 A. Oh, that's probably batteries. Yeah. So  
5 Kentucky has done some research with  
6 utility-scale batteries to get information  
7 about how they can help support the grid  
8 with solar generation.  
9 Q. And the utilities own that storage facility?  
10 A. Yes.  
11 Q. And is Kentucky as well as Pennsylvania  
12 vertically integrated?  
13 A. Kentucky is. Pennsylvania is not.  
14 Q. I'd also like to touch on your distributed  
15 energy management system which I believe you  
16 call DERMS.  
17 A. Yes.  
18 Q. I hate acronyms, but could you describe that  
19 system just briefly, how it operates?  
20 A. Sure. So it's part of our smart grid,  
21 but it's a distributed energy resource  
22 management system, and just to provide a  
23 little bit of context, the electric grids in  
24 the United States and elsewhere were built

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1 years and years ago with one way flow of  
2 energy. You had very large central power  
3 plants that distributed energy one way and  
4 that's how our systems are all across the  
5 country built. What's changed is now with  
6 solar being much more economically viable,  
7 same thing with wind, we've got charging of  
8 electric vehicles, what we're seeing now are  
9 two way flows of energy, and what that does  
10 is it provides some complexity on managing  
11 the grid in order to keep, I'll call it, the  
12 power quality good, in good shape. If it  
13 gets away from you -- so for example, a few  
14 years ago in Hawaii --  
15 Q. When you say the grid, you mean the  
16 distribution grid?  
17 A. Distribution and transmission grid. A  
18 few years ago the state of Hawaii, their  
19 electric prices got really, really high and  
20 so there was a large influx of solar in  
21 Hawaii, so much so that individual circuits  
22 would have maybe 70 percent concentration of  
23 solar on rooftops, and the problem was it  
24 got ahead of them, if you will. And so when

<p style="text-align: right;">Page 97</p> <p>1 clouds went overhead, they saw voltage dips 2 and brownouts and they had power problems 3 and that's what we wanted to avoid at PPL. 4 And the way that you can avoid it is by 5 getting visibility to this distributed 6 energy resources, the solar, et cetera, and 7 when you have a smart grid, you can actually 8 identify what's happening with that solar 9 array, see the changes in output and make 10 automatic adjustments to your system in 11 order to maintain your voltage, your power 12 quality, et cetera. So it's a way to manage 13 the grid to maintain power quality. 14 The other benefit that we've seen 15 is we can reduce the need for capital -- big 16 capital expenditures on the grid because 17 we're managing it better and we can host 18 more solar on the grid without having to 19 invest more capital. 20 Q. And so are you saying that that visibility 21 helps you to determine in advance whether or 22 not costly upgrades are needed at 23 substations, for example? 24 A. Correct.</p>	<p style="text-align: right;">Page 99</p> <p>1 connections are tied up with? 2 A. So our -- let me just backup. So we have 3 a DERMS system that has been in place for 4 two years. That DERMS system is able to see 5 what's happening out on our grid with solar, 6 et cetera. The application that we've 7 submitted with the PUC is we asked for -- it 8 was an interconnect change to our 9 interconnection requirements. And what we 10 were asking for is basically if we are able 11 to monitor and control during peak periods 12 the output to some degree, either change the 13 power factor or the output, we could reduce 14 interconnection costs for those facilities 15 and also avoid increased distribution costs. 16 The PUC said basically that issue of control 17 ability, we want to see a pilot to see if 18 those benefits are actually there or not. 19 So the three-year pilot is to get actual 20 results to see if that control element of 21 the -- of our request is actually resulting 22 in benefits to customers. 23 Q. And so the initial system that you installed 24 has visibility but no control?</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. And you're talking about this system 2 operating on utility-scale, ground-mounted 3 solar systems as well as rooftop, like 4 residence solar? 5 A. Yes. 6 Q. How long has that system been in operation? 7 A. Probably two years. 8 Q. Isn't it also the subject of the docket, 9 though, that's before the Pennsylvania PUC 10 that talked about a pilot that started in 11 January of this year? 12 A. Yes. That's correct. 13 Q. And how is that different from the earlier 14 application of the system that you 15 mentioned? 16 A. So the -- what the pilot is -- so we 17 installed the system and it gives us 18 visibility into what's happening across the 19 grid. 20 Q. But what did you mean by "this system"? 21 A. DERMS. 22 Q. So you have a central system. 23 A. We have a central system. 24 Q. That then is connected -- that then new</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Correct. 2 Q. And the system as it's now being piloted 3 includes control over of the -- 4 A. Pilot group. 5 Q. I'm sorry. The pilot group. All of the 6 developers who want to interconnect now will 7 go through that if they're part of the 8 pilot? 9 A. If they're part of the pilot, correct. I 10 would just add, just to give you an idea, 11 Mr. Bonenberger in his testimony yesterday 12 talked about an example. We had a -- just 13 to summarize, we had a three-megawatt solar 14 array that wanted to connect to our 15 distribution system and we really offered 16 the developer you can connect without 17 control or you can connect with control. 18 The difference is is that -- and again, the 19 control we think is only going to be 20 probably, you know, no impact, but maybe 21 just a few hours a year, the change in 22 interconnection costs would have been -- was 23 a \$700,000 difference because without the 24 control we would have had to have</p>

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1 reconducted that distribution line. So it  
2 reduced that person's interconnection costs  
3 by \$700,000 and he said yeah, I'll sign up  
4 for the pilot.  
5 Q. And so in the commitments, the list of  
6 commitments that were provided this weekend,  
7 No. 12.  
8 A. Yes.  
9 Q. That's the commitment to implement DERMS,  
10 the Pennsylvania DERMS, what exactly is it  
11 that that's committing to install? Is that  
12 the initial DERMS system that just has  
13 visibility or the control system?  
14 A. So this one, this one is to make sure --  
15 is to submit a report to the Division about  
16 the results of our pilot and say these are  
17 the results of the pilot that we had in  
18 Pennsylvania.  
19 Q. Okay. Thanks. In No. 11 of the commitments  
20 it talks about a decarbonization report as  
21 well as the specific decarbonization goals  
22 to support -- I'm sorry -- the  
23 decarbonization goals to support Act on  
24 Climate as well as the long-term strategy

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1 for gas distribution system. How did you  
2 decide on a year for that?  
3 A. Well, so we thought these were issues  
4 that were brought up in testimony from the  
5 parties that are involved in this  
6 proceeding, and we felt that in order to  
7 show our -- you know, really show our  
8 commitment to these areas, that we wanted to  
9 step up and say yeah, we understand the  
10 future of the gas business in the state is  
11 very important so we will commit to taking  
12 an evaluation of that and preparing a  
13 report. Same thing on so what are the  
14 things we can do to help support the state's  
15 Act on Climate? The 12 months was really  
16 not so much in how long it's going to take  
17 us to do these evaluations, but we recognize  
18 that if approved, we'd be new to the state  
19 and it's very important for us to be able to  
20 reach out to stakeholders and understand the  
21 positions of people and what their thoughts  
22 and views are in these areas. So the 12  
23 months was what we felt would give us enough  
24 time to not only do the study but also work

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1 with stakeholders so that we'd come up with  
2 something that the body can agree to.  
3 Q. And I asked Mr. Bonenberger about this also.  
4 Rather than providing a report to the  
5 Division and conducting some kind of  
6 internal procedure, would you consider  
7 filing with the Public Utilities Commission,  
8 since ultimately this will probably end up  
9 going before the Public Utilities  
10 Commission, a docket like the Massachusetts  
11 future of gas docket?  
12 A. I would most likely have to talk to  
13 counsel about the process there.  
14 MS. CURRAN: Thanks.  
15 THE WITNESS: Thank you.  
16 THE HEARING OFFICER: Is that it?  
17 Thank you. Redirect?  
18 MR. RAMOS: Just briefly.  
19 THE HEARING OFFICER: Go ahead.  
20 REDIRECT EXAMINATION BY MR. RAMOS  
21 Q. So Mr. Dudkin, you just received I would say  
22 a number of questions regarding the  
23 implementation of the DERMS system in  
24 Pennsylvania. You recall that?

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1 A. Yes.  
2 Q. And I believe you testified that there are  
3 sort of two phases going on right now, is  
4 that right? There's both the -- what you  
5 installed originally and then the pilot  
6 program, right?  
7 A. Yes. So just to be clear, there is a --  
8 the DERMS system is in both the initial  
9 rollout as well as piloted. What's being  
10 piloted is the interconnection approach.  
11 Q. And that interconnection approach is what  
12 provides you with the functionality to  
13 control as opposed to not control?  
14 A. Right.  
15 Q. But I believe you were also testifying  
16 earlier that the DERMS system gives you  
17 visibility into what's happening with all of  
18 the renewable distributed energy generation  
19 that's on the system, correct?  
20 A. Correct.  
21 Q. And it gives you the ability to respond to  
22 that knowledge by managing other aspects of  
23 your grid, is that right?  
24 A. That's correct.



<p style="text-align: right;">Page 105</p> <p>1 Q. Can you just describe a little bit more what 2 the -- how that visibility in and of itself 3 provides benefits to your ability to manage 4 the grid? 5 A. Yes. Well, maybe the best way to 6 describe it is to describe an unfortunate 7 event in the UK, and this happened a number 8 of years ago. But they had a cascading 9 generation failure in the UK, and what 10 happened was they have a lot of distributed 11 generation on their system in the UK, and 12 the utilities really don't -- they didn't 13 have visibility into those sources of 14 electricity. So what happened was there was 15 unexpected loss of one or two central 16 generation stations, and the operator didn't 17 understand that once -- because he didn't 18 have visibility, or he or she didn't have 19 visibility that when that power went off, it 20 actually took out a line that had 21 distributed energy generation on it and that 22 also went. So that distributed generator 23 was supplying energy to the system. So when 24 the line went off, that generator went off.</p>	<p style="text-align: right;">Page 107</p> <p>1 you recall that? 2 A. Yes. 3 Q. So the first one was enabling third-party 4 decarbonization which includes investing in 5 transmission and distribution networks to 6 allow for large-scale connection of DER and 7 delivery of renewable energy to load 8 centers. Can you describe how the DERMS 9 system and other smart grid investments that 10 you've done in Pennsylvania and would hope 11 to do in Rhode Island would facilitate 12 moving forward with that strategy? 13 A. Yes. So as I mentioned, the DERMS system 14 and our smart grid allows us to -- because 15 we have visibility, allows us to -- it's 16 called host, but have more DER on a 17 particular distribution feeder or circuit 18 than if you don't have visibility. So what 19 that means, that's lower overall 20 interconnection costs, lower need to upgrade 21 costly distribution system upgrades. So 22 we'll be able to have more DER on our system 23 for a lower cost than those that don't have 24 our smart grid and DER system.</p>
<p style="text-align: right;">Page 106</p> <p>1 And so they -- because that went 2 off, other generators went off, so it was a 3 cascading failure that they had a very large 4 blackout. So it's that lack of visibility 5 for the grid operator can cause significant 6 reliability issues, and so having that 7 visibility and having a grid that can -- 8 because these things happen in split 9 seconds, having visibility and having a 10 smart grid that can react instantaneously to 11 those changing conditions is what we are 12 building and what we'll be proposing to 13 bring to Rhode Island customers and it 14 becomes more important as you get more 15 distributed energy on the system. 16 Q. Thank you. And turning to the idea of more 17 distributed energy on the system, you 18 referred to your testimony on Page 13 during 19 questions from multiple parties. Could you 20 just turn back there for just a moment? Do 21 you recall that in your testimony at Page 22 13, the Q and A that starts on Line 3, there 23 was a discussion of the four main prongs of 24 PPL's clean energy transition strategy? Do</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. And when you say for a lower cost, that's a 2 lower cost for interconnection? 3 A. Interconnection, but also for all 4 customers because if you have to continually 5 upgrade substations and distribution 6 circuits more than you need to, that's going 7 to fall on the overall ratepayers. 8 Q. And does it have any benefits for the timing 9 of interconnection as well? 10 A. Well, one of the benefits, and I think 11 Mr. Bonenberger talked about this, is that 12 with our smart grid, one of the benefits is 13 that we have a -- I'll call it a digital 14 twin model, if you will, so that when a 15 customer -- if a customer was interested in 16 installing a solar array on their home, they 17 could go on a web portal and put in the 18 information on that web portal, and within 19 24 hours -- over 90 percent of the time 20 within 24 hours we can respond back to that 21 person and say yes or no, we need to do 22 additional information, but yes, your 23 approval to move forward. 24 When I've -- well, I'll attempt to</p>

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<p>1 be humerus here. But I've been on panels 2 with regulatory groups and I've talked about 3 this quick response to interconnection 4 requests, and I've almost gotten standing 5 ovations because I know across the country 6 there are a lot of complaints about backlogs 7 of looking at interconnection complaints. 8 What this technology does is it allows us to 9 evaluate those requests much quicker and 10 move things along much quicker. 11 Q. And you mentioned the speed of response for 12 residential customers who do install rooftop 13 solar. Are there also time benefits for a 14 large renewable energy developer as well? 15 A. Yes, there are. We -- in Pennsylvania 16 for folks that are connecting to our 17 transmission system, we're part of an RTO or 18 regional transmission organization called 19 PJM, and, again, we are only one of two 20 companies that have 100 percent of the time 21 met its commitment on turning around 22 interconnection requests and that's because 23 of our information we have on the smart 24 grid.</p>	<p>1 MR. RAMOS: I have no further 2 questions. Thank you. 3 THE HEARING OFFICER: Anything else 4 for this witness? 5 MR. WEBSTER: Could I based on that 6 last line of questioning? 7 THE HEARING OFFICER: Surely. Yes. 8 RE CROSS-EXAMINATION BY MR. WEBSTER 9 Q. Yesterday Arcadia Center introduced Arcadia 10 1-5 and 1-7 exhibits in the proceedings. 11 Are you familiar with those? 12 A. No. 13 Q. I can provide a copy. 14 A. Great. Thank you. 15 Q. I'll give you a second to review those. 16 (BRIEF PAUSE) 17 A. Okay. 18 Q. In those documents there's a question asked 19 if the company has any plans to use 20 alternative gaseous fuels in the gas 21 distribution system, is that correct? 22 A. We do not have any plans right now, but I 23 would fully expect the -- that gas plan that 24 we're going to be putting together that will</p>
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<p>1 Q. And how about developers who would be 2 looking to interconnect to the distribution 3 system? 4 A. Yes, that, too. 5 Q. Only one more brief line of questioning. 6 There have been a number of questions 7 regarding whether PPL has an approach that 8 would focus on decarbonizing the delivery of 9 natural gas through the gas distribution 10 system. I just want to turn your attention 11 to Item No. 4 which starts on Line 13 on 12 Page 13 which is one of those four main 13 prongs to the clean energy transition 14 strategy. And I'll just read it. It's 15 decarbonizing non-generation operations 16 including reducing company energy use and 17 emissions associated with our electric 18 equipment and delivery from natural gas. Is 19 it fair to say that one of the four main 20 prongs of the clean energy transition is -- 21 for PPL is decarbonizing through the -- 22 making adjustments to the delivery of 23 natural gas? 24 A. Yes, it is.</p>	<p>1 include a discussion or evaluation of that. 2 Q. But PPL does not have experience with those 3 alternative approaches? 4 A. No. 5 Q. And it also discusses repurposing or using 6 geothermal technologies, I believe that's 7 1-7, to achieve some of the same goals of 8 reutilizing some infrastructure with 9 non-carbonized energy sources, and does PPL 10 have any experience with those alternative 11 technologies? 12 A. Geothermal? 13 Q. Geothermal, network or anything like that. 14 A. So I a long time ago had experience with 15 geothermal heat pumps, but beyond that, I'm 16 not aware of any other. 17 Q. Not at utility scale. 18 A. Correct. Absolutely. 19 Q. And are you aware of National Grid's efforts 20 in Massachusetts to explore a geothermal 21 pilot to network a series of buildings and 22 provide energy resources that way? 23 A. No, I'm not aware. 24 Q. And are you familiar with National Grid's</p>

<p style="text-align: right;">Page 113</p> <p>1 corporate-wide efforts to advance the use of 2 hydrogen as a potential decarbonized fuel in 3 the gas distribution system? 4 A. No, I'm not. 5 Q. And PPL does not have any direct experience 6 in that field as well? 7 A. Correct. 8 MR. WEBSTER: Thank you. No 9 further questions. 10 THE HEARING OFFICER: Thank you. 11 Anyone else? So what's the order of 12 witnesses for this afternoon? 13 MR. RAMOS: PPL has two more 14 witnesses. Well, I guess it's three, but 15 two of them are going up together. It will 16 be first Mr. Jirovec and then Mr. Dane and 17 Mr. Reed, and then after that I believe the 18 Advocacy Section has some witnesses that 19 will be ready to go. 20 MS. HETHERINGTON: Thank you. We 21 have on deck Mr. Gregory Booth who would be 22 appearing virtually, so at the conclusion of 23 your three witnesses, we would propose to 24 put him on next. And I think that IT may</p>	<p style="text-align: right;">Page 115</p> <p>1 AFTERNOON SESSION 2 DECEMBER 15, 2021 3 THE HEARING OFFICER: Okay. We're 4 going to go back on the record. Mr. Ramos? 5 MR. RAMOS: Thank you, Mr. Hearing 6 Officer. PPL now calls Todd Jirovec. 7 TODD JIROVEC (Sworn) 8 DIRECT EXAMINATION BY MR. RAMOS 9 THE COURT REPORTER: Would you 10 state your full name for the record, please? 11 THE WITNESS: Todd J. Jirovec. 12 Q. Good afternoon, Mr. Jirovec. 13 A. Good afternoon. 14 Q. How are you? 15 A. Good. 16 Q. Mr. Jirovec, could you tell everybody your 17 current employer? 18 A. I work with Strategy&amp; which is a part of 19 PricewaterhouseCoopers. 20 Q. And what is your position? 21 A. I'm a principal. 22 Q. And what is your role at Strategy&amp; at 23 PricewaterhouseCoopers? 24 A. I am a member of our strategy practice</p>
<p style="text-align: right;">Page 114</p> <p>1 need a little bit of lead time so maybe a 2 recess after that just to get everything 3 running smoothly and doing a test. That's 4 our proposal. 5 THE HEARING OFFICER: Okay. Thank 6 you. Good time for a lunch break. Let's 7 return in 60 minutes. 8 MS. HETHERINGTON: May I do just 9 one more housekeeping matter? May I move 10 that Exhibits 35 through 37 marked for 11 identification for the Advocacy Section be 12 admitted in full, please? 13 THE HEARING OFFICER: Any 14 objections? So marked. 15 MS. HETHERINGTON: Thank you. 16 THE HEARING OFFICER: All right. 17 One hour for lunch. 18 (LUNCHEON RECESS) 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 116</p> <p>1 that serves the power and utility industry 2 in a consulting capacity. 3 Q. And can you tell us a little bit about your 4 professional experience and educational 5 background particularly as it relates to the 6 utility industry? 7 A. Sure. I started after graduating with a 8 Bachelor's degree in accounting with 9 Deloitte in the audit practice, worked on 10 utility audits there, subsequently went back 11 for an MBA and joined Deloitte Consulting 12 focused primarily on the power and utility 13 sector with Deloitte. I then went to -- our 14 team went to Booz Allen which was 15 subsequently acquired by Pricewaterhouse 16 back in 2015. Over the course of that 17 period of time I've worked on dozens of 18 utility transactions, over 12 of which have 19 been publicly announced. Some examples of 20 those are the Exelon Constellation 21 transaction, AltaGas's acquisition of WGL 22 Holdings, the Center Point Vectra 23 transaction, UIL's acquisition of the gas 24 properties from Iberdrola and the spinoff</p>

<p style="text-align: right;">Page 117</p> <p>1 between Columbia and NiSource. 2 Q. Thank you. And Mr. Jirovec, did you submit 3 any prefiled rebuttal testimony in this 4 matter? 5 A. I did. 6 Q. And do you have a copy of that in front of 7 you? 8 A. I do. 9 MR. RAMOS: I'll note that your 10 prefiled rebuttal testimony has been marked 11 for identification as PPL and PPL Rhode 12 Island Holdings Joint Exhibit 5. 13 Q. Have you had a chance to review that 14 testimony in advance of the hearing today? 15 A. I have. 16 Q. And were the answers that you gave to the 17 questions in that prefiled testimony true 18 and accurate at the time that you gave them? 19 A. Yes. 20 Q. Do you have any changes or corrections that 21 you need to make to your testimony? 22 A. No. 23 Q. And do you adopt that testimony here today 24 under oath?</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. Could you describe where Figure 8 is in the 2 document and what the correction is that 3 needs to be made? 4 A. Figure 8 is on Page 22 on the top, and 5 there was a typographical error in the 6 preparation of that table and we've 7 corrected it for the record. 8 Q. Well, you need to correct it for the record. 9 A. I'm sorry. On the left side of that bar 10 chart it says PPL estimate 2022. It totals 11 up 115.8. That actually should be 119.8. 12 Q. Are there any other corrections that need to 13 be made to that document? 14 A. No. 15 Q. And does that correction have any impact on 16 anything else contained within the document? 17 A. No, it doesn't. 18 THE HEARING OFFICER: Just for the 19 record, I've made that change, that edit on 20 the original. So this is from 115.8 to 21 119.8? 22 THE WITNESS: That's correct. 23 THE HEARING OFFICER: Okay. 24 Q. I have just a couple more questions for you,</p>
<p style="text-align: right;">Page 118</p> <p>1 A. I do. 2 MR. RAMOS: I'd like to move that 3 PPL and PPL Holdings Joint Exhibit 5 be 4 admitted in full. 5 THE HEARING OFFICER: Any 6 objections? 7 MS. HETHERINGTON: No. 8 THE HEARING OFFICER: So marked. 9 Q. Now Mr. Jirovec, I'm going to show you a 10 document that's been marked as Advocacy 11 Section Exhibit 12 and it had been admitted 12 as full. Advocacy Section Exhibit 12 is the 13 response to Division Data Request 1-54 that 14 contains the attachment that is the -- that 15 is a cost comparison document that has been 16 discussed in this hearing, right? 17 A. Right. 18 Q. And you have been involved in the 19 preparation of that document? 20 A. I was. 21 Q. With respect to that document, are there any 22 corrections that need to be made to the 23 content of that document? 24 A. Yes, one in Figure 8.</p>	<p style="text-align: right;">Page 120</p> <p>1 Mr. Jirovec. In your prefiled rebuttal 2 testimony, and I can point you to where I'm 3 referring to, it is Page 8, it's the 4 question that begins at Line 8, and it's 5 really just the first sentence of an answer 6 which is on Lines 7 and 8. Do you see that 7 question and answer? 8 A. I do. 9 Q. And in that answer you indicated that, "The 10 proposed transition period is aligned with 11 the length of transition periods I've 12 observed in other utility transactions." 13 A. Yes, I see that. 14 Q. And in the surrebuttal testimony of Mr. 15 Booth and Mr. Oliver there was some -- do 16 you recall that there was some suggestion 17 that you had not identified any particular 18 transactions that you were referring to 19 there? 20 A. Right. 21 Q. Could you describe what experience you were 22 referring to and what you had observed in 23 other utility transactions when you made 24 that statement in your prefiled testimony?</p>

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<p>1 A. Sure. A couple examples I gave earlier, 2 the UIL's acquisition of the gas properties 3 from Iberdrola had a two-year transition 4 period as part of that transaction. The 5 same as when NiSource spun Columbia pipeline 6 from its portfolio. There was a two-year 7 transition agreement. I'm also aware of 8 another one where SJI, South Jersey 9 Industries purchased the gas businesses of 10 Elizabethtown Gas and Elkin Gas from 11 Southern Company, and they actually had an 12 18-month transition services agreement. 13 Q. And are you aware of any issues with the 14 transition period in any of those 15 transactions? 16 A. I am not. 17 MR. RAMOS: I have no further 18 questions for Mr. Jirovec at this time. 19 He's available for cross-examination. 20 THE HEARING OFFICER: Mr. Wold? 21 MR. WOLD: The Advocacy Section has 22 no questions for this witness? 23 THE HEARING OFFICER: Mr. Vaz? 24 MR. VAZ: Good afternoon.</p>	<p>1 72.9 in the original compilation -- 2 THE HEARING OFFICER: This is Page 3 22? 4 MR. VAZ: Within the bars. 5 THE HEARING OFFICER: Oh, I sec. I 6 see. Say again. 72.9. Yes. Thank you. 7 THE WITNESS: It increases by four 8 to 76.9. 9 THE HEARING OFFICER: I've made 10 that change. 11 Q. Was that a typographical error or was there 12 additional information that that was based 13 on? 14 A. It was a typographical error. If you 15 refer back to the previous page, 21, the 16 fourth line of that bottom paragraph 17 references the 119.8. It just wasn't 18 reflected in the chart. 19 Q. Okay. And that's where the issue was, was 20 the 72.9? 21 A. That's correct. 22 Q. Thank you. So with respect to that same 23 document, that analysis was submitted on 24 September 30th, is that correct?</p>
Page 122	Page 124
<p>1 THE WITNESS: Good afternoon. 2 CROSS-EXAMINATION BY MR. VAZ 3 Q. So with respect to the correction you just 4 made on Page 22 of Division 1-54-1 -- you 5 know what I'm speaking of, correct? 6 A. Correct. 7 Q. With respect to that change to 119.8, do any 8 of the numbers underneath need to change? 9 A. Yes. The number that changed within that 10 buildup would be the allocations number, the 11 72.9. 12 Q. And what should that change to? 13 A. It would increase by four, 76.9. 14 Q. Would you agree to have that changed on the 15 record? 16 A. Sure. 17 THE HEARING OFFICER: Can you point 18 that out to me again? 19 THE WITNESS: Adam, do you have the 20 exhibit? 21 MR. RAMOS: We can do that. Just 22 tell them. 23 THE WITNESS: If you look at the 24 third set of numbers from the bottom, the</p>	<p>1 A. That's correct. 2 Q. Has any additional analysis been done since 3 that time? 4 A. No. 5 Q. And within this analysis is it fair to say 6 that there are certain assumptions and 7 embedded uncertainties in the data? 8 A. Well, the approach that was taken was to 9 compare National Grid's cost to operate 10 Narragansett against PPL's anticipated costs 11 to operate Narragansett. Those estimates 12 were developed and informed by the 13 integration planning work that had been 14 proceeded on throughout the course of the 15 year in the summer to drive those estimates. 16 Q. But those are not hard numbers, correct? 17 A. What is your definition of hard? 18 Q. So there are certain assumptions that needed 19 to be made in order to come to the numbers 20 that were used. 21 A. Sure. And again, those assumptions were 22 informed by the organization that was being 23 developed in Rhode Island to be able to 24 support the Narragansett business and the</p>

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<p>1 support infrastructure that PPL would 2 provide to be able to support that business. 3 Q. Okay. Thank you. And you have a copy of 4 your testimony in front of you? 5 A. I do. 6 Q. If you can go to Page 11. So in response to 7 the question posed at Line 13 your response 8 on Page 17 starts with Mr. Ewen and Mr. 9 Knecht -- Line 17 I apologize. "Mr. Ewen 10 and Mr. Knecht have not provided nor 11 developed their own analysis of PPL's 12 anticipated cost to operate Narragansett 13 that support their assertion that 14 substantial uncertainty exists in PPL's 15 operating costs." And if you don't mind 16 just turning also to Page 16 of your 17 testimony, you made a similar criticism of 18 Mr. Booth at Line 6 where you said, "Mr. 19 Booth provides no analysis to support that 20 there are any potential additional costs 21 associated with these alleged lost 22 synergies." Did I read those correctly? 23 A. You did. 24 Q. And to the extent that you're making those</p>	<p>1 Pennsylvania PPL salaries? 2 A. Right. 3 Q. And for the gas side you used Kentucky 4 salaries? 5 A. That's correct. 6 Q. And is it fair to say that salaries are 7 different in different regions in the 8 country? 9 A. Salaries are different in different 10 regions of the county. Averages kind of 11 account for that in that there's 12 geographical differences potentially, 13 there's leveling differences that comprise 14 that average which would relate to the use 15 of the average as a reasonable proxy for the 16 costs in that particular function. 17 Q. But just to qualify, I think you already 18 said this, but I just want to make sure I'm 19 clear, you've only averaged salaries that 20 were in PPL in Pennsylvania or in the 21 Kentucky gas operations, correct, not the 22 general region or anything like that? 23 A. We used actual data that PPL had on 24 average salaries and comparable functions to</p>
Page 126	Page 128
<p>1 assertions, you don't dispute that the 2 burden in this matter falls on PPL to prove 3 that there's a benefit as opposed to experts 4 analyzing numbers based on things that PPL 5 has. 6 A. I don't have a legal basis to answer that 7 question. 8 Q. Okay. With respect to salary numbers that 9 were used in developing the report, were 10 those real numbers with respect to the 11 individuals who have been signed on by PPL? 12 A. No. As explained in the analysis, those 13 were average functional salaries that were 14 applied to the functions that they related 15 to to be able to drive the estimate. 16 Q. And was that an average based on the current 17 wages paid in Pennsylvania? 18 A. We used PPL data to be able to apply 19 against those averages, whether it was PPL 20 corporate-type average salaries, PPL 21 operational salaries or to the extent they 22 were gas related we used Kentucky-related 23 salaries. 24 Q. So for the electric side you used</p>	<p>1 be able to apply to the estimate. 2 Q. Okay. And you haven't updated -- I believe 3 you've also answered this, but you haven't 4 updated this report based on salaries that 5 may have been negotiated since that point or 6 included salaries that had been negotiated 7 in the analysis, correct? 8 A. That's correct, for the reason I stated 9 before, there's many components of actual 10 salaries, different levels being applied 11 that would render these averages as a 12 reasonable method to estimate. 13 MR. VAZ: That's fine. I just 14 wanted to confirm. Thank you. I have no 15 further questions for the witness. 16 THE HEARING OFFICER: Mr. Rhodes? 17 MR. RHODES: No questions for the 18 witness. 19 THE HEARING OFFICER: Ms. Curran? 20 MS. CURRAN: No questions. Thank 21 you. 22 THE HEARING OFFICER: Thank you. 23 Any redirect? 24 MR. RAMOS: No redirect.</p>

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<p>1 THE HEARING OFFICER: Thank you, 2 Mr. Jirovec. You can step down. Next 3 witness or witnesses? 4 MR. RAMOS: PPL calls Daniel Dane 5 and John Reed as a panel. 6 DANIEL DANE JOHN REED 7 (Collectively sworn) 8 DIRECT EXAMINATION BY MR. RAMOS 9 THE COURT REPORTER: Would you 10 state your full names for the record, 11 please? 12 MR. REED: My name is John J. Reed. 13 MR. DANE: My name is Daniel S. 14 Dane. 15 MR. RAMOS: Good afternoon, Mr. 16 Reed and Mr. Dane. I'll start with you, Mr. 17 Reed. Could you please tell me who your 18 current employer is? 19 MR. REED: I'm the Chairman and 20 chief executive officer of Concentrix Energy 21 Advisors. 22 MR. RAMOS: And you've answered my 23 next question. So can you tell me what you 24 do as the Chairman and chief executive</p>	<p>1 that you gave to the questions contained in 2 that testimony true and accurate at the time 3 that you gave them? 4 MR. REED: Yes, they were. 5 MR. RAMOS: And do you adopt that 6 testimony under oath today? 7 MR. REED: I do. 8 MR. RAMOS: Now Mr. Dane, could you 9 tell me who your employer is? 10 MR. DANE: I'm employed by 11 Concentrix Energy Advisors in our broker 12 dealer subsidiary CE Capital Advisors. 13 MR. RAMOS: And what is your 14 current position? 15 MR. DANE: I'm a Senior Vice 16 President. 17 MR. RAMOS: And can you tell me 18 what your role is as Senior Vice President, 19 what your responsibilities are? 20 MR. DANE: Sure. My primary focus 21 at Concentrix and CE Capital is in two 22 areas, the first is advising clients on 23 utility merger and acquisitions such as this 24 proceeding, and the other area of focus is</p>
Page 130	Page 132
<p>1 officer of Concentrix Energy Advisors? 2 MR. REED: I lead the firm's 3 overall consulting and investment banking 4 activities through our broker dealer 5 business unit. I provide consulting 6 services in energy economics and finance to 7 the utility industry across North America 8 including serving as an expert witness in 9 numerous proceedings, both regulatory, 10 civil, arbitration and in front of elected 11 officials. 12 MR. RAMOS: Thank you. And as part 13 of this proceeding, Mr. Reed, did you submit 14 joint prefiled rebuttal testimony together 15 with Mr. Dane? 16 MR. REED: I did. 17 MR. RAMOS: And is a copy of that 18 testimony with you today? 19 MR. REED: I have that. 20 MR. RAMOS: And have you had a 21 chance to review that testimony in advance 22 of the hearing today? 23 MR. REED: Yes, I have. 24 MR. RAMOS: And were the answers</p>	<p>1 advising clients on regulatory and 2 ratemaking matters. 3 MR. RAMOS: Thank you. And did you 4 file prefiled joint rebuttal testimony with 5 Mr. Reed in this proceeding? 6 MR. DANE: I did. 7 MR. RAMOS: Do you have a copy of 8 that with you today? 9 MR. DANE: I do. 10 MR. RAMOS: And have you had a 11 chance to review it in advance of the 12 hearing today? 13 MR. DANE: Yes. 14 MR. RAMOS: And were the answers 15 that you gave to the questions in that 16 prefiled testimony true and accurate at the 17 time that you gave them? 18 MR. DANE: Yes. 19 MR. RAMOS: And you adopt that 20 testimony here today under oath? 21 MR. DANE: I do. 22 MR. RAMOS: PPL and PPL Rhode 23 Island would move their Joint Exhibit 6 24 which is the joint rebuttal testimony of Mr.</p>

<p style="text-align: right;">Page 133</p> <p>1 Reed and Mr. Dane as a full exhibit. 2 THE HEARING OFFICER: Hearing no 3 objections, so marked. 4 MR. RAMOS: Just a few additional 5 questions for you. Mr. Reed, or actually, 6 this will be to both of you, could you 7 describe some of your past experience in 8 consulting on utility transactions and 9 mergers? 10 MR. REED: I can begin. Yes. I've 11 worked on more than two dozen electric and 12 gas utility mergers in the past 25 years 13 including having acted as an advisor to the 14 buyer or the seller, including having acted 15 as a consultant to customers and how they 16 would be affected by the transaction. As 17 part of that work I have prepared merger 18 saving studies, merger impact analysis, 19 regulatory applications testimony on how the 20 transaction would or would not be consistent 21 with the approval standard in that 22 jurisdiction or the multiple jurisdictions. 23 I've sponsored testimony and appeared as a 24 witness in more than a dozen cases on that</p>	<p style="text-align: right;">Page 135</p> <p>1 National Grid. It is a strategic 2 transaction, not financial, meaning it is a 3 utility that intends to stay in the utility 4 business as opposed to a private equity fund 5 or international investor that may be in and 6 out. We see strategic transactions as being 7 typically more successful than financial 8 private equity or other non-strategic, and 9 it represents, again, a utility moving into 10 a new market with new ideas and offering 11 bases for improvement that I think are often 12 a basis on which improvements can be 13 achieved through diversity of experience and 14 diversity of operations. 15 In some ways I think about my 16 career as a consultant in New England over 17 the last 40 years and I can even bring it 18 specifically to Rhode Island. In my 19 consulting career I've worked for Newport 20 Electric, for Blackstone Valley Gas, for 21 Blackstone Electric, for South County Gas, 22 for Providence Gas, for Bristol Warren Gas 23 and for Valley Gas and also now for 24 Narragansett. Every one of those companies</p>
<p style="text-align: right;">Page 134</p> <p>1 topic. I've opposed some transactions, 2 offered testimony in support of others, and 3 again, have about 25 years of experience on 4 that specific topic. 5 MR. RAMOS: Mr. Dane? 6 MR. DANE: My experience is working 7 alongside Mr. Reed on a number of those 8 transactions. I have 20 years of experience 9 in the energy industry and I've also worked 10 on virtually all phases of energy asset and 11 energy utility and water utility 12 transactions including offering expert 13 testimony in merger approval proceedings. 14 MR. RAMOS: And in your collective 15 experience and working on other transactions 16 and merger proceedings, is there anything 17 about this particular transaction that would 18 make it an outlier? 19 MR. REED: Again, I'll begin. The 20 answer to that is no. In many ways it 21 represents a very strong approach to a 22 utility transaction. It brings together a 23 very strong utility service provider in PPL 24 with a utility that's already well run under</p>	<p style="text-align: right;">Page 136</p> <p>1 up to Narragansett, of course, were the 2 subject of a transaction in Rhode Island, 3 and having worked for those companies both 4 before and after the transaction I can say 5 in my experience the transaction was 6 transformative for those companies and 7 helped to improve the operations in each 8 situation. And that's even with the fact 9 that in the case of Providence Gas there 10 were multiple transactions for that company 11 over time. I don't expect this transaction 12 to be any different. I see no reason, I see 13 no evidence that would suggest it's going to 14 be different than the prior experience. 15 MR. DANE: I would add to that that 16 our prefiled testimony was submitted prior 17 to the set of commitments that was filed 18 over the weekend by PPL and I would add that 19 those commitments even further strengthen 20 the transaction from the time that we 21 initially reviewed it. 22 MR. RAMOS: Thank you. Now, to 23 both of you, in your prefiled rebuttal 24 testimony you made reference to certain</p>



<p style="text-align: right;">Page 137</p> <p>1 transactions in other contexts that had 2 similar TSA periods. Do you recall that? 3 MR. DANE: Yes. 4 MR. RAMOS: And one of the 5 transactions that you referred to was the 6 sale of Granite State and Energy North to 7 Liberty Utilities by National Grid USA. Do 8 you recall that? 9 MR. DANE: I do. 10 MR. RAMOS: And in Mr. Oliver's and 11 in Mr. Booth's rebuttal testimony they 12 expressed some, I don't know, concerns or 13 they made some comments with respect to your 14 reliance or your reference to that 15 transaction. Do you have a response to the 16 comments that Mr. Oliver and Mr. Booth made 17 in their surrebuttal testimony? 18 MR. DANE: I can start. We 19 reference that transaction, among other 20 transactions in our testimony, as examples 21 where a TSA was used to transfer the utility 22 from one company to another, and in that 23 case, the specific case you referenced for 24 the sale of Energy North and Granite State</p>	<p style="text-align: right;">Page 139</p> <p>1 MR. REED: I would just briefly add 2 that, again, with my 24 plus mergers that 3 I've worked on, that is unique in the 4 establishment of that escrow fund and I 5 think it was a unique solution to a unique 6 circumstance. 7 MR. RAMOS: Thank you, both. I 8 have no further questions at this time and 9 the witness panel is available for 10 cross-examination. 11 THE HEARING OFFICER: Mr. Wold? 12 MR. WOLD: Thank you. Just 13 briefly. 14 CROSS-EXAMINATION BY MR. WOLD 15 MR. WOLD: So the escrow fund was 16 about \$28.5 million that had been put aside 17 in the Granite State case, is that correct? 18 MR. DANE: That's correct. 19 MR. WOLD: And there's no escrow in 20 this fund, and your argument is that PPL is 21 experienced in the aspects of the services 22 that Narragansett provides to its customers 23 and, therefore, no escrow is needed. Is 24 that your explanation?</p>
<p style="text-align: right;">Page 138</p> <p>1 to Liberty Utilities there was a 24-month or 2 two-year TSA, so it was similar in duration 3 as the TSA in this transaction. I think 4 that transaction is also relevant, however, 5 because Liberty Utilities, the buyer in that 6 case at that time was very inexperienced in 7 US utility operations. It had zero gas 8 distribution -- had no gas distribution 9 business at the time and it had been the 10 electric distribution business for about a 11 year at that time. And so the TSA was used 12 in that transaction to effectuate that, the 13 transfer. 14 The testimony you referenced, Mr. 15 Ramos, also brought up one aspect of that 16 deal. One of the commitments made there was 17 in regards to an escrow fund that was put 18 aside for the TSA. But in that case, again, 19 it was a very inexperienced at the time 20 utility buying the assets, stepping into the 21 ownership shoes, very different than this 22 case where you have an experienced operator 23 that's been operating electric and gas 24 utilities for quite some time.</p>	<p style="text-align: right;">Page 140</p> <p>1 MR. DANE: Our view is that no 2 escrow is required in this transaction. 3 MR. WOLD: And there was also a set 4 of performance metrics that went along with 5 the escrow, is that correct? 6 MR. DANE: I don't know that they 7 went along with the escrow. I think there 8 were certain reporting requirements in that 9 transaction. 10 MR. WOLD: Well, there were 11 different pools of the escrow fund, three 12 pools, is that correct? 13 MR. DANE: That is correct. 14 MR. WOLD: And certain milestones 15 and metrics for each pool to be released to 16 National Grid had to be met, correct? 17 MR. DANE: I think there were three 18 tranches of escrow, some based on time, some 19 based on the services being transferred and 20 others based on staff in New Hampshire 21 certifying that certain metrics had been 22 met. 23 MR. WOLD: And the staff of the New 24 Hampshire Public Service Commission actually</p>

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1 had to make sure that those metrics were met  
2 before each pool of those funds were  
3 released back to National Grid, and if they  
4 weren't met, then that money would be  
5 utilized to back up accomplishing those  
6 metrics, correct?  
7 MR. DANE: Generally, I'd say  
8 that's correct. Staff did have to submit a  
9 certification releasing the escrow, and they  
10 did certify that all the escrow should be  
11 released and it was released in that case.  
12 MR. WOLD: And we have no  
13 certification here, we have no metrics and  
14 we have no escrow, correct?  
15 MR. DANE: We certainly have no  
16 escrow, and I'm not sure what you mean by  
17 certification or metrics.  
18 MR. WOLD: Well, there's no  
19 certification by the Division of Public  
20 Utilities that as this transition of the 153  
21 TSAs are accomplished throughout the  
22 two-year period, we have no milestones for  
23 those TSAs in terms of when they are  
24 accomplished, how they are accomplished and

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1 we have no ability for the Division to  
2 certify that they have been accomplished in  
3 accordance with any set of standards as was  
4 used in the Granite State case, correct?  
5 MR. DANE: Again, it's a very  
6 different transaction and there is a  
7 commitment in this case for the parties to  
8 report regularly on the status of  
9 transition.  
10 MR. WOLD: No, I understand there's  
11 reporting requirements, but there are no  
12 metrics that the Division of Public  
13 Utilities has to check to make sure that  
14 when a TSA is reported as complete, it  
15 satisfies those metrics. That doesn't exist  
16 here.  
17 MR. DANE: Again, I'm not sure of  
18 the form of that reporting, but there's not  
19 a formal commitment around that, no. I  
20 don't think it's necessary.  
21 MR. WOLD: No, I understand that  
22 you don't think it's necessary. I'm just  
23 asking you whether it exists here.  
24 And the other issue in the Granite

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1 State case, though, of significance was with  
2 respect to the total amount of cost of the  
3 transaction. There was a cap on the costs,  
4 right? So if the costs exceeded -- for the  
5 transition happened to exceed the level that  
6 had been estimated, ratepayers would not  
7 bear the responsibility for that overage, is  
8 that correct?  
9 MR. DANE: I don't know that to be  
10 the case.  
11 MR. WOLD: I'll read to you from  
12 Page 13 of the Granite State case. You  
13 don't have that in front of you, do you?  
14 MR. DANE: I don't.  
15 MR. WOLD: I'm showing you Page 13,  
16 and actually --  
17 THE HEARING OFFICER: Is this  
18 document in evidence?  
19 MR. WOLD: It is not, but since  
20 it's come up in discussion, I do not have  
21 copies with me and I wasn't -- but I'm  
22 willing to tender it to the Hearing Officer  
23 and make copies for everybody in the hearing  
24 room and I'll provide that after I complete

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1 our cross-examination.  
2 MR. RAMOS: I'd like to have a copy  
3 while the cross-examination is happening so  
4 that I can see what's going on here.  
5 THE HEARING OFFICER: Why don't we  
6 take a couple minutes and make some copies  
7 of this exhibit. It will go a lot easier I  
8 think.  
9 MR. RAMOS: Okay.  
10 (RECESS)  
11 THE HEARING OFFICER: We'll go back  
12 on the record. Mr. Wold has handed me a  
13 copy of a New Hampshire PUC decision, Order  
14 No. 25370 dated May 30th, 2012. This will  
15 be marked as Advocacy 38.  
16 Q. So just going back to the Granite decision,  
17 this was a case where the Commission  
18 approved the purchase of -- or the sale of  
19 Granite to Liberty, but they put some  
20 conditions on the sale, and what we were  
21 talking about was there was an escrow that  
22 was put in place that had three tranches,  
23 correct, as you described it?  
24 MR. RAMOS: I object to the

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1 question. I believe that it  
2 mischaracterizes the nature of the order in  
3 this case.  
4 THE HEARING OFFICER: Mr. Wold, can  
5 you rephrase the question?  
6 MR. WOLD: Well, again, I think the  
7 description is so generic and in general  
8 that the witness could correct me if I  
9 misdescribed what the order is. Is that  
10 fair to say?  
11 MR. RAMOS: No. May I just point  
12 out my objection is that he described the  
13 order as having -- the Commission having  
14 imposed conditions on the sale. The order  
15 is the approval of a settlement agreement  
16 which included those conditions which is  
17 different than the Commission imposing those  
18 conditions. They were agreed to.  
19 MR. WOLD: That's fair enough. It  
20 was a settlement agreement that was entered  
21 into between the buyer and seller, correct?  
22 MR. DANE: Yes, that's correct.  
23 MR. WOLD: And the settlement  
24 agreement had some terms in the settlement

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1 agreement, correct?  
2 MR. DANE: And if I could clarify,  
3 the settlement was actually not between the  
4 buyer and the seller, it was between the  
5 buyer and the other parties to that case.  
6 MR. WOLD: Fair enough. And one of  
7 the terms of the settlement was that there  
8 was an escrow arrangement that you  
9 previously described, correct?  
10 MR. DANE: Yes. That was agreed to  
11 in the settlement.  
12 MR. WOLD: And it was \$28.5  
13 million. And then there was also with  
14 respect to the transition-related IT capital  
15 investments an \$8.1 million cap on the  
16 recovery of those, that amount, correct?  
17 That's on Page 13.  
18 MR. DANE: Yes. I agree that in  
19 the settlement Liberty agreed to an \$8.1  
20 million cap on its transition-related  
21 capital IT investments.  
22 MR. WOLD: And we don't have any  
23 type of cap in the commitments that PPL has  
24 filed with the Division in this matter,

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1 correct?  
2 MR. DANE: The commitments do  
3 exclude certain costs from the transition.  
4 I think it excludes certain of those costs.  
5 MR. WOLD: I understand that, but  
6 if the \$408.1 million in transition costs is  
7 too low, in other words, the costs are  
8 higher than \$408.1 million, there's nothing  
9 in the commitments of PPL that would prevent  
10 PPL from seeking recovery of the overage  
11 between the higher figure and the \$408.1  
12 million.  
13 MR. RAMOS: Objection. That  
14 misstates the commitments.  
15 THE HEARING OFFICER: Overruled.  
16 You can answer.  
17 MR. DANE: PPL has reserved the  
18 right to seek recovery of certain costs, but  
19 it also in the commitments has certain  
20 tests, if you will, that it would meet or  
21 bear the burden of proof on in order to seek  
22 recovery of those costs.  
23 MR. WOLD: I understand that, but  
24 with respect to that overage there is no

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1 cap. In other words, the \$408.1 million is  
2 not a cap for the recovery of costs, right,  
3 and anything over that \$408.1 million,  
4 subject to the test that you referred, PPL  
5 reserves the right to seek recovery of,  
6 correct?  
7 MR. DANE: I don't think that's  
8 correct. There are certain amounts in that  
9 number that PPL has explicitly excluded from  
10 seeking recovery on.  
11 MR. WOLD: I understand that, but  
12 if the amount -- if the costs are over that  
13 amount -- do you understand what I'm saying?  
14 If it's 500 million or 600 million, PPL  
15 reserves the right to collect the difference  
16 between the, say, \$500 (sic) and \$408.1  
17 million. PPL reserves the right to go to  
18 the Commission and collect that overage,  
19 correct?  
20 MR. DANE: I don't think that's the  
21 right characterization. PPL has committed  
22 to or -- committed to excluding certain  
23 costs and it has left open the ability to  
24 seek recovery of certain costs. It's not

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<p>1 the 400 million in the question, it's a 2 portion of that. And I do agree PPL is not 3 capping that portion. 4 MR. WOLD: Are you aware of the AMF 5 and grid mod programs that National Grid had 6 filed in this particular -- well, in Rhode 7 Island prior to the transaction that is 8 pending before the Division being announced? 9 MR. DANE: I'm aware they were 10 filed. I'm not familiar with the filings. 11 MR. WOLD: And are you aware of the 12 exhibits that were submitted in this case 13 where the -- and if you're not aware, that's 14 fine, where there was a represented cost 15 savings that would result from co-deployment 16 of AMF and grid mod between National Grid's 17 New York affiliate and Narragansett? Were 18 you aware of that at all? 19 MR. RAMOS: Objection. This is 20 beyond the scope of this witness' -- of this 21 witness panel's testimony. 22 THE HEARING OFFICER: I'm going to 23 overrule if the witness can answer. He's 24 either aware of it or he's not.</p>	<p>1 MR. DANE: Can you clarify your 2 question? 3 MR. WOLD: Sure. If there are 4 assets on the books of Narragansett that 5 become stranded as a result of this 6 transaction, there's nothing in those 7 commitments to protect ratepayers from 8 Narragansett -- or PPL telling Narragansett 9 to go before the Rhode Island Public 10 Utilities Commission and seek recovery for 11 those assets, correct? 12 MR. DANE: I would say that the 13 regulatory process and the accounting 14 process, frankly, would provide those 15 protections. 16 MR. WOLD: And similarly with 17 respect to the commitments that are on file 18 or before the Division of Public Utilities 19 with respect to this case, you mentioned 20 there's no cap on IT-related investment that 21 PPL will be making that it has reserved its 22 right to seek recovery, there's also no cap 23 on the AMF or grid mod program that PPL has 24 indicated that it will intend to file for</p>
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<p>1 MR. DANE: I'm not aware of those 2 documents. 3 MR. WOLD: If I could just have one 4 moment. 5 (BRIEF PAUSE) 6 MR. WOLD: Are you aware of the 7 cyber security and gas business enablement 8 programs that were the subject of the 9 National Grid's last rate case? 10 MR. DANE: Can you clarify National 11 Grid's last rate case? 12 MR. WOLD: The last base rate case 13 in 2018. Did you happen to review that in 14 your preparation for today's hearing? 15 MR. DANE: No. 16 MR. WOLD: You're aware of the 17 commitments that have been filed before the 18 Division in this matter by PPL, correct, the 19 commitments that are marked as Joint 20 Exhibits -- I believe it's 2 and 3? 21 MR. DANE: Yes. 22 MR. WOLD: And there's nothing in 23 those commitments that would protect 24 ratepayers from stranded assets, is there?</p>	<p>1 the Rhode Island Public Utilities 2 Commission. 3 MR. DANE: I'm not aware of that 4 commitment. 5 MR. WOLD: That's all the questions 6 I have. Thank you. 7 THE HEARING OFFICER: Mr. Vaz? 8 MR. VAZ: We have no questions. 9 Thank you. 10 THE HEARING OFFICER: Anyone else? 11 No. All right. Seeing no other -- 12 redirect? 13 MR. RAMOS: Briefly. Thank you, 14 Mr. Hearing Officer. 15 REDIRECT EXAMINATION BY MR. RAMOS 16 MR. RAMOS: Respect to the document 17 that was marked as -- and shown to you as 18 Advocacy Section Exhibit 38 regarding the 19 New Hampshire Public Utilities Commission 20 approval of the settlement, is there any 21 significance to you that this was an 22 approval of a settlement as opposed to an 23 order in a contested case? 24 MR. DANE: I would offer, and Mr.</p>

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1 Reed can add to this as well, but the  
2 settlement process naturally involves some  
3 gives and takes and it would have addressed  
4 the specific concerns that would have been  
5 present in that transaction so I think it is  
6 significant from that perspective.  
7 MR. REED: Nothing further on my  
8 part.  
9 MR. RAMOS: And in your view,  
10 you've evaluated this transaction and you've  
11 reached the conclusion that the same sorts  
12 of protections are not warranted, is that  
13 correct?  
14 MR. DANE: That's correct. As I  
15 testified earlier, PPL has put forward its  
16 own commitments which I think provide a  
17 strong package in addition to its initial  
18 testimony. Those commitments do go further  
19 than what was settled on in New Hampshire  
20 with that transaction in regard to things  
21 like ring fencing, with regard to  
22 environmental commitments and the like. So  
23 each transaction does need to be evaluated  
24 on its own and on its own merits and I think

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1 that commitments also reflect the  
2 specificities of each individual  
3 transaction.  
4 MR. REED: And I would just add one  
5 point which is that it's important to  
6 understand that the TSA in the Energy North  
7 transaction really provided a very different  
8 role than what's being proposed here. And  
9 again, the role there was not just the  
10 transfer of assets, the transfer of  
11 capabilities, but really the development of  
12 an entirely new management infrastructure  
13 for Liberty as part of the acquisition of  
14 Energy North and Granite State.  
15 MR. RAMOS: Thank you. Just  
16 briefly, you don't have Exhibits 2 and 3  
17 with the commitments in front of you, do  
18 you?  
19 MR. REED: We do.  
20 MR. RAMOS: Okay. Mr. Wold was  
21 asking you some questions on whether there  
22 was a cap on the recovery of any transition  
23 costs. Do you recall that?  
24 MR. DANE: Yes.

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1 MR. RAMOS: And as part of that he  
2 was suggesting that if the transition costs  
3 were to increase above 408 million, that  
4 there was no protection from those, correct,  
5 no commitment to not seek the recovery of  
6 the additional costs above 408. That's what  
7 he was suggesting to you, correct?  
8 MR. DANE: Correct.  
9 MR. RAMOS: And you were explaining  
10 or attempting to explain that there were  
11 some categories of costs where there is a  
12 cap, isn't that right?  
13 MR. DANE: That's correct.  
14 MR. RAMOS: So if I just turn your  
15 attention to Commitment 2 and then  
16 Subparagraph A which is on Page 2 of Exhibit  
17 2.  
18 MR. DANE: I'm there.  
19 MR. RAMOS: That defines certain  
20 categories of costs -- is it fair to say  
21 that that defines certain categories of  
22 costs for which PPL is committed and it  
23 won't be seeking recovery under any  
24 circumstances, correct?

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1 MR. DANE: It says Narragansett  
2 will not seek recovery, and then it goes on  
3 to list it looks like four or five  
4 categories of costs.  
5 MR. RAMOS: Right. So would you  
6 say that that qualifies as protections  
7 against -- or effectively a protection  
8 against recovery of any transition costs  
9 even if they exceed the estimates that are  
10 set forth in that?  
11 MR. WOLD: Objection.  
12 THE HEARING OFFICER: Basis?  
13 MR. WOLD: He said -- he's asking  
14 the witness to characterize whether this is  
15 for any transaction costs and the total  
16 transition cost is \$408.1 million. These  
17 are all agreements for very specific  
18 subcategories within that amount. So that  
19 wasn't what he asked the witness. He asked  
20 him for any transition costs, whether it's a  
21 cap relative to that.  
22 THE HEARING OFFICER: So I thought  
23 the question was -- you're characterizing  
24 these subcosts within the 408 as de facto

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<p>1 caps. Is that the question?</p> <p>2 MR. RAMOS: Slightly different than</p> <p>3 that, but I am --</p> <p>4 THE HEARING OFFICER: Why don't you</p> <p>5 repeat the question?</p> <p>6 MR. RAMOS: Yes. I'll just go</p> <p>7 about it in a slightly different way. I'll</p> <p>8 break it down piece by piece rather than</p> <p>9 trying to do it collectively. So the first</p> <p>10 clause of Subparagraph A states Narragansett</p> <p>11 will not seek recovery of any integration</p> <p>12 and regulatory planning costs, and then in</p> <p>13 parentheses it says currently estimated to</p> <p>14 be \$48.1 million. Did I read that right?</p> <p>15 MR. DANE: Yes.</p> <p>16 MR. RAMOS: So the first statement</p> <p>17 is Narragansett will not seek recovery of</p> <p>18 any integration and regulatory planning</p> <p>19 costs. And then there's an estimate that</p> <p>20 follows, \$48.1 million. Do you understand</p> <p>21 that to mean that if the integration and</p> <p>22 regulatory planning costs exceed \$48.1</p> <p>23 million that commitment to not seek recovery</p> <p>24 of those costs applies to the excess above</p>	<p>1 costs?</p> <p>2 MR. DANE: I do.</p> <p>3 MR. RAMOS: So there are several</p> <p>4 categories of costs for which the cap, as</p> <p>5 you read this agreement, is effectively zero</p> <p>6 dollars, correct?</p> <p>7 MR. DANE: That's right.</p> <p>8 MR. RAMOS: I have no further</p> <p>9 questions. Thank you.</p> <p>10 THE HEARING OFFICER: Mr. Wold, any</p> <p>11 followup?</p> <p>12 MR. WOLD: No followup.</p> <p>13 THE HEARING OFFICER: Okay. Thank</p> <p>14 you, Mr. Reed and Mr. Dane. I appreciate</p> <p>15 your testimony today. Do we need a recess?</p> <p>16 It's my understanding we need 15 minutes to</p> <p>17 facilitate the next witness' remote</p> <p>18 participation.</p> <p>19 MS. HETHERINGTON: Subject to IT's</p> <p>20 confirmation, yes.</p> <p>21 THE HEARING OFFICER: So I'll leave</p> <p>22 that up to the Advocacy Section to figure</p> <p>23 out and we'll take a 15-minute recess.</p> <p>24 MS. HETHERINGTON: Thank you.</p>
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<p>1 \$48.1 million as well?</p> <p>2 MR. DANE: Yes. I think for this</p> <p>3 category the cap is effectively zero because</p> <p>4 they said they will not seek recovery of any</p> <p>5 of the costs.</p> <p>6 MR. RAMOS: That's right. And then</p> <p>7 the next category is severance cost with a</p> <p>8 current estimate to be 15.4 million. And is</p> <p>9 it -- do you have the same interpretation</p> <p>10 with respect to that category of costs?</p> <p>11 MR. DANE: I do.</p> <p>12 MR. RAMOS: And then the next</p> <p>13 category is pre-close National Grid costs to</p> <p>14 be reimbursed to National Grid at close for</p> <p>15 branding currently estimated to be 4.4</p> <p>16 million. Do you have the same understanding</p> <p>17 with respect to that category of costs?</p> <p>18 MR. DANE: Yes.</p> <p>19 MR. RAMOS: And then the final one</p> <p>20 is for enterprise resource planning</p> <p>21 separation for Day One transition service</p> <p>22 agreement needs currently estimated to be</p> <p>23 8.2 million. You have the same</p> <p>24 understanding respect to that category of</p>	<p>1 GREGORY BOOTH (Sworn via Zoom)</p> <p>2 DIRECT EXAMINATION BY MS. HETHERINGTON</p> <p>3 THE COURT REPORTER: Would you</p> <p>4 state your full name for the record, please?</p> <p>5 THE WITNESS: Gregory Lee Booth.</p> <p>6 MS. HETHERINGTON: Good morning,</p> <p>7 Mr. Booth, or good afternoon at this point.</p> <p>8 I want to thank everyone for being willing</p> <p>9 to allow this accommodation for you to</p> <p>10 appear today, and if at any time you can't</p> <p>11 hear me, raise your hand or let me know, and</p> <p>12 if I could ask everyone who will be speaking</p> <p>13 or cross-examining you to also use their</p> <p>14 mics so he can hear.</p> <p>15 Q. So with that, let me ask you, Mr. Booth,</p> <p>16 were you retained by the Division's Advocacy</p> <p>17 Section to review the pending petition?</p> <p>18 A. I was.</p> <p>19 Q. And can you tell me what the focus and/or</p> <p>20 scope of this review was?</p> <p>21 A. Yes. I looked at the entire petition,</p> <p>22 all of the data requests, responses,</p> <p>23 materials filed, all the testimony filed,</p> <p>24 and the scope was to establish whether there</p>

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1 was any -- was public interest or lack of  
2 public interest being met, any harm to the  
3 ratepayers, what that harm potentially could  
4 be.  
5 Q. And with respect to the specific part of the  
6 proposed transaction relative to the  
7 electric distribution system, was that the  
8 area also of your focus?  
9 A. Yes. My primary focus was the electric  
10 distribution system and all of the transfer  
11 of electric assets and the operation of the  
12 electric system and the capital investments  
13 that may be required in that.  
14 Q. Thank you. Your direct and surrebuttal  
15 testimony have your full experience and I  
16 won't go through all of that, but generally  
17 speaking, can you tell me what level of  
18 experience you have in that area of  
19 expertise, please?  
20 A. Yes. So I've spent more than 50 years of  
21 my career providing electrical engineering  
22 and consulting services to over 300 electric  
23 utilities throughout the United States. I'm  
24 a licensed professional engineer in 23

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1 states and the District of Columbia, and  
2 that includes Rhode Island. I also have  
3 provided services to hundreds of other  
4 industrial and commercial clients. I've  
5 built up multiple engineering consulting  
6 businesses, served as president of several  
7 of those businesses. I was employed by the  
8 Southern Company through their acquisition,  
9 a whole group of businesses for which I was  
10 president. I am currently owner of Gregory  
11 L. Booth, PLLC, and also the Chairman of the  
12 advisory board of utility engineering.  
13 Q. And with respect to Rhode Island and the  
14 Narragansett Electric distribution system,  
15 can you tell me what your familiarity is  
16 with this system?  
17 A. Yes. So I've been providing consulting  
18 services to the Division for over 20 years.  
19 I have physically been across the majority  
20 of National Grid's system, in substations,  
21 in their duct bank systems, evaluating the  
22 system assets, their system reliability. I  
23 worked with Rob Sheridan years ago in the  
24 development of an asset management program

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1 for the company. I've been involved with  
2 the ISR planning process from Day One. I've  
3 been involved in many, many dockets for the  
4 Division, comprehensive evaluations of  
5 National Grid's electric distribution system  
6 and operations including most recently  
7 reviewing the 5113 and 5114 in the filing of  
8 the AMF and GMP.  
9 Q. And with regard to the infrastructure,  
10 safety and reliability plans that you  
11 reference as ISR and the Dockets 5113 and  
12 5114, are those dockets -- well, let me step  
13 back.  
14 With regard to the ISR plan which I  
15 understand is -- well, I know is a yearly  
16 plan. Are you currently still engaged in  
17 that process here with Narragansett?  
18 MR. PETROS: I have maybe --  
19 A. Yes, I am.  
20 MR. PETROS: I have maybe an  
21 objection or point of clarification. I'm  
22 sorry, Mr. Booth. This is Jerry Petros. I  
23 just have a point of clarification. So Mr.  
24 Hearing Officer, as you know this format far

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1 better than I, we have cross-examination  
2 that's prefiled and surrebuttal that's  
3 prefiled. Mr. Booth has I think filed over  
4 55 pages in his direct and also 20 some  
5 other pages in his surrebuttal. I  
6 understand there's some initial preliminary  
7 questions, but it feels like we're heading  
8 down a full direct examination which is  
9 outside the confines of this process where  
10 the witness is supposed to be introduced and  
11 offered for cross-examination. So I didn't  
12 want to wait much longer to find out where  
13 we were going here.  
14 MS. HETHERINGTON: I have a  
15 response for that. Thank you. First, I  
16 don't think this goes beyond the -- we just  
17 heard from Mr. Dane and Mr. Reed speaking to  
18 their experience. I think that's not  
19 outside the bounds. But with regard to the  
20 scope of this direct, we had talked in a  
21 procedural conference that we would keep it  
22 mostly limited to cross, however, I have two  
23 points first on timing and second on scope.  
24 This matter was filed on May 4th.

<p style="text-align: right;">Page 165</p> <p>1 We propounded discovery throughout six 2 months. We received not until September 3 30th a cost comparison analysis and on 4 November 23rd we received an actual estimate 5 of transition costs. This weekend on the 6 eve of hearing we received a -- two 7 documents which were additional commitments 8 which the Advocacy Section considers as if 9 it's an amended petition, if you will. The 10 Advocacy Section has had zero opportunity, 11 in fact, we had one hour before the start of 12 the hearing to respond to these commitments. 13 So respectfully, I do ask that we 14 are given some latitude with regard to this 15 direct because -- based on the circumstances 16 and we simply have not had time nor does the 17 very aggressive procedural schedule account 18 for any additional followup discovery. And 19 so to that effect I am -- and as to 20 relevancy, the commitments basically go to 21 everything within the petition because the 22 issue is whether this is in the public 23 interest, and this has changed the terms of 24 the petition. So respectfully, I would like</p>	<p style="text-align: right;">Page 167</p> <p>1 experience have you dealt with any 2 acquisitions or merges in your past? 3 A. Yes. Numerous. 4 Q. And those are contained in your direct, 5 correct? 6 A. Yes. 7 Q. Thank you. Have you been watching some, if 8 not all, of this hearing that started on 9 Monday? 10 A. Yes, I missed yesterday morning because 11 of some other things I had to do, but I saw all 12 of Monday's, I saw yesterday afternoon's 13 portion and this morning's up until just 14 recently, Mr. Dane and Mr. Reed. 15 Q. Okay. I referenced commitments just now. 16 Have you a chance to see or review what came 17 in this weekend which has been since marked 18 as Exhibit 2 which are the two commitments 19 -- which are the commitments and the 20 supplemental commitments that they made on 21 the weekend? 22 A. Yes, I've reviewed them. 23 Q. Okay. Did you prepare direct testimony 24 that's been marked as Advocacy Section</p>
<p style="text-align: right;">Page 166</p> <p>1 to have some latitude in my questioning. 2 THE HEARING OFFICER: So as I 3 understood the objection, again, it wasn't 4 about you addressing the rebuttal testimony 5 and what's come in recently. I thought it 6 was more about the introductory dialog 7 between you and Mr. Booth. Is that -- 8 MR. PETROS: That's correct, Mr. 9 Hearing Officer. 10 THE HEARING OFFICER: I'll give you 11 little more latitude on that, but I think 12 Mr. Booth's resume and his experiences are 13 adequately documented in his testimony and 14 his exhibits. 15 MS. HETHERINGTON: Thank you. I'm 16 going to repeat that question. I don't know 17 if your objection was pertaining to this 18 most recent question. 19 Q. But are you currently engaged in the ISR 20 program review? 21 A. I am. 22 Q. Thank you. Are you also familiar, and if 23 you could be brief with any -- have you in 24 the course of your consultation and in your</p>	<p style="text-align: right;">Page 168</p> <p>1 Exhibit 3? 2 A. Yes. 3 Q. And have you had a chance to review that 4 since its filing? 5 A. I have. 6 Q. Do you have any corrections or changes to 7 make to that? 8 A. I do not. 9 Q. And then do you adopt under oath today that 10 testimony? 11 A. I do. 12 Q. And did you prepare rebuttal testimony 13 that's been now marked as Advocacy Section 14 Exhibit 8? 15 A. Yes, surrebuttal testimony. 16 Q. I'm sorry. Surrebuttal. Thank you. And 17 have you had a chance to review that as 18 well? 19 A. I have. 20 Q. And do you have any changes or 21 cross-examinations to make to that 22 surrebuttal? 23 A. I do not. 24 Q. And do you adopt today under oath that</p>



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1 surrebuttal?  
2 A. I do.  
3 MS. HETHERINGTON: Thank you. May  
4 I move that Advocacy Section Exhibit 3 and 8  
5 be marked as full exhibits?  
6 MR. PETROS: No objection.  
7 THE HEARING OFFICER: So marked.  
8 MS. HETHERINGTON: Thank you.  
9 Q. Based on your comprehensive review of the  
10 filings, the discovery, the most recent  
11 filings to include these commitments and  
12 based on your listening to the portions that  
13 you did of the hearing, Mr. Booth, based on  
14 all of that and on the totality, do you  
15 recommend that the Division grant this  
16 transaction?  
17 A. I do not.  
18 Q. There was a great deal of discussion here at  
19 the hearing, if you did hear those portions,  
20 concerning National Grid's -- they call it  
21 the AMF, the advanced meter functionality,  
22 and the grid mod, as we call it, filings.  
23 Do you recall that?  
24 A. I do.

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1 Q. Okay. And there was some discussion  
2 about -- Mr. Wold brought Exhibits 14  
3 through I believe 18 which spoke to the New  
4 York advancement part of these programs.  
5 Were you involved in the AMF and grid mod  
6 stakeholder process that came after the rate  
7 case?  
8 A. Yes. I was involved in both Dockets 4770  
9 and 4780, the rate case, and I was involved  
10 in the stakeholder process for the AMF and  
11 grid modernization plan conferences and  
12 discussions with National Grid and the  
13 stakeholders.  
14 Q. Would you be -- would you briefly describe  
15 your view of the benefits of the AMF and  
16 grid mod under National Grid versus what  
17 you've heard and seen in data responses from  
18 PPL?  
19 A. Yes. The National Grid AMF and grid  
20 modernization plan has enormous synergies.  
21 Dollar benefits were documented between New  
22 York and Rhode Island, and how much Rhode  
23 Island would save being part of the National  
24 Grid as a whole versus stand-alone. That

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1 was roughly 40 million on AMF, 80 million on  
2 GMP. And those savings were shown through  
3 the stakeholder process. There will be  
4 additional benefits as Massachusetts moves  
5 forward with AMF and grid mod, and that's an  
6 enormous synergy in benefit to Rhode Island  
7 which is significantly smaller than New York  
8 and Massachusetts and I don't see that PPL  
9 is offering comparable or similar benefits.  
10 Q. And are you familiar with -- in the course  
11 of your being engaged in this process are  
12 you aware that the process has been stayed  
13 subject to this transaction?  
14 A. Yes. There was quite a bit of money  
15 spent by National Grid, an enormous amount  
16 of manpower time and cost borne by the  
17 stakeholders through the process and now  
18 that process has been stayed and, of course,  
19 it's restarted if this were approved and the  
20 stakeholders have costs, the ratepayers will  
21 bear more costs just through the process  
22 alone.  
23 Q. So you're speaking to costs. Is there also  
24 a time delay cost, if you will? Do you

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1 understand my question?  
2 A. Yes. Absolutely, because the filing of  
3 National Grid has been stayed. If this  
4 transaction were approved, PPL would have to  
5 come in with a filing, presumably there  
6 would be a stakeholder process which would  
7 then at some point bring us back to where  
8 National Grid was with their filings in 5113  
9 and 5114. So we've got a substantial delay  
10 in the implementation process.  
11 Q. And with regard to the commitment document I  
12 referenced which is Joint Exhibit 2,  
13 Petitioners Joint Exhibit 2, there's a  
14 Commitment No. 13. Do you have that handy,  
15 Mr. Booth?  
16 A. I do.  
17 Q. Okay. Thank you. And it speaks to --  
18 A. I've got that in front of me.  
19 Q. And it speaks to a commitment that  
20 Narragansett will submit an updated proposal  
21 on those two matters within 12 months of the  
22 transaction closing, is that correct?  
23 A. Yes, it is.  
24 Q. Is that a commitment that you believe is

<p style="text-align: right;">Page 173</p> <p>1 satisfactory to the issues you just 2 discussed? Does that resolve the issues? 3 A. It does not because that doesn't resolve 4 the synergies with National Grid and Rhode 5 Island part of that. It doesn't resolve the 6 increased costs that would play from PPL 7 versus the synergies that come out of 8 National Grid. It doesn't resolve the cost 9 that's already been expended, and it doesn't 10 resolve the future cost that stakeholders 11 had already borne will have to bear again or 12 the cost the ratepayers have borne. 13 Q. So you mentioned duplication of costs. Did 14 you hear any of the testimony this week at 15 which PPL witnesses committed that they 16 would not seek recovery for duplicate costs? 17 A. I did hear that, and I guess the whole 18 cost issue I think is quite convoluted at 19 this point. So we have to keep in mind that 20 the stay of the base rate case only affects 21 two out of roughly 25 components of the 22 rates to the customers. So AMF costs and 23 GMP costs will most likely flow through the 24 ISR plan. That's not part of a base rate</p>	<p style="text-align: right;">Page 175</p> <p>1 if that's \$30 million, then that 30 million 2 will flow through the ISR plan in the rates 3 and the Division and the Commission would be 4 put essentially between a rock and hard 5 place. If they push back on that, that's 6 going to adversely impact both reliability 7 and safety, and if it's allowed to flow 8 through the ISR, that's going to impact the 9 rates so the customer is going to pay higher 10 rates, and that's going to happen over and 11 over again for all of these capital 12 components that have to be duplicated. So I 13 just don't see how that duplicative issue 14 works relative to the ISR plan under any of 15 the commitments at this point. 16 Q. So to make this -- what you've just said 17 more tangible, can you give me one example 18 of what the ISR program capital costs 19 provide? 20 A. Yes. So the plan covers customer 21 extensions, governmental issues, asset 22 condition, additions, substation transformer 23 additions, change-out, new substations, a 24 mobile substation or spare transformer is</p>
<p style="text-align: right;">Page 174</p> <p>1 case. That's part of a statute that has an 2 annual adjustment. So all of those costs 3 that have already been borne by the 4 ratepayers and any future costs will flow 5 through the ISR plan with no stay of that 6 cost whatsoever, and that's true of all the 7 capital costs under the ISR plan and the 8 operating costs under the ISR plan. 9 Q. So if I can refer you to the commitment 10 sheet again, Petitioners Joint 2. No. 1 11 speaks to a rate case -- a stay-out of 12 filing a base rate case of three years. Are 13 you familiar with that? 14 A. Yes. 15 Q. So to clarify what you've just testified to, 16 does this commitment protect the ratepayers 17 from any of the costs that we've just spoken 18 of, namely, AMF, grid mod or ISR 19 investments? 20 A. It does not. And in fact, maybe a simple 21 example might help that. So if PPL puts in 22 the ISR plan the duplication of mobile 23 substations that National Grid currently has 24 in Massachusetts that benefit Rhode Island,</p>	<p style="text-align: right;">Page 176</p> <p>1 going to flow through the ISR plan. If 2 those spares and mobiles exist in 3 Massachusetts and can be relied on for 4 back-stand in Rhode Island, Rhode Island is 5 benefiting from not having to bear all that 6 cost, but if new equipment has to be 7 duplicated for Rhode Island standing alone, 8 the ratepayers are now going to have to bear 9 that cost. And so I mean, from my 10 perspective, if the ISR plan has been 11 running at about 103 million and under PPL 12 it jumps to 150 or 200 million, that's an 13 enormous impact on the ratepayers. 14 Q. So let me break that down for a minute. 15 MR. PETROS: So I'm going to object 16 at this point. I understand that the 17 witness, obviously, Mr. Hearing Officer, can 18 comment on the commitments, but we're now 19 getting literally new opinions that could 20 have been offered months ago. We're all 21 playing under the same rules here, and one 22 of those rules is you don't walk into the 23 hearing and start offering new opinions, and 24 there was nothing that the witness just</p>

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<p>1 described that wasn't known to him in 2 September or October or November. So I 3 object to new opinions being offered at this 4 -- it gives us no chance and no time at all 5 to consider or respond or, more importantly, 6 to offer testimony in response to what he's 7 now saying.</p> <p>8 MS. HETHERINGTON: Respectfully, 9 this has been referenced in both his direct 10 and surrebuttal. I would also as to new 11 opinion or new information, this is at the 12 very root of the case. If PPL and Grid are 13 not prepared to speak on this, this is 14 literally the basis of the entire case.</p> <p>15 THE HEARING OFFICER: All right. 16 I'm going to overrule the objection.</p> <p>17 MS. HETHERINGTON: Thank you.</p> <p>18 Q. I just want to break down what you said, Mr. 19 Booth. The ISR program is essentially 20 exactly like its namesake, correct? It's 21 the infrastructure to guarantee safety and 22 reliability on the distribution system. Am 23 I saying that correctly? 24 A. That's correct. It's the cost for</p>	<p>1 essentially it has developed plans -- gone 2 from a proposed plan to a filed plan that 3 was essentially completely agreed to by both 4 parties and they've worked together 5 collaboratively. But if a large mobile 6 substation is added to the plan and the 7 Division does not think that that's 8 appropriate because it already existed in 9 Massachusetts for the benefit of back-stand 10 but if the ownership is under PPL, 11 Narragansett has to maintain safety and 12 reliability. So the Division and Commission 13 both are basically going to be in a position 14 they're going to have to approve it or 15 they're going to have to accept lower safety 16 and reliability. That's just a difficult 17 position to be in.</p> <p>18 Q. And you mentioned numbers, you said 19 approximately 103 for ISR. Was that last 20 year, subject to check, the budget for that? 21 A. Yes, last year, and the 2023 I think is 22 about 105.</p> <p>23 Q. And I knew you threw other numbers out which 24 might have been the basis of the objection,</p>
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<p>1 infrastructure, it's the cost to accommodate 2 safety, so damage failure and other issues 3 like that, and it's the cost for 4 reliability, so grid modernization 5 additions, anything for reliability, so that 6 would be asset condition and the like. 7 That's all accounted for in the budget of 8 the ISR plan on an annual basis and then on 9 an annual basis as those dollars are spent, 10 as that capital is put into service, that 11 then goes into rates as separate line items. 12 I think there's roughly four separate line 13 items in the rates for that. It doesn't go 14 through a base rate case.</p> <p>15 Q. And you said -- previously you spoke to 16 some -- working against itself if those 17 costs are not provided. Let me ask this 18 question.</p> <p>19 Are you saying that if there is 20 pushback on cost recovery for ISR capital 21 costs, let me ask, what would be the 22 consequence of that? 23 A. Well, there's -- the Division has always 24 collaborated with the company and</p>	<p>1 but you gave us a hypothetical that it could 2 be more for PPL. Can you tell me what your 3 basis for opining on that is?</p> <p>4 A. Yes. There are absolutely capital items 5 that are going to have to be duplicated by 6 PPL, spare power transformers, mobile 7 transformers, because you've got the 8 Narragansett system design for these items 9 and voltage and capacity and you've got the 10 close proximity that you want this 11 equipment. So there's all these spare parts 12 and equipment and items that have got to be 13 duplicated that are going to go through the 14 ISR plan and there will be immediate rate 15 relief for those items. There won't be a 16 three-year stay at all.</p> <p>17 Q. And what you're describing are the loss of 18 synergies, correct, from the service 19 company?</p> <p>20 A. Well, it's not just the loss of 21 synergies, but it's also the physical 22 capital components that -- for instance, 23 that are in Massachusetts are spread across 24 the entire National Grid company that now</p>

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1 will -- if Narragansett were to stand alone  
2 in Rhode Island, would have to be acquired  
3 for the stand-alone company, and that could  
4 be a SCADA system, that could be many  
5 components.  
6 Q. And what is --  
7 A. At significant cost.  
8 Q. Can you describe what the SCADA is? You  
9 used that acronym.  
10 A. That's the supervisory control and data  
11 acquisition system. That's the system that  
12 allows the utility to look at its  
13 substations at breaker and operate the  
14 system and that's a key component to  
15 operations.  
16 Q. Mr. Booth, did you hear the PPL testimony  
17 that it would seek cost recovery if  
18 investments were not duplicative or were  
19 like for like? Did you hear that testimony?  
20 I think it was from both Mr. Bonenberger and  
21 Ms. Johnson during the hearing.  
22 A. Yes, I heard that.  
23 Q. I'm going to refer you to again the same  
24 commitment document, No. 2, concerning the

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1 recovery of transition costs. Do you have  
2 that?  
3 A. I do.  
4 Q. What is your takeaway from this testimony  
5 and this particular commitment?  
6 A. Well, we've got -- there's a listing  
7 here, there was an Exhibit A, and when you  
8 look at the total IT, so you take  
9 everything, you take something as simple as  
10 the global information system which is all  
11 the lines and everything on the system  
12 converted into a digital format track,  
13 there's going to be significant time and  
14 cost to develop all of that. PPL appears to  
15 have indicated that they would absorb 250  
16 million of that cost, but that cost, rather  
17 than 250 million, could easily be three  
18 times that. I mean, we've watched with  
19 National Grid alone, their billing system  
20 and all costs to be significant multiples of  
21 their original estimate. There is no  
22 protection for the ratepayer of that cost  
23 runaway.  
24 MR. PETROS: I am going to object

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1 again, Mr. Hearing Officer. When I talked  
2 about new opinions, now a new opinion with  
3 no basis whatsoever that transmission costs  
4 are going to be three times that.  
5 THE HEARING OFFICER: So I think  
6 his testimony is offered in response to the  
7 commitments made by PPL and that to the  
8 extent that he has said something that you  
9 think is inaccurate, I'm going to let you  
10 deal with that on cross-examination.  
11 MR. PETROS: Very well.  
12 Q. And so you're suggesting specific -- you're  
13 speaking to the IT cost of 315 million, is  
14 that correct?  
15 A. That's correct. And of course, you have  
16 all these other transition costs that are  
17 not spoken to at all. Of course, I've  
18 obviously mentioned those in my testimony  
19 and surrebuttal, but if you're not going to  
20 lose the synergies of the design and  
21 construction standards, material standards  
22 that National Grid has, then PPL is going to  
23 have to then spend significant money to  
24 develop all that, and I've watched that with

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1 other utilities. That's a lot of time and a  
2 lot of cost and there's nothing that  
3 protects the ratepayers from having to  
4 absorb that.  
5 Q. Can you tell me what has informed your  
6 statement today that it could be up to three  
7 times that? What is the basis of saying  
8 that?  
9 A. Well, the basis is multiple. No. 1,  
10 National Grid's put in a new billing system.  
11 As I recall, that was more than twice the  
12 original estimated cost, it took  
13 significantly longer to put in place, and  
14 the ratepayers have already paid for that.  
15 And now we've got an IT billing system  
16 that's got to be recreated again with just  
17 an estimate and really no details behind the  
18 estimate so we don't even know how accurate  
19 PPL's estimate is. And I've watched with my  
20 own electric utility clients as they've  
21 rolled out IT products, I've watched it with  
22 Southern, and you have an estimate and a  
23 time program and I've yet to see one come in  
24 underbudget. They're all multiple of the

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<p>1 original budget, the original timeframe. So</p> <p>2 there's tremendous risk of the cost runaway</p> <p>3 and there's no protection of the ratepayer</p> <p>4 from any excess of cost beyond the estimate</p> <p>5 PPL has put out in the commitment.</p> <p>6 Q. So we're talking numbers. I'm just going to</p> <p>7 refer everyone, what we're speaking of, it's</p> <p>8 appeared in two places, Mr. Bonenberger's</p> <p>9 Rebuttal Exhibit B, but also Exhibit A is</p> <p>10 what you're referring to in the commitment</p> <p>11 page, I believe, that has that total</p> <p>12 estimated transition cost of 408.1 million,</p> <p>13 is that correct? You're referring to that</p> <p>14 one page, Exhibit A?</p> <p>15 A. I'm referring to that page. I'm</p> <p>16 referring to the line that says IT new</p> <p>17 system implementation, it has a Footnote 1</p> <p>18 that lists at least some of what that will</p> <p>19 be at \$315 million. I just -- No. 1, we</p> <p>20 don't have a detailed breakdown of that, and</p> <p>21 No. 2, I've never seen IT for these types of</p> <p>22 components come in at or under budget and</p> <p>23 they're generally significantly above. My</p> <p>24 testimony is that increased cost above the</p>	<p>1 references to the TSA. One of them is</p> <p>2 actually the second document, Joint 3, which</p> <p>3 speaks to amending the TSA to extend -- to</p> <p>4 allow the ability to extend the two-year</p> <p>5 term as necessary. Are you familiar with</p> <p>6 that, No. 17?</p> <p>7 A. I am. I have it in front of me.</p> <p>8 Q. With regard to the two-year time --</p> <p>9 transition time, did you hear the testimony</p> <p>10 from PPL, Mr. Sorgi, Mr. Bonenberger saying</p> <p>11 we put that in there to satisfy concerns but</p> <p>12 we really don't think it's necessary? In</p> <p>13 your opinion is the two years an achievable</p> <p>14 amount of time?</p> <p>15 A. I do not think it is. In at least the</p> <p>16 acquisitions I've been directly involved in,</p> <p>17 I have not seen two years as being adequate</p> <p>18 and I don't see how this can be.</p> <p>19 Q. Have you done any acquisitions that are of</p> <p>20 the same nature, if you will, the same</p> <p>21 magnitude, the same complications?</p> <p>22 A. Not precisely because the one thing</p> <p>23 that's different about this acquisition is</p> <p>24 this is an out-of-state utility acquiring</p>
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<p>1 315 million is going to be borne by the</p> <p>2 ratepayer. There's no protection for the</p> <p>3 ratepayer and yet they're currently getting</p> <p>4 all the benefits of all of these programs,</p> <p>5 software, control centers that already exist</p> <p>6 with National Grid. So they're going to be</p> <p>7 paying for something again.</p> <p>8 Q. So on the point of providing a basis for</p> <p>9 cost, in your expert opinion does this</p> <p>10 Exhibit A provide satisfactory analysis of</p> <p>11 these cost estimates?</p> <p>12 A. It's neither a satisfactory analysis nor</p> <p>13 is it a comprehensive assessment of what all</p> <p>14 the costs will be. So we don't have a</p> <p>15 detailed breakdown to look at, we got no</p> <p>16 time even to get discovery or know the</p> <p>17 background to it and it doesn't cover all of</p> <p>18 the transition costs we're going to be</p> <p>19 looking at.</p> <p>20 Q. With regard to the TSA that you mentioned,</p> <p>21 the transition service agreement and the</p> <p>22 time by which Grid will support PPL's</p> <p>23 transition, if you will, referring you again</p> <p>24 to the commitment page, there are several</p>	<p>1 another utility in a different state. The</p> <p>2 acquisitions that I've been involved in both</p> <p>3 directly and testified on and peripherally</p> <p>4 were in-state acquisitions, so they were</p> <p>5 much easier to transition, and even in those</p> <p>6 cases the transitions took much more than 24</p> <p>7 months, in some cases some portions took</p> <p>8 three to five years, and that was a utility</p> <p>9 in a state acquiring another utility in the</p> <p>10 exact same state with facilities essentially</p> <p>11 right across the street. So I just don't</p> <p>12 see how it's possible for an out-of-state</p> <p>13 utility to acquire the Rhode Island utility</p> <p>14 and make a transition in 24 months. And</p> <p>15 there's nothing in Commitment 17 that really</p> <p>16 holds National Grid to any standard of the</p> <p>17 quality or the services they provide even if</p> <p>18 PPL asks for the extension of the TSA.</p> <p>19 There's no performance metrics or anything</p> <p>20 else to be assured that it's done and done</p> <p>21 in a fashion that's comprehensive and</p> <p>22 complete and of adequate quality.</p> <p>23 Q. Mr. Booth, in your surrebuttal did you</p> <p>24 provide an additional suggestion, if you</p>

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1 will, for assurances relative to the -- to  
2 Grid's accountability for the TSA  
3 performance?  
4 A. I did. I recommend an escrow of \$200  
5 million.  
6 Q. And by your understanding of these  
7 commitments, was that an accepted  
8 recommendation?  
9 A. It was not.  
10 Q. Could I bring our attention to Commitment --  
11 I'm focusing your attention on the reference  
12 to the -- sorry. Strike that. Did you hear  
13 testimony about the markup in the new TSA --  
14 we do have the new TSA as an exhibit -- of  
15 five percent for the first 24 months and  
16 then a much higher 15 percent markup  
17 thereafter?  
18 A. Yes, I did. I mean, that's an indication  
19 that National Grid certainly wants to get  
20 out as early as possible.  
21 Q. Does that bring you any concerns?  
22 A. Well, not really because if PPL absorbs  
23 that 15 percent cost, that's fine, but if  
24 that 15 percent cost is passed on to the

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1 ratepayers, it's not. The only concern is  
2 that it's just a further indication to me  
3 that the seller, being National Grid, and it  
4 really doesn't have an interest in staying  
5 any longer than 24 months, so the question  
6 becomes what's their commitment to the  
7 quality of the service beyond 24 months that  
8 they'll provide.  
9 Q. Did you hear in the hearing there was a  
10 reference to some discussion about the  
11 Lincoln electric distribution center?  
12 A. Yes.  
13 Q. And I think, I can't recall the witness now,  
14 but I believe there was talk elicited  
15 perhaps this morning -- every day is a blur  
16 now -- relative to the backup control center  
17 would be in Pennsylvania. Does a discussion  
18 about the Lincoln the distribution center,  
19 does that concern you at all?  
20 A. Well, it does. The concern is that  
21 Lincoln is a backup to National Grid's main  
22 control center which is in Massachusetts.  
23 So PPL's going to use a backup facility as  
24 the main facility and then we don't know

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1 exactly where or the magnitude of the  
2 supposed backup facility that will be built  
3 in Pennsylvania nor do we have any idea of  
4 what the cost of that and the integration of  
5 that cost is under the total IT portion or  
6 under any capital that would flow through  
7 the ISR plan.  
8 Q. I want to draw your attention to  
9 discussions -- in particular, did you hear  
10 the testimony of Mr. Kelly and Mr. Willey,  
11 the joint Grid witnesses, relative to  
12 employees that are coming from the service  
13 company?  
14 A. I did.  
15 Q. And they spoke specifically about addressing  
16 your concerns about expertise level and  
17 numbers of employees. Did their testimony  
18 sort of -- let me ask what your response to  
19 that is. Did that change your assessment of  
20 their testimony?  
21 A. Well, it doesn't change my assessment  
22 relative to the cost that would be imposed  
23 on the ratepayers, so the risk of extra cost  
24 on the ratepayers. It does address all of

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1 the roughly 89 employees that National Grid  
2 has relied upon in the ISR plan and area  
3 studies, but that testimony did provide me  
4 with some additional, I guess, confidence  
5 that with people like Ryan Constable and  
6 Kathy Castro coming over and quite a number  
7 of other ISR plan people, that standing up  
8 the ISR plan process is going to be much  
9 better with that group of people if they, in  
10 fact, are coming over because I have a  
11 personal long-time working relationship with  
12 those National Grid people and they're  
13 excellent folks.  
14 Q. In your surrebuttal and direct you mention  
15 concern on employment gaps and expertise  
16 gaps, the boots on the ground. Do those  
17 concerns still remain?  
18 A. They do, but the gap at least in the  
19 senior portion of the ISR plan seems to be  
20 starting to be addressed now through recent  
21 testimony.  
22 Q. Did you hear Mr. Dudkin testify this  
23 morning?  
24 A. I did.

<p style="text-align: right;">Page 193</p> <p>1 Q. In his testimony do you recall he spoke 2 about -- he mentioned that -- he was touting 3 the benefits of the Rhode Island centric 4 part of the organizational structure. Do 5 you recall that? 6 A. I do. 7 Q. And then he said but we plan to add service 8 company model benefits from Pennsylvania. 9 Do you recall that? 10 A. I do. 11 Q. Can the two -- can you reconcile how -- 12 based on your experience does that make 13 sense? Can you reconcile the two models, if 14 you will? 15 A. At this point I have no reconciliation 16 for a local control approach system by PPL 17 and then a service company approach. 18 National Grid has a three-state service 19 company jurisdiction approach. They 20 obviously have local construction people and 21 local people, but they mostly have a service 22 company approach. It's very confusing as to 23 how the local control approach would not, in 24 fact, result in the loss of most of the</p>	<p style="text-align: right;">Page 195</p> <p>1 September 30th, I believe, which is a 2 supplemental response to our June request 3 providing an analysis of the cost comparison 4 between Grid and PPL, correct? 5 A. That's correct. That was a cost 6 comparison and, again, there's no commitment 7 by PPL in any of their commitments to back 8 up those purported benefits they think will 9 be -- offset the loss of the National Grid 10 synergies by a Narragansett Rhode Island 11 local approach. 12 Q. Referring also again to Mr. Dudkin's 13 testimony, do you recall him speaking about 14 how Pennsylvania runs a very efficient 15 operation and that the O&amp;M rates have been 16 flat for several years? Do you recall that? 17 A. I do. 18 Q. Is it -- in your expert opinion does that 19 bear a reflection on how things will play 20 out here should the transaction go through? 21 A. It does not because it doesn't speak to 22 how the National Grid Service Company 23 synergies in three jurisdictions and the 24 loss of that can be offset by what PPL is</p>
<p style="text-align: right;">Page 194</p> <p>1 National Grid synergies that Rhode Island 2 and Narragansett have benefited from. It 3 sounds like only a few of the synergies that 4 may come from PPL Service Company will 5 actually be utilized. 6 Q. When you said it sounds like, do you feel 7 like you have enough information, have you 8 been provided a picture of what the 9 Pennsylvania synergies will look like? 10 A. There's no picture. Everything so far is 11 they're working on it, they're going to come 12 with that detail and that information. 13 That's just like the filing of 1-54-1. I 14 mean, I testified quite a bit on its 15 deficiencies. That doesn't begin to analyze 16 the deficiencies and the difference in 17 operating costs between National Grid and 18 all of its synergies and at a local control 19 approach and the loss of those synergies and 20 benefits and all of the -- and all the 21 expertise that comes from that larger 5,100 22 employee service company at National Grid. 23 Q. When you say 1-54, for clarification, that 24 is the document that was provided on</p>	<p style="text-align: right;">Page 196</p> <p>1 doing in its Pennsylvania jurisdiction which 2 is a single-state jurisdiction now has to 3 stretch across multiple states to get to 4 Rhode Island. 5 Q. Do you recall Mr. Dudkin speaking to the 6 grid mod for Pennsylvania? 7 A. I do. 8 Q. Do you recall that he said the grid mod will 9 be cheaper with our platforms? Do you 10 recall that testimony? 11 A. I do. 12 Q. Do you have an ability or do you have an 13 opinion on whether that could be true? Do 14 you have a basis to opine? 15 A. PPL has provided no petition support for 16 that statement. We know National Grid has 17 identified significant benefits to 18 Narragansett Rhode Island by their service 19 company, multi-state synergies for grid 20 modernization plan. I can't state whether 21 Mr. Dudkin will wind up correct or incorrect 22 because there's no detail to back it up. It 23 just seems -- you know, it's just an opinion 24 with no support and there's no commitment to</p>

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1 that statement, so the ratepayers are the  
2 ones at risk if he's wrong.  
3 Q. And you said that you heard Mr. Dane and Mr.  
4 Reed testify this morning, is that correct?  
5 A. I did.  
6 Q. Do you recall them classifying or  
7 characterizing the transaction as a  
8 "strategic transaction" and not an outlier?  
9 Do you recall that?  
10 A. I do.  
11 Q. Is your interpretation of that strictly from  
12 a business perspective, correct, that's not  
13 speaking to the ratepayer strategies? Do  
14 you follow me? Is that strictly an  
15 assessment relative to a business  
16 transaction?  
17 A. I mean, the way they characterized it was  
18 as a business transaction, as a strategic  
19 transaction -- versus certain strategic  
20 transactions. This is certainly an  
21 acquisition from an out-of-state utility  
22 that's several states away and that's just a  
23 more difficult acquisition to accomplish.  
24 It's not -- but it is done, it's just more

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1 difficult to accomplish.  
2 Q. Mr. Booth, have you been involved in any of  
3 the storm response, storm response issues  
4 with National Grid over the years? Are you  
5 familiar with the storm response in Rhode  
6 Island?  
7 A. I have. I've been involved in the storm  
8 response filings for the Division.  
9 Q. So do you have an opinion -- you speak about  
10 a state that's far away. Will the geography  
11 of Pennsylvania have any bearing on storm  
12 response in your opinion?  
13 A. The real problem for PPL in the storm  
14 response issue is going to be the fact that  
15 they're several states away as opposed to  
16 having a state like Massachusetts that's  
17 right up against Rhode Island. So they'll  
18 have some challenges. And as I mentioned  
19 earlier, they're going to incur some  
20 additional costs. If they want the same  
21 type of quick response for spare  
22 transformers or mobiles that are only an  
23 hour or two out of Massachusetts, they're  
24 going to have to spend the capital, buy that

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1 equipment and impose that cost on the  
2 ratepayers in order to stand up comparable  
3 storm response.  
4 Q. We've been focusing primarily on transition  
5 and the transition period. Do you have any  
6 concerns about the ability of PPL to run as  
7 cost efficiently as Grid in the long term?  
8 THE HEARING OFFICER: Ms.  
9 Hetherington, we're getting a little bit  
10 outside the scope.  
11 MS. HETHERINGTON: I'm almost done.  
12 I promise.  
13 Q. What I'm trying to focus on is we keep  
14 looking at transition. I'm wondering if you  
15 have an opinion beyond the transition. Can  
16 you say?  
17 A. Yes, I do, and obviously an out-of-state  
18 utility without a generally contiguous  
19 multi-jurisdiction utility like National  
20 Grid is going to have greater difficulty  
21 operating and maintaining the system through  
22 service companies or other operations as  
23 efficiently as what National Grid has  
24 created. We have nothing in the record that

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1 says what they can actually accomplish from  
2 that standpoint. It's not been shown by  
3 them. But when you have a state and when  
4 you have a utility a few states away,  
5 particularly the smallest state in the  
6 United States having to rely on a utility  
7 that's not contiguous, that can create  
8 operation problems and costs.  
9 Q. Mr. Booth, do you -- for all of these  
10 reasons do you maintain the position that --  
11 let me ask. What is your opinion relative  
12 to the impacts of the discussion we've had  
13 on the public interest?  
14 A. I do not feel that the commitments that  
15 were filed over the weekend go anywhere near  
16 far enough to protect the ratepayers or the  
17 stakeholders such that if this acquisition  
18 is approved, that the public interest will  
19 be met. I think there will be damage to the  
20 public interest and to the ratepayers based  
21 on everything I've evaluated today including  
22 the few commitments that we recently  
23 obtained.  
24 Q. Can you provide your opinion as to whether



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1 the services will diminished?  
2 A. I think it's more likely than not that  
3 they will be because we won't have this  
4 large service company of National Grid any  
5 longer. We're going to have this local  
6 control approach of a much smaller utility  
7 and that's going to come from PPL and I  
8 guess Kentucky Utility so it's going to come  
9 from several states away.  
10 MS. HETHERINGTON: Thank you, Mr.  
11 Booth. I have no further questions and I'll  
12 open the witness up for cross-examination  
13 now. Thank you.  
14 THE HEARING OFFICER: Mr. Petros,  
15 are you doing cross?  
16 MR. PETROS: Yes.  
17 THE HEARING OFFICER: You can  
18 proceed.  
19 CROSS-EXAMINATION BY MR. PETROS  
20 Q. Good afternoon, Mr. Booth. Jerry Petros on  
21 behalf of PPL. I'm a little closer than  
22 Christy was. Can you see me okay?  
23 A. I see you very well and I hear you  
24 clearly. Good to meet you.

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1 Q. I apologize for visual. Appreciate your  
2 indulgence.  
3 A. And so do I.  
4 Q. Mr. Booth, I don't think you and I have met  
5 before, so I'm going to ask just a few  
6 preliminary questions and we'll try to get  
7 quickly into the substance, so if you'll  
8 bear with me. My understanding from your  
9 background presented today and in your  
10 paper, Mr. Booth, is that you're an  
11 electrical engineer licensed in 23 states,  
12 right?  
13 A. That's correct.  
14 Q. Just to be clear, you don't have a degree in  
15 accounting, correct?  
16 A. I do not have a degree in accounting.  
17 I've been accepted on accounting matters  
18 including at the Federal Energy Regulatory  
19 commission and numerous state commissions  
20 including on rate cases.  
21 Q. Do you have a degree in finance, Mr. Booth?  
22 A. I do not.  
23 Q. Do you have a degree in economics?  
24 A. I do not have a degree in economics. As

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1 part of my obtaining my professional  
2 engineering license, part of the studies and  
3 the course in passing that is economics, so  
4 I had to demonstrate that I was proficient  
5 in economics in order to get my PE license.  
6 Q. And finally, do you hold an MBA degree?  
7 A. I do not.  
8 Q. Okay. Thank you. So let's talk about  
9 shared services model. I think you finished  
10 to some extent your testimony discussing  
11 that. Just a few general concepts. There  
12 are some truly standalone utilities in the  
13 United States that do not have a shared  
14 services model, correct?  
15 A. Yes.  
16 Q. Okay. But is it fair to say that pretty  
17 much all utility holding companies  
18 throughout the United States typically  
19 provide some level of shared services?  
20 A. I would say that's typical, yes.  
21 Q. And I'm talking about utility holding  
22 companies that own multiple utilities. Are  
23 you with me?  
24 A. Yes. So for instance, First Energy out

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1 of Ohio, that would be an example, yes.  
2 Q. But it's fair to say, isn't it, that even  
3 among those utility holdings companies,  
4 there is some variation in the level of  
5 shared services that they provide to their  
6 constituent utilities.  
7 A. Yes.  
8 Q. So those utility companies typically provide  
9 some form of hybrid model where some  
10 services are provided locally and other  
11 services are provided from the mother ship,  
12 so to speak.  
13 A. That is certainly one example, yes.  
14 Q. Okay. And would you also agree, Mr. Booth,  
15 I think this is self-evident, that there are  
16 some functions that a utility company  
17 provides that are better provided locally?  
18 A. Yes.  
19 Q. Okay. Let's talk for a minute about PPL. I  
20 think you did some diligence on PPL in the  
21 course of your review, is that correct?  
22 A. I did.  
23 Q. Okay. So PPL Utility, the mother ship, the  
24 parent company, so to speak, you understand

Page 205	Page 207
<p>1 operates both electric and gas utilities in 2 Kentucky and Pennsylvania. 3 A. I do. 4 Q. Thank you. 5 A. Yes. 6 Q. And do you understand it currently serves I 7 think something more than 2.5 million 8 customers? 9 A. Yes. 10 Q. And that it has over 80,000 miles of gas and 11 power -- I should say power and gas lines? 12 A. Subject to check, that sounds right. 13 Q. And just to be a little more granular for a 14 moment, let's talk about the various 15 utilities themselves. PPL Electric 16 Utilities, the operating company in 17 Pennsylvania, that provides services I think 18 to 1.4 million electric customers, is that 19 accurate? 20 A. That sounds correct, yes, subject to 21 check. 22 Q. And just approximations. 23 A. Sure. 24 Q. And about 50,000 miles of power lines in</p>	<p>1 the same size as Narragansett actually. 2 Q. Just some comparisons. This might even come 3 from Mr. Oliver's testimony or maybe your 4 testimony, I think maybe yours, 5 Narragansett's gas system in Rhode Island 6 delivers about 40 million decatherms of 7 natural gas on an annual basis compared to 8 -- 9 A. You know, I don't recall the natural gas 10 numbers. That's Bruce Oliver's area of 11 expertise. I would just be approximating 12 that. I didn't testify to that. 13 Q. That's fine, Mr. Booth. I'll confirm that 14 with Mr. Oliver. Thank you. 15 Do you recall that the LG&amp;E gas 16 system is larger than the gas system in 17 Rhode Island operated by Narragansett? 18 A. Again, I didn't do the gas analysis so I 19 didn't do that detailed analysis. 20 Q. And I take it you're also aware that prior 21 to April or May of this year and for years 22 before that PPL had an electric utility in 23 the United Kingdom? 24 A. I'm aware of that, yes.</p>
Page 206	Page 208
<p>1 Pennsylvania that they operate. 2 A. I'll take your word for that. I don't 3 recall that number, but that sounds about 4 right. 5 Q. Okay. And about -- well, okay, and that 6 operational history for PPL Electric 7 Utilities dates back 100 years, sort of like 8 Narragansett Electric. Did you see that in 9 the course of your diligence? 10 A. Yes, I think that is correct. I don't 11 know the exact date they were started, but 12 it's about 100 years old, yes. 13 Q. Fair enough. Thank you. Similar question 14 just for LG&amp;E and KU, the two Kentucky 15 utilities. LG&amp;E has about 425,000 electric 16 customers and 300,000 gas customers, again, 17 subject to check. Is that approximately 18 what you recall? 19 A. Yeah. I have pretty good familiarity 20 with some negotiations with LG&amp;E from years 21 ago, so yes. 22 Q. Thank you. And KU has about 550,000 23 electric customers. 24 A. That sounds about right. That's about</p>	<p>1 Q. And that utility, which was referred to as 2 WPD, had just under 8 million customers? 3 A. That's my understanding is what they sold 4 to National Grid. 5 Q. And it covered roughly 55,000 square 6 kilometers as far as the size of that 7 system? 8 A. Yeah. It was quite large. 9 Q. Okay. So fair to say, Mr. Booth, that we 10 know today that PPL has safely and reliably 11 operated electric and gas utilities serving 12 2.5 million customers in the United States 13 for a number of years now. 14 A. Correct. 15 Q. Okay. And we know that PPL safely and 16 reliably operated an electric utility of 8 17 million customers in the UK before selling 18 WPD to National Grid this past spring. 19 A. That would be the assumption. I don't 20 know the details of the United Kingdom 21 system. 22 Q. So you wouldn't be aware, for example, that 23 they won the customer service excellence 24 award, formally known as the Government's</p>

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1 Charter Mark since 1992 in WPD?

2 A. I would not know that.

3 Q. I'm not surprised you didn't. So is it --

4 would it be fair for the Hearing Officer to

5 conclude that PPL is a sophisticated utility

6 operator with global experience?

7 A. Yes, it would.

8 Q. Now, Mr. Booth, I appreciate you

9 acknowledging the testimony of the two fine

10 witnesses from National Grid who testified I

11 think it was yesterday. And I think you

12 heard them say, and I think you reflected

13 that they indicated that National Grid is

14 committed to a successful transition and has

15 pledged to do all that is required to meet

16 that goal and protect Rhode Island

17 customers. Did you hear them say that?

18 A. I did.

19 Q. And I think in your testimony today and in

20 your written testimony as well you've

21 acknowledged that you have great respect for

22 the National Grid team, is that accurate?

23 A. I do. Excellent utility.

24 Q. And by the way, has National Grid ever been

Page 210

1 one of your clients?

2 A. They have not.

3 Q. Okay.

4 A. I've always worked for the Division and

5 collaborated with National Grid.

6 Q. Okay. How about PPL? Has PPL ever been one

7 of our clients?

8 A. They have not.

9 Q. Okay. And over the many, many years that

10 you've had the -- I think in your own words

11 the privilege of working with the National

12 Grid team have you found them to be a team

13 that delivers on their promises and meets

14 their obligations?

15 A. They strive pretty hard to do that. I

16 mean, they have obviously missed budgets,

17 missed schedules, not completed projects on

18 time, but I mean, they certainly work hard

19 and strive to. Have they always met budget

20 and met their commitments? No.

21 Q. Mr. Booth, during your review of the

22 information presented throughout the course

23 of this particular docket and proceeding did

24 you have an opportunity to review the

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1 transition plan materials?

2 A. I did, in detail.

3 Q. Okay. And so you are aware, then, that in

4 some detail PPL and National Grid have put

5 together a transition plan that has multiple

6 levels and pathways for transitioning

7 functions from National Grid service

8 organization to PPL?

9 A. Yes, as a living document. It's my

10 understanding that it's continually under

11 revision.

12 Q. I think that's a fair statement. And you're

13 also aware, therefore, that National Grid

14 has a transition management office, and I

15 think, was it Mr. Kelly who indicated or Mr.

16 Dudkin --

17 MR. RAMOS: Mr. Willey.

18 Q. -- Mr. Willey has indicated that he is the

19 captain of that transition management

20 office, is that right?

21 A. That was his testimony.

22 Q. Okay. And similarly, I think you're aware

23 of the material submitted to you that PPL

24 has an integration management office.

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1 A. Yes.

2 Q. And these -- and in fact, these offices are

3 fairly heavily staffed. Do you recall how

4 many staff are in the transition management

5 office for National Grid?

6 A. Not without trying to look it up.

7 Q. Would it refresh your recollection if I said

8 it was 300 to 400 range of employees?

9 A. For some reason the number 368 sticks out

10 in my mind, but again, I have to double

11 check.

12 Q. I think that sounds like an accurate number.

13 Thank you for that. In addition, or maybe

14 as part of the transition efforts certainly

15 and maybe part of the transition plan there

16 are also knowledge transfer menus that

17 National Grid and PPL have established to

18 make sure that the knowledge acquired by

19 National Grid over its years of operation of

20 Narragansett are also transferred to PPL.

21 Did you see that in the materials you

22 reviewed?

23 A. That's correct, yes, I did.

24 Q. And again, the knowledge transfer plan also

Page 213	Page 215
<p>1 identifies multiple areas, again, keying 2 with the transition plan to ensure that that 3 knowledge is transferred during the 4 transition period from National Grid to PPL. 5 Do I have that right? 6 A. That's the way the plan is laid out at 7 this point. 8 Q. And for example, the knowledge transfer 9 teams deal with things like energy 10 transactions, training facilities, training, 11 talent and performance management, health 12 services, safety policy and programs, 13 consultancy services for dispatch 14 supervision and energy planning and 15 operations. Do those topics sound accurate 16 to you? 17 A. They do. 18 Q. Okay. Now as part of the transition or the 19 preparation, I should say, Mr. Booth, for 20 the transition, as you mentioned, the 21 transition plan is a living document, and in 22 fact, as I think you've seen in the 23 testimony and heard during the course of 24 this week, PPL has already made offers to</p>	<p>1 A. Well, I wouldn't -- I mean, I don't have 2 the exact percentage, but I've worked with 3 numerous groups out of New York for part of 4 the services, numerous parties out of 5 Massachusetts for the services, so they do 6 come from multiple states of the National 7 Grid Service Company. 8 Q. Thank you. That's exactly where I was 9 going. So they provide services from 10 Massachusetts, and Waltham is one of the 11 locations, right? 12 A. Correct. 13 Q. And is it Northborough is another location 14 in Massachusetts? 15 A. Yes, it is, that's correct. In fact, I 16 think that's where their control center is 17 at this point. 18 Q. That is correct. That's where it is. They 19 also provide services from Syracuse. 20 A. Yes, I think that's right. 21 Q. And they provide services from Brooklyn. 22 A. I haven't been there, but I've certainly 23 talked to their New York folks, so I can't 24 absolutely say that was Brooklyn.</p>
Page 214	Page 216
<p>1 the Narragansett employees and has retained 2 I think 731. Almost all of the direct 3 employees at Narragansett will continue with 4 PPL if this transaction is approved. You're 5 aware of that, right? 6 A. I'm aware that the frontline employees of 7 Narragansett, most of them are coming over 8 to PPL. 9 Q. Okay. And I won't talk so much about the 10 management employees because I think the 11 National Grid employees covered that the 12 other day, National Grid witnesses I should 13 say. So let's talk a little bit more on a 14 granular level of shared services. Is it 15 fair to say, Mr. Booth, that most of the 16 shared services provided by National Grid to 17 Narragansett are not impacted by the 18 location at which those shared services are 19 provided? 20 A. I would not agree with that. 21 Q. Okay. Well, let's -- most of the shared 22 services, do they come from Massachusetts 23 for National Grid sharing services to 24 Narragansett?</p>	<p>1 Q. You know they provide services from Long 2 Island as well, right? 3 A. Yes. 4 Q. Okay. And so my point is many of the shared 5 services are provided at different locations 6 in Massachusetts and New York, correct? 7 A. That is correct, yes. 8 Q. Let's talk about a few of those shared 9 services like accounting. Where is the 10 accounting provided for Narragansett? Where 11 is the center of accounting services? 12 A. I think it's in Massachusetts, but I 13 don't know the precise location. 14 Q. No. I think it is in Mass. I think it 15 might be located in Waltham. Do you know 16 how many people in Waltham provide 17 accounting services to Narragansett? 18 A. I do not. 19 Q. Okay. And it wouldn't matter, wouldn't you 20 agree, Mr. Booth, whether those -- whether 21 it's 100 people or 500 people or 5,100 22 people providing accounting services for 23 Narragansett from National Grid Services, it 24 wouldn't matter whether they were in Waltham</p>

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<p>1 or Northborough or Brooklyn or Syracuse or 2 Long Island, right? 3 A. It would not. 4 Q. That was just my -- the point I was trying 5 to make with my opening question. I was 6 probably inartful about it. My point is for 7 many of these shared receives it really 8 doesn't matter whether they're being 9 provided from Waltham or Northborough or 10 Brooklyn or Long Island or Syracuse, -- if I 11 say that again, Jo Anne is going to hit 12 me -- but the nature of those services is 13 that the location isn't important, it's the 14 quality of the services that's important. 15 A. That is correct relative to most of the 16 services that we talked about, but there are 17 many services and functions that location 18 does matter. 19 Q. Okay. And there are many where location 20 does not matter. 21 A. That's correct. 22 Q. Okay. Fair enough. Let's talk about a few 23 of the locations where -- I'm sorry. Let's 24 talk about a few of the services where</p>	<p>1 function. 2 Q. Leak survey and damage prevention would be a 3 local function? 4 A. That's correct. Even though that's gas 5 and I'm not dealing with gas, that 6 absolutely needs to be a local function. 7 Q. Okay. All right. So the opinions that you 8 gave when Ms. Hetherington was questioning 9 you, those were opinions that related only 10 to the electric system and not the gas 11 system. 12 A. That's correct. My opinions are directly 13 with the electric system. I have not really 14 given opinions on the gas system at all. 15 Q. Okay. Let's talk a little bit about the -- 16 let's leave that because that is a longer 17 topic. 18 MR. PETROS: May I just ask the 19 Hearing Officer how long he intends to go 20 tonight so I can time my next topic? 21 THE HEARING OFFICER: How much time 22 do you expect? 23 MR. PETROS: We're not going to 24 finish tonight.</p>
Page 218	Page 220
<p>1 location does matter or where it might 2 matter. Okay? 3 A. Okay. 4 Q. So let's talk about -- why don't you 5 identify -- let's go to an even more general 6 question. There are some services provided 7 that should be local in your book. 8 A. Yes. 9 Q. Okay. Do you want to identify some of 10 those? 11 A. Well, certainly. The basic line 12 construction activity, the customer service 13 extension activity, the governmental service 14 activity such as streetlights or Department 15 of Transportation re-locates, make-ready for 16 communication companies, those all need to 17 be local folks doing local work, both the 18 engineering, design and the construction 19 both for changing facilities and 20 constructing new facilities. 21 Q. Right. So in addition, customer meter 22 services would be a local function, right? 23 A. Correct. Meter reading, meter services, 24 meter replacement, that would be a local</p>	<p>1 THE HEARING OFFICER: Are you 2 suggesting that we break or do you want to 3 go another -- 4 MR. PETROS: Why don't we go until 5 4:30? I can do another ten minutes easily. 6 THE HEARING OFFICER: Okay. Let's 7 do that. 8 MR. PETROS: That was my point. I 9 just didn't want to start a long topic and 10 be caught. 11 Q. Let's just talk about transition costs. We 12 may not finish this topic in ten minutes 13 either, Mr. Booth, so I apologize in 14 advance, so let's at least get started on 15 it. Let's use the time we have. 16 You made a couple of comments when 17 you were chatting with Christy a few 18 moments, and a few times you said that with 19 respect to certain transition costs the 20 ratepayers have no protection whatsoever. 21 Do you recall that? 22 A. Yes. 23 Q. Okay. So I know you're not an attorney, but 24 I know you have a lot of regulatory</p>

<p style="text-align: right;">Page 221</p> <p>1 experience, and I have to say that we've had 2 a lot of discussion about legal issues with 3 non-lawyers here over the course of the last 4 few days as you've listened and seen, I'm 5 sure, so I'm going to try to not go over the 6 line, but let me ask you a few questions 7 about the regulatory process. So if at some 8 point -- I mean, you understand that at this 9 point in time PPL has not said it's going to 10 pursue any recovery of transition costs. 11 It's reserved the right to recover 12 transition costs in certain categories above 13 certain amounts. We're together on that, 14 right? 15 A. Well, not totally. That is what PPL 16 said, but the problem with what PPL said is 17 the statutory requirement of the ISR plan 18 and its process. There are transition costs 19 that will be capital and other items that 20 will be put into the annual ISR plan budgets 21 and they'll be recovered through the ISR 22 plan process and added to the rates. So 23 although there's all this base rate 24 discussion and things we won't recover,</p>	<p style="text-align: right;">Page 223</p> <p>1 extraordinary experience that you rarely 2 see. 3 Q. Right. And you could even say he has 4 extraordinary energy and he's very 5 protective of the ratepayers. Can we agree 6 on that, too? 7 A. I would certainly agree with that. 8 Q. Okay. And there are other advocates for 9 ratepayers on the Commission as well. Am I 10 going too far there or would you agree with 11 that as well? 12 A. I think it's a well-informed, very 13 educated, excellent Commission that tries to 14 protect the ratepayers while being just and 15 fair to the utility. 16 Q. And I'm not going to do which has been done 17 a lot this week which is ask you what the 18 standard is, but there are legal standards 19 and regulations and statutes and decisions 20 that set the standards that govern requests 21 for recovery before the Public Utility 22 Commission, correct? 23 A. That's correct. There's a whole series 24 of standards to be met and considered.</p>
<p style="text-align: right;">Page 222</p> <p>1 there are certain transition costs that will 2 include capital items that will flow through 3 the ISR plan and I just don't see how that 4 is avoidable. 5 Q. Let's talk about both aspects of that. 6 Let's start with the base rate then we'll 7 talk about the ISR. So in terms of the next 8 base rate case, to the extent that PPL seeks 9 to recover any transition costs, it would 10 need to get approval from the Public 11 Utilities Commission, correct? 12 A. That's correct. Any rate change, once 13 the retail rate case has been filed, that 14 has to be approved by the Rhode Island 15 Public Utilities Commission. 16 Q. And in terms of that Commission, which you 17 know even far better than I, the Chair of 18 that Commission has extraordinary deep 19 utility knowledge based on his work at 20 Narragansett, his work in Massachusetts in 21 the regulatory area, his work at the 22 Division and now his work at the Commission. 23 Can we agree on that? 24 A. I would agree as chairmen go he has</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. And rather than state them all here, no one 2 those standards better than the Commission 3 themselves right? 4 A. Correct. 5 Q. So let's talk about ISR now. So I don't 6 think you meant to suggest that if this 7 transaction is approved and PPL has the 8 privilege of acquiring Narragansett, that it 9 could just spend money on whatever it wanted 10 to spend money on and flow it through the 11 ISR plan and get recovery for it. You 12 weren't saying that, were you? 13 A. No, I wasn't. I was couching it in the 14 exact way the ISR works. So the capital 15 budget, certain O&amp;M items, asset condition 16 and the like are put into a proposed ISR 17 plan and that goes through a rigorous 18 assessment by the Division, there's either 19 agreement or disagreement, and it ultimately 20 goes to the Commission for approval. But 21 what I was saying, if there are components 22 that have to be duplicated that absent the 23 transition wouldn't have to be and they go 24 to safety and reliability, it would be very</p>

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1 difficult for the Division to push back on  
2 that or the Commission not to allow rate  
3 relief.  
4 Q. Just to stick with what you said in the  
5 middle, that you said it ultimately goes to  
6 the Commission for approval. So first of  
7 all, after Narragansett does a lot of work  
8 and that work is vetted by the Division and  
9 with experts like yourself, the ISR plan is  
10 presented to the Commission for review,  
11 modification and approval, right?  
12 A. Correct. And so far they've accepted the  
13 recommendation of the Division in each one  
14 of the ISR plans.  
15 Q. They often, in fact, accept your  
16 recommendations as an expert for the  
17 Division in those plans.  
18 A. I guess I've been blessed with the Rhode  
19 Island Commission. They have in most cases  
20 adopted my recommendations almost verbatim.  
21 Q. All right. And after the plan is approved,  
22 the -- Narragansett has some obligation to  
23 follow the plan, don't they?  
24 A. Yes. And there are certainly things that

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1 cause the plan to be modified, other costs  
2 to be incurred, budget numbers not to be  
3 met, things to be moved up in the schedule  
4 or back in the schedule.  
5 Q. Right. And there are also, I may put this  
6 colloquially, but there are regulatory  
7 re-openers that allow the Commission to  
8 re-examine the plan if there are changes to  
9 it, right?  
10 A. They could, and of course, we have  
11 quarterly conference calls and updates on  
12 where the plan stands from the company.  
13 It's an excellent collaborative process.  
14 Q. Right. So if the company -- if you had  
15 planned on the company spending \$10 million  
16 on X and you find out they've spent \$10  
17 million on Y which was not in the plan, the  
18 Division becomes aware of that and is able  
19 to vet that and then to the extent necessary  
20 involve the Commission in the consideration  
21 of the prudence of that deviation, correct?  
22 A. You know, I don't know how that would  
23 ultimately play out because there have been  
24 circumstances exactly like that and there's

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1 not been a prudence push back from the  
2 Division or the Commission to date.  
3 MR. PETROS: This might be a good  
4 time to break.  
5 THE HEARING OFFICER: Approximately  
6 how much more time do you have with this  
7 witness?  
8 MR. PETROS: It's going to be --  
9 THE HEARING OFFICER:  
10 Approximately.  
11 MR. PETROS: At least an hour I  
12 think, Mr. Hearing Officer.  
13 THE HEARING OFFICER: Okay. Then  
14 we'll break at this point.  
15 MR. HUMM: Mr. Hearing Officer,  
16 before we break, can I take care of one  
17 administrative matter? On Monday you asked  
18 for the parties to submit a list of filed  
19 motions for protective treatment, and I just  
20 wanted to represent that National Grid USA  
21 and Narragansett filed that this afternoon  
22 and distributed it to the parties.  
23 THE HEARING OFFICER: Thank you,  
24 Mr. Humm. I have a copy. Much appreciated.

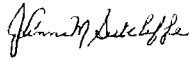
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1 MR. HUMM: Thank you.  
2 THE HEARING OFFICER: Is there  
3 anything else we need to discuss before we  
4 go off the record?  
5 MS. HETHERINGTON: No, but perhaps  
6 we can approach the Bench after.  
7 MR. PETROS: And we should thank  
8 Mr. Booth and we'll see you at 10:00  
9 tomorrow morning, Mr. Booth.  
10 THE WITNESS: See you at 10:00 in  
11 the morning. Thank you very much. Have a  
12 good evening.  
13 (ADJOURNED AT 4:31 P.M.)  
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C E R T I F I C A T E

I hereby certify that the foregoing  
is a true and accurate transcript of the  
hearing taken before the State of Rhode  
Island Division of Public Utilities and  
Carriers, John Spirito, Esq., Hearing  
Officer, on December 15, 2021, at 10:00 a.m.



JO ANNE M. SUTCLIFFE, RPR/CSR  
NOTARY PUBLIC, STATE OF RHODE ISLAND  
MY NOTARY EXPIRES ON 10/10/2024



(1) \$10 - AL

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# **EXHIBIT P**

212 A.3d 604  
Supreme Court of Rhode Island.

Kevin M. BLAIS

v.

RHODE ISLAND AIRPORT  
CORPORATION et al.

No. 2017-326-M.P. (PC 15-4893)

June 20, 2019

### Synopsis

**Background:** Plaintiff brought action for judicial review of order of Rhode Island Airport Corporation (RIAC) prohibiting him from entering airport managed and operated by RIAC, seeking injunctive and declaratory relief. The Superior Court, Providence County, Sarah Taft-Carter, Associate Justice, 2017 WL 3011485, reversed RIAC's order, but denied plaintiff's requests for declaratory and injunctive relief. RIAC petitioned for issuance of writ of certiorari, which petition was granted.

**Holdings:** The Supreme Court, Flaherty, J., held that:

[1] plaintiff's action was not moot;

[2] the RIAC's statutory authority to issue orders requiring or prohibiting certain things to be done is not limited to generally applicable matters concerning aeronautical regulation;

[3] an order issued by the RIAC's director pursuant to the statute authorizing the director to issue orders requiring or prohibiting certain things to be done is the exclusive means of permanently barring an individual from entering onto an airport in RIAC's jurisdiction;

[4] no-trespass letter prohibiting plaintiff from entering airport was not formal order in compliance with statute authorizing RIAC's director to issue orders requiring or prohibiting certain things to be done, and thus was unenforceable;

[5] letter sent to plaintiff by RIAC's director prohibiting plaintiff from entering airport was not formal order in compliance with statute authorizing director to issue orders

requiring or prohibiting certain things to be done, and thus was unenforceable; and

[6] plaintiff timely appealed RIAC's decision to ban him from airport.

Affirmed.

Robinson, J., filed opinion concurring in part and dissenting in part.

West Headnotes (14)

[1] **Administrative Law and Procedure** ⇌ Questions of law or fact in general

When the Supreme Court reviews an administrative appeal brought under the Administrative Procedures Act, its review is limited to questions of law. R.I. Gen. Laws Ann. § 42-35-1 et seq.

1 Cases that cite this headnote

[2] **Administrative Law and Procedure** ⇌ Credibility and number of witnesses

**Administrative Law and Procedure** ⇌ Weight of evidence

When the Supreme Court reviews an administrative appeal brought under the Administrative Procedures Act, the Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact. R.I. Gen. Laws Ann. § 42-35-1 et seq.

1 Cases that cite this headnote

[3] **Administrative Law and Procedure** ⇌ De novo review; plenary, free, or independent review

**Administrative Law and Procedure** ⇌ Deference to Agency in General

Although the Supreme Court affords great deference to the factual findings of an administrative agency when reviewing an administrative appeal under the Administrative Procedures Act, questions of law—including statutory interpretation—are reviewed de novo. R.I. Gen. Laws Ann. § 42-35-1 et seq.

1 Cases that cite this headnote

**[4] Statutes ⇌ Purpose and intent**

A court's ultimate goal when interpreting statutes is to give effect to the purpose of the act as intended by the Legislature.

**[5] Aviation ⇌ Mootness**

Plaintiff's action for judicial review of order of Rhode Island Airport Corporation (RIAC) prohibiting him from entering airport managed and operated by RIAC was not moot, even though RIAC had issued later order that lifted ban and allowed plaintiff to again make use of airport premises, since plaintiff had alleged, in separate actions concerning his ban, that RIAC had attempted to retain jurisdiction over controversy and had left door open to again prohibiting his use of the airport after subsequent six-month review, and thus judicial opinion on merits of controversy would have practical effect on controversy.

**[6] Action ⇌ Moot, hypothetical or abstract questions**

A case is "moot" if it raised a justiciable controversy at the time the complaint was filed, but events occurring after the filing have deprived the litigant of an ongoing stake in the controversy.

**[7] Action ⇌ Moot, hypothetical or abstract questions**

A case is "moot" if there is no continuing stake in the controversy, or if the court's judgment would fail to have any practical effect on the controversy.

**[8] Aviation ⇌ Power to control and regulate**

The Rhode Island Airport Corporation's (RIAC) statutory authority to issue orders requiring or prohibiting certain things to be done is not limited to generally applicable matters concerning aeronautical regulation. R.I. Gen. Laws Ann. § 1-4-15.

**[9] Aviation ⇌ Operation and use of facilities in general**

An order issued by the Rhode Island Airport Corporation's (RIAC) director pursuant to the statute authorizing the director to issue orders requiring or prohibiting certain things to be done is the exclusive means of permanently barring an individual from entering onto an airport in RIAC's jurisdiction. R.I. Gen. Laws Ann. § 1-4-15.

**[10] Aviation ⇌ Operation and use of facilities in general**

No-trespass letter prohibiting plaintiff from entering airport managed and operated by Rhode Island Airport Corporation (RIAC) was not formal order in compliance with statute authorizing RIAC's director to issue orders requiring or prohibiting certain things to be done, and thus was unenforceable, where letter was issued by RIAC's attorneys, was not signed by RIAC's director, and did not hold itself out as formal order by director, and letter, which was three sentences long, did not provide any statutory basis or authority for banning plaintiff from airport, failed to set forth reasons for ban, and did not state requirements that needed to be met for purposes of modifying or changing ban. R.I. Gen. Laws Ann. § 1-4-15.

**[11] Aviation ⇌ Operation and use of facilities in general**

Letter sent to plaintiff by director of Rhode Island Airport Corporation (RIAC) prohibiting plaintiff from entering airport managed and operated

by RIAC was not formal order in compliance with statute authorizing director to issue orders requiring or prohibiting certain things to be done, and thus was unenforceable, since director did not in any way “state the requirements to be met before approval is given or the...order shall be modified or changed.” R.I. Gen. Laws Ann. § 1-4-15.

- [12] **Statutes** ⇌ Judicial construction; role, authority, and duty of courts

It is not for the Supreme Court to determine whether a statute enacted by the General Assembly comports with the Court's ideas of justice, expediency or sound public policy.

- [13] **Statutes** ⇌ Plain language; plain, ordinary, common, or literal meaning

Where the General Assembly has lawfully enacted a statute whose terms are clear and unambiguous, the task of interpretation is at an end and a court will apply the plain and ordinary meaning of the words set forth in the statute.

- [14] **Aviation** ⇌ Time for proceedings

Plaintiff timely appealed Rhode Island Airport Corporation's (RIAC) decision to ban him from airport, where plaintiff brought administrative appeal from letter sent to him by RIAC's director, which RIAC characterized as a “final order,” within 30 days of its issuance, as required by the Uniform Aeronautical Regulatory Act and the Administrative Procedures Act. R.I. Gen. Laws Ann. §§ 1-4-16, 42-35-15(b).

\*607 Providence County Superior Court, Associate Justice Sarah Taft-Carter.

#### Attorneys and Law Firms

Kevin C. Cain, Esq., for Plaintiff.

Matthew C. Reeber, Esq., Patrick J. McBurney, Esq., for Defendants.

Present: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ.

#### OPINION

Justice Flaherty, for the Court.

The Rhode Island Airport Corporation (RIAC) and its director, Kelly Fredericks, seek review of a Superior Court judgment that reversed RIAC's 2015 order prohibiting the plaintiff, Kevin Blais, from entering the North Central State Airport. This matter reaches us by way of writ of certiorari in accordance with the Uniform Aeronautical Regulatory Act (UARA), G.L. 1956 chapter 4 of title 1, and the Administrative Procedures Act, G.L. 1956 chapter 35 of title 42. In this case of first impression, we are tasked with deciding whether or not RIAC is cloaked with the inherent authority to preclude an individual from entering an airport within its jurisdiction without having first issued a formal order and, if a formal order was required, whether the communications issued by RIAC purporting to bar the plaintiff from North Central State Airport complied with the procedural requirements of the UARA. For the reasons stated herein, we affirm the well reasoned decision and judgment of the Superior Court.

#### I

##### Facts and Travel

RIAC was created as, in the words of the statute, a “subsidiary public corporation” of the Rhode Island Commerce Corporation, in accordance with G.L. 1956 § 42-64-7.1(b) and (h).<sup>1</sup> See *In re Advisory Opinion to Governor*, 627 A.2d 1246, 1248 (R.I. 1993). The director of RIAC is responsible for the management and safe operation of several airports in Rhode Island, including the North Central State Airport in Smithfield (North Central). See § 1-4-9.

In 2010, Kevin Blais purchased a “gate key,” which provided him with operational access to the airfield at North Central and allowed him to store his airplane at that facility. For the next several years, Blais regularly flew his airplane from

North Central although, according to RIAC, those years were not without incident. Reports of Blais's troubling conduct plagued his tenure at North Central and, according to RIAC, prompted RIAC to direct its attorneys to send Blais a "no-trespass" letter that advised him that he was no longer welcome at North Central. That letter, dated February 14, 2014, read, in its entirety:

"This firm represents the Rhode Island Airport Corporation (the 'RIAC').

"Please be advised that you are not allowed to enter the premises of North Central State Airport. If you ignore this directive, you will be deemed a trespasser pursuant to Rhode Island General Laws Section 11-44-26 and RIAC will take appropriate legal action."

\*608 The no-trespass letter was signed by an attorney from a law firm that represented RIAC, and it did not include any additional information or attachments.

Several days after he received the no-trespass letter, Blais attended a safety seminar that was being conducted at North Central, but his presence was soon discovered by airport personnel and airport police escorted him from the airport. In connection with that incident, Blais was subsequently prosecuted for criminal trespass pursuant to G.L. 1956 § 11-44-26. Blais was convicted in the District Court and appealed to the Superior Court for a trial *de novo*. However, before the matter could be tried, the Attorney General dismissed the case.<sup>2</sup>

In May 2015, RIAC issued a Notice of Hearing concerning the February 2014 no-trespass letter. The Notice of Hearing informed Blais that a hearing would be held in June 2015 at North Central and that a hearing officer had been retained to investigate the "facts concerning the potential lifting of the No Trespass issued to Kevin Blais in connection with the North Central Airport." The hearing officer would be empowered to hear testimony and take evidence from any witnesses who wished to be heard, and he would ultimately author a report and recommendation "regarding whether the No Trespass should be lifted and, if so, under what, if any, restrictions." The Notice of Hearing made it clear that the hearing would "not proceed in the manner of a formal adversarial adjudication"; that the hearing officer's report would "not constitute a final determination of the matter"; and that "[t]he Executive Director [of RIAC] shall make such final determination following a review of the report and recommendation."

Even though Blais did not attend the hearing personally, he was represented by counsel who appeared on his behalf. In total, ten witnesses testified and were cross-examined at the hearing. Most of those witnesses testified about incidents involving Blais that had made them feel, at best, uncomfortable and, at worst, unsafe.

Frank Sherman, an eighty four year old flight instructor, testified that late one afternoon he was landing at North Central with one of his students.<sup>3</sup> Sherman said that Blais announced his intention over the radio to make a landing from the direction through which Sherman had just been flying. According to Sherman, "[t]he visibility in the area was terrible" that day and, believing Blais would have difficulty seeing the other planes in the area, Sherman "suggested to him that that wasn't a good way to come into the traffic pattern." Later, after both aircraft had landed, Blais approached Sherman and his student as they were securing their airplane. According to Sherman, "[Blais] landed and came over to me in the most belligerent, violent way that you can imagine. I was somewhat frightened. The woman that I was flying with was frightened." Sherman testified that Blais told him he was "an unfit person" and that Sherman was "trying to teach people to fly on the radio" by "using the common traffic advisory frequency in a way that should not be used[.]"

David LaChapelle claimed to have been present for the confrontation between Sherman and Blais, and, according to LaChapelle: "It wasn't a discussion. It was just yelling, screaming." LaChapelle, tempering the actual four letter word that had \*609 been used, told the hearing officer that he had heard Blais call Sherman "a fricking idiot."

Lance Eskelund testified that he also witnessed the confrontation. According to Eskelund, Blais was acting "threatening, belligerent" and "[h]e actually lunged at Frank." Eskelund testified that he believed at the time "that Frank was probably going to get punched[.]" but that Blais instead walked away when he saw Eskelund approaching.

Paul Harry Smith, the airport manager at North Central, testified about a different incident. According to Smith, in January 2013, Blais entered Smith's office at North Central, demanding to know who had deactivated his gate key. Although Smith explained that the gate key had been turned off because Blais no longer kept a plane at the airport, Smith said that the situation kept escalating. According to Smith, Blais punctuated his disturbance by telling Smith that "bad

karma is coming [Smith's] way" and that Smith "could not be that much of a fucking dick." Smith said that, because he believed Blais's foul-mouthed opprobrium to be a threat, he called the RIAC police, at which point Blais "turned around and left." John Sulyma, a pilot who flew out of North Central, said that he was in Smith's office immediately after Smith's confrontation with Blais, and that Smith had told him "[h]e felt threatened by Mr. Blais. He felt his family was threatened."<sup>4</sup>

Several more witnesses testified about other minor incidents that involved Blais. Paul Carroll, a pilot of forty years who had previously promoted safety initiatives for the Federal Aviation Administration (FAA), said that he was concerned about what he termed as Blais's "cavalier attitude." Carroll recounted a conversation that he had with Blais in which Blais had bragged about flying into the clouds. That behavior, Carroll testified, was "an extremely dangerous position for a private pilot, let alone a student pilot" such as Blais. He also related an incident in which Blais had crossed an active runway while Carroll was attempting to land his airplane, and he claimed that Blais had "accosted" him on more than one occasion. According to Carroll, Blais had told him "directly that he has a permit to carry a gun, and he wears a bulletproof vest[.]"—a comment that Carroll took to be a threat.

Kevin DiLorenzo, Blais's flight instructor, testified that he had never seen Blais acting belligerently or disrespectfully. Nevertheless, he recounted an episode in which Blais, then DiLorenzo's student, called to let DiLorenzo know that he intended to make a flight without DiLorenzo's signature in his logbook. According to DiLorenzo, the flight would not be legal without his signature, so he told Blais not to fly until DiLorenzo could drive to the airport. DiLorenzo told the hearing officer that he believed Blais would have made the flight with or without his signature in the logbook because Blais's plane was already on the ramp when DiLorenzo intercepted him, and Blais was walking to his plane with a loaded flight bag. Since that incident, DiLorenzo had refused to fly with Blais and had in fact stayed away from the airport for about four to five months—long enough for his obligation to remain as Blais's flight instructor to expire.

John Guerin and Raymond Venticinque also testified that their own interactions with Blais had been less than pleasant. Guerin reported that he had once delivered \*610 a letter to Blais while he was in his aircraft and that Blais "started wiggling out," threw the letter out from the cockpit window, and then later complained to RIAC that Guerin had "assaulted

his airplane." Venticinque testified that he thought that Blais "wants to be a pilot, but he doesn't want to do what is necessary to acquire the license and do the proper practice lessons[.]" According to Venticinque, Blais "goes against the grain" and "likes to do things his way, which obviously isn't the right way."

Edouard DeCelles, however, provided a very different view of events. DeCelles testified that "[t]here is a group of people at this airport who don't like Mr. Blais. They just keep attacking him. He has been attacked enough that he just retaliated." According to DeCelles, Blais acted in the same manner in which DeCelles himself would have acted if confronted with the same situations that Blais had faced.

The hearing officer provided his report and recommendation to the director of RIAC in September 2015. The hearing officer found that all the witnesses who testified at the hearing were credible and he noted the concern that most of them had over Blais's alleged conduct. The hearing officer reported that Blais had demonstrated that he was unwilling to follow FAA regulations and that he was "contemptuous" of his comrades' concern for their safety and that of others. He found that Blais presented "an ongoing risk to himself and fellow pilots[.]" and therefore he recommended that the ban against Blais at North Central not be lifted.

On October 8, 2015, the director of RIAC sent a letter to Blais, purporting to be a final order, which stated:

"I am writing to advise you that I have adopted the findings, conclusion and recommendations of [the hearing officer]. As such, you are directed to remain off the premises of North Central State Airport. This restriction applies only to the North Central State Airport. You may use any of the other Rhode Island Airport Corporation facilities, and may use North Central State Airport in the event of aviation emergency.

"\* \* \*

"It is my intention to review this matter within six (6) months of today's date. I will request that [the hearing officer] reconvene the hearing and would welcome your participation. You will receive notice of the location, date and time of the hearing."

The order was signed by Kelly Fredericks, the director of RIAC, and attached to it was a document entitled "Notice of Appeal Rights of Party Aggrieved by Final Order of Director." The attached document informed Blais of his right



to appeal RIAC's "final order" by the filing of a complaint in Superior Court within thirty days of the mailing of the order, in accordance with the Administrative Procedures Act.

On November 6, 2015, Blais did just that, filing a complaint in Superior Court that appealed RIAC's October 8, 2015 order, and seeking injunctive and declaratory relief. Following briefing by the parties, the trial justice concluded that, although Blais was not entitled to injunctive or declaratory relief, neither the February 14, 2014 letter nor the October 8, 2015 order constituted a valid order because each had failed to comply with the statutory mandates set forth in the UARA. Specifically, she found that the February 14, 2014 letter failed to state the reasons for the order or provide the requirements that needed to be met before the order might be modified, as required for a final order by § 1-4-15. She also concluded that, because the October 8, 2015 order purported to extend the ban imposed by the February 2014 letter, which she had found to be invalid, it \*611 followed that the 2015 order was also invalid. Accordingly, the trial justice reversed the decision of RIAC, but denied Blais's requests for declaratory and injunctive relief.

RIAC petitioned this Court for the issuance of a writ of certiorari, which petition we granted on November 27, 2017.<sup>5</sup> Additional facts will be provided as necessary to resolve the issues raised in this review.

## II

### Standard of Review

[1] [2] [3] When this Court reviews an administrative appeal brought under the Administrative Procedures Act, G.L. 1956 chapter 35 of title 42, our review is limited to questions of law. *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619, 625-26 (R.I. 2017). "This Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact." *Id.* at 626 (quoting *Tierney v. Department of Human Services*, 793 A.2d 210, 213 (R.I. 2002)). Although we afford great deference to the factual findings of the administrative agency, "questions of law—including statutory interpretation—are reviewed *de novo*." *Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008). Pursuant

to § 42-35-15(g), when reviewing an administrative appeal, this Court may:

"affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- "(1) In violation of constitutional or statutory provisions;
- "(2) In excess of the statutory authority of the agency;
- "(3) Made upon unlawful procedure;
- "(4) Affected by other error or law;
- "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

[4] We note that our "ultimate goal" when interpreting statutes "is to give effect to the purpose of the act as intended by the Legislature." *Providence Journal Company v. Rhode Island Department of Public Safety ex rel. Kilmartin*, 136 A.3d 1168, 1173 (R.I. 2016) (quoting *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). In doing so, we look to the text of a statute because "it is well settled that the plain statutory language is the best indicator of the General Assembly's intent." *Twenty Eleven, LLC v. Botelho*, 127 A.3d 897, 900 (R.I. 2015) (brackets omitted) (quoting *Zambarano v. Retirement Board of Employees' Retirement System of State*, 61 A.3d 432, 436 (R.I. 2013)).

## III

### Discussion

Before this Court, RIAC argues that it has the authority to ban an individual from \*612 any one of its airports without issuing a formal order if that individual poses a threat to airport safety or operations. In the alternative, RIAC argues that either the no-trespass letter issued by RIAC's attorneys on February 14, 2014 or the order issued by RIAC's director on October 8, 2015 may be considered a valid final order that complies with all statutory requirements. Finally, RIAC asserts that Blais's administrative appeal is time barred

because Blais never appealed from the no-trespass letter issued in 2014.

A

### Mootness

[5] Before addressing the merits of this review, we first address the threshold issue of mootness. During oral argument in this case, the parties represented that, subsequent to the appeal of the 2015 order that is the subject of this review, RIAC issued a later order that lifted the ban and allowed Blais to again make use of the premises at North Central, and that order had itself become the subject of ongoing litigation in other courts. To address potential mootness concerns raised by these representations, we issued a post-hearing order on April 4, 2019, directing the parties “to advise this Court, within five days of the date of this order, of any action pending in any other court that might directly or indirectly relate to this appeal, including the relief sought in those cases.” Pursuant to that order, the parties submitted complaints filed by Blais in two separate actions: a 2016 administrative appeal in Superior Court, No. KC-2016-0724, and a 2017 civil action in the United States District Court for the District of Rhode Island, No. 1:17-cv-00075-S-LDA.

[6] [7] We previously have said that “[a]s a general rule we only consider cases involving issues in dispute; we shall not address moot, abstract, academic, or hypothetical questions.” *Morris v. D’Amario*, 416 A.2d 137, 139 (R.I. 1980). “[A] case is moot if it raised a justiciable controversy at the time the complaint was filed, but events occurring after the filing have deprived the litigant of an ongoing stake in the controversy.” *City of Cranston v. Rhode Island Laborers’ District Council, Local 1033*, 960 A.2d 529, 533 (R.I. 2008) (quoting *Seibert v. Clark*, 619 A.2d 1108, 1110 (R.I. 1993)). In other words, “[a] case is moot if there is no continuing stake in the controversy, or if the court’s judgment would fail to have any practical effect on the controversy.” *Boyer v. Bedrosian*, 57 A.3d 259, 272 (R.I. 2012).

At first blush, RIAC’s subsequent order allowing Blais to reenter North Central would seem to render our review of Blais’s original administrative appeal moot, because RIAC is no longer preventing Blais from entering North Central. However, in each of the two complaints that were supplied to this Court in response to our April 4, 2019 order, Blais alleged that, while the case presently before this Court was

pending, a second hearing was held by RIAC and that a hearing officer had recommended that “it is time that the ‘No Trespass’ order be removed – **but** his [Kevin Blais] status be reviewed again in six months.” (Emphasis in original.) Both of those complaints concern a final order—which has not been transmitted to this Court as part of the record below and which is not currently before this Court for review—issued by the interim director of RIAC, Peter Frazier, on June 23, 2016, and which allegedly adopted the hearing officer’s report and recommendation.<sup>6</sup>

\*613 In those complaints, Blais alleges that, although RIAC has again allowed him to use North Central, the agency has also attempted to retain jurisdiction over the present controversy and that it has left the door open to again prohibiting his use of the airport after a subsequent six-month review. If Blais’s allegations in those complaints are true, then his continued use of the airport remains subject to review by RIAC’s director, and his status has in fact not returned to the status quo that existed before the 2014 no-trespass letter or the 2015 order were issued. Thus, our opinion on the merits of this appeal would indeed have a “practical effect on the controversy” currently on review and, therefore, the case before us at present is not moot. *Boyer*, 57 A.3d at 272. Accordingly, we shall proceed to consider the merits of RIAC’s arguments on review.<sup>7</sup>

B

### G.L. 1956 § 1-4-15

This case turns on our interpretation of the powers granted to RIAC under the UARA and, more specifically, the agency’s power to issue orders “requiring or prohibiting certain things to be done” pursuant to § 1-4-15. That statute provides, in relevant part:

“In any case where the director, pursuant to this chapter, issues any order requiring or prohibiting certain things to be done, the director shall set forth his or her reasons for the order and state the requirements to be met before approval is given or the rule, regulation, or order shall be modified or changed.” Section 1-4-15.

Blais argued below, and the trial justice agreed, that RIAC is required to issue a formal order in accordance with § 1-4-15 to validly prohibit Blais from entering North Central. RIAC

disagrees; it argues to this Court that control over entry onto its airports should more plausibly be considered a necessary function of its overarching responsibility to supervise and operate the state's airports and that RIAC therefore was acting within its authority when it directed its attorneys to issue the no-trespass letter prohibiting Blais from entering North Central. That argument is two-fold. First, RIAC argues that § 1-4-15 authorizes RIAC to issue only generally applicable orders in relation to its broader authority vis-à-vis aeronautical regulation, and that its control over ingress to and egress from its airports flows from the “penumbra” of powers implicit in its “supervision over aeronautics within the state, including: \* \* \* [t]he \* \* \* operation, and use of airports[.]”<sup>8</sup> Section 1-4-9(a)(1). Second, RIAC argues that compliance with the procedural requirements in § 1-4-15 and other sections of the UARA, discussed *infra*, would severely hinder its ability to \*614 react to time-sensitive threats to airport security and operations.<sup>9</sup> Neither of these arguments is persuasive.

[8] First, we discern no support, in the UARA or elsewhere, for RIAC's argument that its authority to issue orders is limited to generally applicable aeronautical regulation. Aside from § 1-4-15, which governs “any order requiring or prohibiting certain things to be done,” RIAC's authority to issue orders is mentioned in two other sections of the UARA: Sections 1-4-10 and 1-4-11.<sup>10</sup> Neither of those sections, either explicitly or implicitly, prevents RIAC from issuing orders that lie outside the realm of generally applicable aeronautical regulation. Section 1-4-10 requires RIAC's “orders governing aeronautics” to be “kept in conformity as nearly as may be with the federal legislation, rules, regulations, and orders on aeronautics,” but does not prevent RIAC from issuing orders relating to other matters within its jurisdiction, such as the “safe and efficient operation of airports, airport facilities, and grounds.” General Laws 1956 § 1-2-1(a). On the other hand, § 1-4-11, which relates to the acceptable methods of publicizing orders, plainly contemplates the issuance of orders “applying only to a particular person or persons[.]” Section 1-4-11(b). Moreover, although we agree that the normal incidents of operating and supervising the airports in this state, pursuant to § 1-4-9, may be accomplished without resort to a multitude of formal orders, we do not believe that the indefinite ban RIAC has purportedly imposed here can be plausibly classified as a normal incident of operation. Consequently, we conclude that RIAC's authority to issue orders “requiring or prohibiting certain things to be done,” § 1-4-15, is not limited to generally applicable matters concerning aeronautical regulation.

We are similarly unpersuaded by RIAC's argument that the procedural requirements attendant to a formal order would hamstring its efforts to protect the safe and secure operation of its airports. Indeed, RIAC has unquestionable “authority to make arrests for violation of the statutes, laws, rules, and regulations relating to aviation and airport security matters[.]” Section 1-4-14(b). That authority no doubt includes the lesser authority to temporarily eject persons from any airport, without issuing a formal order, for behavior that poses an immediate disturbance or pressing threat.<sup>11</sup> *Id.*; see *Perrotti v. Solomon*, 657 A.2d 1045, 1048 (R.I. 1995) (holding that the state retirement board's enabling legislation, which endowed the board with the authority to “administer” and “operate” the retirement system, provided “sufficiently broad” authority to decide matters not explicitly provided for elsewhere in the statute).

However, it is significant that RIAC has not alleged that Blais violated any law or regulation, and, even though RIAC characterizes Blais's behavior as a threat to airport safety, it does not advance any argument that any potential menace was \*615 pressing or time-sensitive to the extent that might justify circumventing the procedural requirements the General Assembly has imposed on the issuance of a formal order.<sup>12</sup>

[9] In short, we conclude that RIAC's authority to issue orders “requiring or prohibiting certain things to be done” pursuant to § 1-4-15 is not limited to generally applicable aeronautics regulation. Thus, it is our opinion that an order issued by RIAC's director pursuant to § 1-4-15 is the exclusive means of permanently barring an individual from entering onto an airport in RIAC's jurisdiction.<sup>13</sup> We therefore reject RIAC's argument that it may bar an individual from an airport in its jurisdiction by means of a no-trespass letter issued through counsel.

## C

### Formal Order

Having determined that RIAC may permanently prohibit an individual from entering its airports only by issuing a formal order, we now turn our attention to an examination of the communications RIAC sent to Blais to determine whether any of them might plausibly be considered a formal order and whether either the communication of February

2014 or of October 2015 complied with the procedural requirements of § 1-4-15. First, however, we must describe the procedural requirements that must be met before a formal order prohibiting Blais's access to North Central may be enforced.

Section 1-4-15 provides that RIAC's director may issue an order "requiring or prohibiting certain things to be done[.]" However, § 1-4-15 also provides that, before such orders may be enforced, "the director shall set forth his or her reasons for the order and state the requirements to be met before approval is given or the rule, regulation, or order shall be modified or changed." Additional procedural requirements are found elsewhere in the UARA. Section 1-4-11(b) provides that "[e]very order applying only to a particular person or persons named in it shall be mailed to, or served upon, that person or persons" and § 1-4-11(c) requires that all orders "adopted by the director shall be kept on file with the secretary of state."<sup>14</sup> \*616 To summarize, RIAC's director may issue an order "applying only to a particular person or persons," § 1-4-11(b), which "require[s] or prohibit[s] certain things to be done," § 1-4-15, if the following procedural requirements are met: (1) that the order "be mailed to, or served upon, that person or persons," § 1-4-11(b); (2) that it "be kept on file with the secretary of state," § 1-4-11(c); (3) that the director "set forth his or her reasons for the order," § 1-4-15; and (4) that the director "state the requirements to be met before approval is given or the \* \* \* order shall be modified or changed," § 1-4-15.

RIAC issued, or caused to be issued, two communications that would have prevented Blais from entering North Central, if either or both were found to be a formal order that was in compliance with the procedural requirements just mentioned—the original no-trespass letter issued by RIAC's attorneys on February 14, 2014, and the director's order of October 8, 2015, which adopted the hearing officer's recommendation that RIAC not lift the ban purportedly imposed by the 2014 no-trespass letter.

[10] The trial justice found that the 2014 no-trespass letter was not enforceable because it failed to set forth the reasons for the order and further that it "did not state the requirements that needed to be met for purposes of modifying or changing the purported ban[.]" We completely agree, and add that the three sentence letter was not signed by RIAC's director, did not provide any statutory basis or authority for banning Blais from North Central, and did not hold itself out as a formal order of RIAC's director.

[11] The October 8, 2015 order demands a different analysis.<sup>15</sup> The trial justice concluded that the October 2015 order was invalid because it merely purported to extend a ban established by the 2014 no-trespass letter, which the trial justice also had found to be invalid. Although we agree with the reasoning of the trial justice that RIAC could not extend a ban that was not valid in the first place, we believe the 2015 order might also be viewed as an independent source of the prohibition on Blais's entry onto North Central because that order "directed [Blais] to remain off the premises of North Central State Airport."

Nevertheless, even were we to assume that the 2015 order is an independent source of the ban, it could not be enforced because it also did not comply with the procedural requirements of the UARA. By stating in the order that the director had "adopted the findings, conclusion and recommendations of [the hearing officer,]" RIAC's director arguably "set forth his or her reasons for the order," § 1-4-15, by incorporating the hearing officer's report and recommendation by reference.<sup>16</sup> We \*617 need not decide whether such incorporation was permissible, however, because the director did not in any way "state the requirements to be met before approval is given or the \* \* \* order shall be modified or changed." Section 1-4-15. This, in our opinion, is a fatal flaw.

RIAC argues that § 1-4-15 merely requires the director to state the "requirements to be met" in situations where RIAC would need approval from some other entity before modifying or changing an order. We disagree. The relevant language of § 1-4-15 provides that "[i]n any case where the director, pursuant to this chapter, issues any order requiring or prohibiting certain things to be done, the director shall \* \* \* state the requirements to be met before approval is given or the rule, regulation, or order shall be modified or changed." The statute clearly provides that the director *shall* provide the requirements to be met "in any case" where the director issues "any order" that requires or prohibits certain things to be done.

[12] [13] We are similarly unmoved by RIAC's urging that "requiring RIAC to forecast what conditions would enable it to lift the ban is impractical[.]" as such a requirement "presupposes that such conditions could be identified" in the first place. However, even if such forecasting is impractical or difficult, it is what the statute requires. As we have said recently, "[i]t is not for this Court to determine whether a statute enacted by the General Assembly 'comports with our

own ideas of justice, expediency or sound public policy.’ ” *State v. LeFebvre*, 198 A.3d 521, 527 (R.I. 2019) (brackets omitted) (quoting *State v. DiStefano*, 764 A.2d 1156, 1160 (R.I. 2000)). This is so because “[w]here the General Assembly has lawfully enacted a statute whose terms are clear and unambiguous, ‘the task of interpretation is at an end and this Court will apply the plain and ordinary meaning of the words set forth in the statute.’ ” *Id.* at 527-28 (brackets omitted) (quoting *State v. Marsich*, 10 A.3d 435, 440 (R.I. 2010)).

We conclude, therefore, that neither the 2014 no-trespass letter nor the 2015 order constituted a valid formal order because neither complied with the UARA's procedural requirements for an order “requiring or prohibiting certain things to be done.” Section 1-4-15.

## D

### The Timely Appeal

[14] We are similarly unconvinced by RIAC's argument that Blais failed to timely appeal RIAC's decision to ban him from North Central because Blais “*never* appealed the February 2014 letter.” The UARA provides that anyone aggrieved by an order issued by RIAC may obtain judicial review under the provisions of the Administrative Procedures Act. *See* § 1-4-16. Under the Administrative Procedures Act, a complaint must be filed in Superior Court “within thirty (30) days after mailing \*618 notice of the final decision of the agency[.]” Section 42-35-15(b).

Unfortunately, RIAC's focus on the 2014 no-trespass letter is misplaced. We agree with the trial justice that the 2014 letter was not a final order. Blais did, however, bring an administrative appeal from the 2015 order, characterized by the agency as a “final order,” within thirty days of its issuance. We thus brush aside RIAC's argument on this issue and easily conclude that Blais's administrative appeal was timely made.

Therefore, having concluded that Blais's administrative appeal was timely made and that a formal order is the exclusive means by which RIAC may permanently prohibit an individual's entry onto any airport in its jurisdiction, and after further concluding that neither the 2014 no-trespass letter nor the 2015 order complied with the procedural requirements of an order “requiring or prohibiting certain things to be done[.]” it is the opinion of this Court that

the judgment of the Superior Court reversing RIAC's order banning Blais from North Central was correct.

## IV

### Conclusion

For the reasons stated herein, the judgment of the Superior Court is affirmed. The papers in this case are remanded to the Superior Court with our decision endorsed thereon.

Justice Robinson, dissenting in part and concurring in part. I respectfully, but very vigorously, dissent from the majority opinion's analysis and conclusion with respect to mootness in this challenging case. Contrary to the determination of the majority, it is my opinion that this case is absolutely moot and that we as a Court should not issue what amounts to an advisory opinion. In my judgment, the presence of mootness should end our consideration of this case.

However, given that the majority has chosen to delve into the merits of the case, I likewise feel obliged to comment on some of the substantive aspects of the Court's opinion—without, however, retreating from my position that the appeal is moot and that this Court should not so very unnecessarily be sailing into uncharted and potentially hazardous waters. I am able to concur in the majority's holding that “an order issued by [the Rhode Island Airport Corporation's (RIAC) ] director pursuant to [G.L. 1956] § 1-4-15 is the exclusive means of *permanently* barring an individual from entering onto an airport in RIAC's jurisdiction.” (Emphasis added.) But, while I concur in that holding, I wish with all due respect to emphatically state my opinion that the director of RIAC (or his or her delegate) has the authority to *temporarily* bar an individual from airport property without having to issue a formal order pursuant to § 1-4-15.

## A

### Mootness

I begin by addressing the issue of mootness. “As a general rule, the Supreme Court will only consider cases involving issues in dispute; [it] shall not address moot, abstract, academic, or hypothetical questions.” *Campbell v. Tiverton*

*Zoning Board*, 15 A.3d 1015, 1022 (R.I. 2011) (internal quotation marks omitted). This Court has held that “a case is moot if the original complaint raised a justiciable controversy, but events occurring after the filing have deprived the litigant of a continuing stake in the controversy.” *Hallsmith-Sysco Food Services, LLC v. Marques*, 970 A.2d 1211, 1213 (R.I. 2009) (internal quotation \*619 marks omitted); *see also Boyer v. Bedrosian*, 57 A.3d 259, 272 (R.I. 2012). In this case, it was represented at oral argument before this Court that RIAC has issued an order lifting the ban on Mr. Blais’s access to the North Central State Airport. In my judgment, that simply ends the inquiry. There is no relief that we are able to afford Mr. Blais at this time. *See Hallsmith-Sysco Food Services, LLC*, 970 A.2d at 1213 (“This Court will not decide a question if it would fail to have a practical effect on an actual controversy.”); *see also H.V. Collins Co. v. Williams*, 990 A.2d 845, 847 (R.I. 2010) (“It is well settled that a necessary predicate to this Court’s exercise of jurisdiction is an actual, justiciable controversy.”); *Cicilline v. Almond*, 809 A.2d 1101, 1106 (R.I. 2002) (stating that the Court will not adjudicate a moot case because “whenever a court acts without the presence of a justiciable case or controversy, its judicial power to do so is at its weakest ebb”) (internal quotation marks omitted). This appeal should simply be dismissed as moot. I consider it to be unwise and inconsistent with this Court’s traditional jurisprudence to venture where it is not necessary to go.

I am not in the least persuaded by the majority’s reference to the complaints pending in the Rhode Island Superior Court and the United States District Court for the District of Rhode Island, which reference is accompanied by the unstated assumption that the mere pendency of those cases in other courts somehow renders this case something other than moot. It is clear to me that the mere existence of those other cases does not transmogrify this case into a justiciable controversy. *See H.V. Collins Co.*, 990 A.2d at 847. What is more, the majority bases its mootness decision on the purported existence of an order which allegedly stated that Mr. Blais’s status would be reviewed by RIAC in six months from the issuance of that purported order; but the majority candidly acknowledges that *we have no such order in the record before us in this case*. I cannot countenance arriving at a determination that the case is not moot on the basis of mere speculation, based on complaints filed in other courts and a purported order that is not part of the record. The reality of the situation with which we are presented is that, based on the record that is actually before us, there is no actual case or controversy on which a decision of this Court could have

a practical effect. *See Hallsmith-Sysco Food Services, LLC*, 970 A.2d at 1213; *see also H.V. Collins Co.*, 990 A.2d at 847; *City of Cranston v. Rhode Island Laborers’ District Council, Local 1033*, 960 A.2d 529, 533 (R.I. 2008). Consequently, I am of the unshakable opinion that, if this case is not moot, I simply do not know what case would be.<sup>1</sup> While my respect for the author of the majority opinion and for the Court is real, I fear that a major mistake is being made by not simply stopping at the mootness inquiry. To my mind, there is great wisdom in the frequently quoted remark of Shakespeare’s \*620 Falstaff: “The better part of valor is discretion \* \* \*.” William Shakespeare, *The First Part of King Henry the Fourth*, act 5, sc. 4.

## B

### The Merits

Although I feel very strongly that the determination of mootness should end this Court’s consideration of this case, I feel duty-bound to express my thoughts with respect to the remaining substance of the majority opinion. After considerable reflection,<sup>2</sup> I ultimately agree with the majority’s holding that “an order issued by RIAC’s director pursuant to § 1-4-15 is the exclusive means of *permanently* barring an individual from entering onto an airport in RIAC’s jurisdiction.”<sup>3</sup> (Emphasis added.) However, I wish to clearly state that I am of the definite opinion that the director of RIAC (or his or her delegate) undoubtedly has the authority to *temporarily* bar an individual from an airport (or indeed all airports) under the director’s jurisdiction without issuing a formal order pursuant to § 1-4-15. Any ruling to the contrary would be, in my opinion, a serious threat to airport security in this state.

In spite of my agreement with what I understand to be the holding of the majority as to the permanent barring of individuals, I feel compelled to express my view relative to the following sentence in the majority opinion which I find troubling:

“We therefore reject RIAC’s argument that it may bar an individual from an airport in its jurisdiction by means of a no-trespass letter issued through counsel.”

To begin, this sentence seems to me to create some confusion, in spite of what the majority says elsewhere in its opinion, as to the issue of whether or not the director has the power

to temporarily bar individuals from airports in this state by issuing a no-trespass letter. I acknowledge that the letters at issue in this case involved a permanent barring of Mr. Blais, but the issue of the scope of the director's power in this area is important enough that I feel compelled to make my view known.

The RIAC director, by statute, is tasked with the supervision of the airports of this state, including the “operation[ ] and use” \*621 of those airports. General Laws 1956 §§ 1-2-1(a); 1-4-9(a)(1). The director is further charged with promulgating rules and regulations “for the safe and efficient operation of airports, airport facilities, and grounds.” Section 1-2-1(a). The General Assembly has further specifically granted RIAC “jurisdiction” over the airports in this state, and it has expressly indicated that it “recognizes that the safe and efficient operation of the airports and airport facilities is of paramount importance to the citizens of the state of Rhode Island.” Section 1-2-7.1(a).

In addition, I would also note that the General Assembly has stated that the RIAC director “shall adopt and promulgate, and may amend or repeal, rules and regulations establishing minimum standards with which all air navigation facilities \* \* \* must comply, and shall adopt and enforce, and may amend or repeal rules, regulations, and orders, to safeguard from accident and to protect the safety of persons operating or using aircraft and persons and property on the ground \* \* \*.” Section 1-4-10. The director also “has the power to conduct investigations, inquiries, and hearings concerning matters covered by the provisions of this chapter and accidents or injuries incident to the operation of aircraft occurring within” Rhode Island. Section 1-4-12.

In my opinion these statutes represent a broad statutory authority granted to RIAC and its director to govern the airports of this state. Any argument that a *temporary* barring of an individual from an airport in this state for good cause must be done by formal order and, therefore, must meet all of the statutory requirements discussed in Part III.C of the majority opinion would be misguided; it would be, at best, an instance of putting form over substance. *See generally New Harbor Village, LLC v. Town of New Shoreham Zoning Board of Review*, 894 A.2d 901, 905 (R.I. 2006) (declining to put form over substance and citing other cases similarly declining to do so). In my view, it is absolutely imperative that the director, as a result of the broad statutory authority granted to

him or her, have the authority to deal with dangerous and time-sensitive security or general welfare issues of a developing nature without engaging in an administrative process that could be characterized as cumbersome. *See Peak v. United States*, 353 U.S. 43, 46, 77 S.Ct. 613, 1 L.Ed.2d 631 (1957) (“That seems to us to be the common sense of the matter; and common sense often makes good law.”). In my opinion, the director's statutory authority is sufficiently broad to encompass such a situation. *See Perrotti v. Solomon*, 657 A.2d 1045, 1048 (R.I. 1995) (holding that the enabling legislation for the state's retirement board was “sufficiently broad so as to include the retirement board's administrative authority to determine pension eligibility” even when that authority was not specifically mentioned in the statute); *Cardenas v. Cardenas*, 478 A.2d 968, 970 (R.I. 1984) (holding that the Family Court's “grant of power by [G.L. 1956] § 8-10-3 [was] sufficiently broad to include the issuing of a restraining order against a third person in order to reach and apply an asset in the hands of that third person in implementation of an order for support”). As such, it is my belief that the statutory scheme with which we are now confronted certainly provides the RIAC director with the authority to temporarily eject or bar someone from an airport under his or her supervision by use of a no-trespass order. I am, however, able to agree with what I understand the holding in the majority opinion to be—*i.e.*, that, in order to *permanently* bar someone from an airport that is under the director's supervision, the director must issue a formal order pursuant to § 1-4-15, which order \*622 must then comply with the relevant statutory requirements.

## C

### Conclusion

Accordingly, I must record my respectful, but very vigorous, dissent from the opinion of the majority with respect to the issue of mootness. I concur in the remaining portions of the majority opinion—except that I believe that the director's authority to temporarily bar an individual from a state airport is worthy of additional emphasis.

### All Citations

212 A.3d 604

Footnotes

- 1 When RIAC was created, the Rhode Island Commerce Corporation was known as the Rhode Island Port Authority and Economic Development Corporation. See G.L. 1956 § 42-64-1.1.
- 2 We note that the criminal proceedings are of no particular relevance to the case currently before this Court, and we relay the incident solely for the sake of narrative cohesion.
- 3 It was later clarified that this incident occurred in August 2013.
- 4 Sulyma also testified that he was the sponsor of the safety seminar from which police had escorted Blais in early 2014. According to Sulyma, Blais had cooperated with police, but seemed “dumbfounded” at having been forced to leave.
- 5 The UARA provides that “[a]ny person against whom an order is entered may obtain a judicial review of that order under the provisions of chapter 35 of title 42.” General Laws 1956 § 1-4-16. Accordingly, pursuant to G.L. 1956 § 42-35-15.1(a), anyone aggrieved by a final order of RIAC’s director may seek review of that order by filing a complaint in Superior Court. Litigants may seek further review of a Superior Court judgment in an administrative appeal by petitioning this Court for a writ of certiorari within twenty days of the date that judgment was entered. Sections 42-35-15.1(b) and 42-35-16.
- 6 The complaints that were provided to us pursuant to our order of April 4, 2019 do not explain what occurred after the expiration of that six-month review, or in the years since.
- 7 Even if we were to hold this case to be moot, it may well have fallen into an exception to the mootness doctrine. See *Boyer v. Bedrosian*, 57 A.3d 259, 281 (R.I. 2012) (explaining that this Court will review otherwise moot issues if “the issues are of extreme public importance, which are capable of repetition but which evade review”) (quoting *Campbell v. Tiverton Zoning Board*, 15 A.3d 1015, 1022 (R.I. 2011)).
- 8 RIAC’s authority to supervise and operate the various airport facilities in Rhode Island cannot be disputed. RIAC’s authority in this area is reinforced by G.L. 1956 § 1-2-1(a), which provides that “[t]he director [of RIAC] has supervision over the state airport at Warwick and any other airports constructed or operated by the state[.]” and § 1-2-7.1(a), which recognizes that RIAC “has jurisdiction over the state airports and airport facilities, and the general assembly recognizes that the safe and efficient operation of the airports and airport facilities is of paramount importance to the citizens of the state of Rhode Island.”
- 9 RIAC also briefly argues that § 1-4-15 does not apply because “[t]he February 14 Letter generally prohibited Blais from entering North Central; it did not ‘prohibit **certain things** to be done.’ ” We see utterly no merit in this argument. By purportedly prohibiting Blais from entering North Central, RIAC has attempted to set forth a “thing” which may no longer “be done” by Blais—namely, entering North Central. Section 1-4-15 therefore clearly applies.
- 10 The ability to appeal from orders of RIAC’s director, and issues related to such appeals, is also mentioned in §§ 1-4-16, 1-4-18, and 1-4-19.
- 11 In addition, there is nothing in the statutory framework that would prohibit RIAC from seeking injunctive relief in the Superior Court in appropriate circumstances.
- 12 What is more, if RIAC was truly convinced that Blais’s behavior was a time-sensitive threat to security warranting circumvention of the UARA’s procedural requirements, it is difficult to understand why, in its 2015 order prohibiting Blais from entering North Central, RIAC expressly allowed Blais to “use any of the other Rhode Island Airport Corporation facilities[.]”
- 13 Blais argues that a litany of constitutional concerns is raised by orders prohibiting individuals from entering onto public airports. The trial justice did not reach those issues and, because we affirm the judgment of the Superior Court on statutory grounds, we need not, and shall not, consider Blais’s constitutional concerns. See *In re Brown*, 903 A.2d 147, 151 (R.I. 2006) (“Neither this Court nor the Superior Court should decide constitutional issues unless it is absolutely necessary to do so.”).
- 14 RIAC contends that any formal order it issued would also need to meet the requirements of § 1-4-11(a), which provides: “Every general rule, regulation, and order of the director shall be posted for public inspection in the main aeronautics office of the director at least five (5) days before it becomes effective, and shall be given any further publicity, by advertisement in a newspaper or otherwise, as the director deems advisable.”  
RIAC argues that such a posting requirement would render impractical, and potentially unsafe, any attempt to prohibit a dangerous person’s entry onto the premises of an airport by way of a formal order. We disagree. Section 1-4-11(a), by its terms, applies to “[e]very *general* rule, regulation, and order[.]” (Emphasis added.) In contrast, § 1-4-11(b) governs “[e]very order applying only to a particular person or persons[.]” We conclude that, by including the word “general” in § 1-4-11(a), the General Assembly intended the posting requirement to apply only to generally applicable rules, regulations, and



orders and not to personal orders that apply only to particular persons and for which § 1-4-11(b) governs the applicable notice requirements.

15 Unlike the 2014 no-trespass letter, the 2015 order had several hallmarks of a formal order. It was signed by Kelly Fredericks, the director of RIAC, was mailed to Blais's home address in compliance with § 1-4-11(b), and included a notice of Blais's right to appeal, which referred to the communication as a "final order."

16 Blais argued before the hearing officer, and implied in his brief to this Court, that the administrative hearing held in June 2015 was not authorized by law because "[t]he Notice of Hearing did not comply with Rhode Island open meeting notice requirements set forth in R.I. Gen. Laws § 42-46-6." He seems to argue that his opportunity to cross-examine the witnesses at the hearing belied the purported nature of the hearing as an "open meeting/public hearing." Blais also takes issue with the location of the hearing, as it was "at the one and only location, North Central State Airport, where RIAC had purportedly banned [him] from accessing." Despite those clamorous protests, Blais does not identify for our review a single requirement that was not met, nor error that was made, in arranging or holding the June 2015 hearing, and he cites no caselaw in support of his apparent dissatisfaction with the hearing process. Because we affirm the decision of the Superior Court, we need not and do not consider Blais's undeveloped argument regarding the propriety of the Notice of Hearing or the June 2015 hearing itself. We do observe, however, that the UARA gives the director of RIAC "the power to conduct investigations, inquiries, and hearings concerning matters covered by the provisions of [the UARA] and accidents or injuries incident to the operation of aircraft occurring within this state." Section 1-4-12.

1 I acknowledge that this Court has recognized that "[o]ne narrow exception to the mootness doctrine exists for those cases that are of extreme public importance, which are capable of repetition but which evade review." *Hallsmith-Sysco Food Services, LLC v. Marques*, 970 A.2d 1211, 1214 (R.I. 2009) (internal quotation marks omitted). "For a matter to be deemed of extreme public importance, it will usually implicate important constitutional rights, matters concerning a person's livelihood, or matters concerning citizen voting rights." *City of Cranston v. Rhode Island Laborers' District Council, Local 1033*, 960 A.2d 529, 533-34 (R.I. 2008) (internal quotation marks omitted). In my opinion, the invocation of the exception would not be appropriate in this case since we are not confronted with an issue of extreme public importance as defined in our case law.

2 I wish to emphasize that, while I now intellectually assent to the majority's interpretation of the statutory scheme at issue, I did not reach that conclusion because the answer was self-evident or immediately clear to me. In view of the absence of controlling precedent and bearing in mind the historical reality of the need for safety and security in our airports, it was only with difficulty that I acceded to the majority's reasoning. I do not believe that we should elevate administrative formalism over the need to protect the health and safety of those who use our airports.

For the same reason, I do not entirely fault the director for the remedial action that he took vis-à-vis Mr. Blais, even if he did not use the correct means in so doing. (The majority opinion nicely narrates the troubling provocations that resulted in the decision to ban Mr. Blais from the North Central State Airport.) Notably, the director lacked the legal guidance that today's majority opinion provides; and, although I concur in the majority's judgment with respect to the action that he took in response to those provocations, I would caution against being too quick to judge him too harshly in a Monday morning quarterbacking fashion. Due process is an important value, but it is not the only important value; there is wisdom in the ancient maxim, *salus populi suprema lex*. (The well-being of the citizenry is the highest law.) See *Beer Co. v. Massachusetts*, 97 U.S. 25, 33, 24 L.Ed. 989 (1877).

3 I deem it worth noting that I also concur in the conclusion reached by the majority in Part III.C of its opinion that the communications at issue sent to Mr. Blais did not constitute valid formal orders because they did not comply with the dictates of G.L. 1956 § 1-4-15 and other relevant statutory sections.

# **EXHIBIT Q**

136 A.3d 1168  
Supreme Court of Rhode Island.

The PROVIDENCE  
JOURNAL COMPANY et al.

v.

The RHODE ISLAND DEPARTMENT  
OF PUBLIC SAFETY, by and through  
Peter KILMARTIN, Attorney General et al.

No. 2014-182-Appeal.

April 11, 2016.

**Synopsis**

**Background:** Newspaper requested copies of state police reports relating to an investigation of then-governor's son's violation of Social Host Law. Following denial of the request, newspaper filed a complaint alleging violations of Access to Public Records Act. Parties filed cross-motions for summary judgment. The Superior Court, Providence County, William E. Carnes, Jr., J., granted summary judgment in favor of government and denied that of the newspaper. Newspaper appealed.

**[Holding:]** The Supreme Court, Indeglia, J., held that son's privacy interest outweighed public interest in disclosure.

Affirmed.

West Headnotes (12)

- [1] **Appeal and Error** ⇌ Review using standard applied below

The Supreme Court reviews the grant of a motion for summary judgment de novo, applying the same standards and rules as did the motion justice.

2 Cases that cite this headnote

- [2] **Judgment** ⇌ Presumptions and burden of proof

On a motion for summary judgment, the evidence is viewed in the light most favorable to the nonmoving party.

2 Cases that cite this headnote

- [3] **Judgment** ⇌ Existence or non-existence of fact issue

Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law.

2 Cases that cite this headnote

- [4] **Appeal and Error** ⇌ Statutory or legislative law

The Supreme Court conducts a de novo review of a trial justice's ruling concerning the interpretation of a statute.

- [5] **Statutes** ⇌ Purpose and intent

In matters of statutory interpretation, the Supreme Court's ultimate goal is to give effect to the purpose of the act as intended by the Legislature.

1 Cases that cite this headnote

- [6] **Statutes** ⇌ Plain language; plain, ordinary, common, or literal meaning

**Statutes** ⇌ Relation to plain, literal, or clear meaning; ambiguity

When the language of a statute is clear and unambiguous, the Supreme Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings; in so doing, however, the Supreme Court will not construe a statute to reach an absurd result.

[7] **Statutes** ⇌ Purpose

A statute may not be construed in a way that would defeat the underlying purpose of the enactment.

[8] **Records** ⇌ Discretion and balancing of interests in general

**Records** ⇌ Questions of law or fact

**Records** ⇌ Presumptions and burdens on further review

A trial justice's determination in balancing the public interest in disclosure under Access to Public Records Act against the privacy interests at stake, presents a mixed question of law and fact, and the Supreme Court accords such questions the same amount of deference that it provides to a trial justice's findings of fact. Gen.Laws 1956, § 38-2-1 et seq.

[9] **Appeal and Error** ⇌ Verdict or Findings of Judge in General

**Appeal and Error** ⇌ Judge as factfinder below

The Supreme Court will not overturn a trial justice's findings of fact absent a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong.

[10] **Records** ⇌ Personal interests and privacy considerations in general

Direction, in Access to Public Records Act exemption for records maintained for law enforcement purposes, that records shall not be deemed public only to extent that disclosure of the records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy, requires courts to balance competing interests in privacy and disclosure; to effect this balance and to give practical meaning to the exemption, the usual rule that citizen need not offer a reason for requesting the information must be inapplicable. Gen.Laws 1956, § 38-2-2(4)(D)(c).

[11] **Records** ⇌ Presumptions, inferences, and burden of proof

Where there is a privacy interest protected by Access to Public Records Act exemption for records maintained for law enforcement purposes and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure; rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred. Gen.Laws 1956, § 38-2-2(4)(D)(c).

[12] **Records** ⇌ Personal interests and privacy considerations in general

Privacy interest of then-governor's son who had been the subject of an investigation by state police for violation of Social Host Law, and had pled nolo contendere, outweighed public interest in disclosure of the investigation records, and thus request for disclosure was properly denied under Access to Public Records Act exemption for records maintained for law enforcement purposes; requester's unsubstantiated assertion that government impropriety may have occurred in the investigation due to then-governor's position was insufficient to obtain disclosure. Gen.Laws 1956, § 38-2-2(4)(D)(c).

**Attorneys and Law Firms**

**\*1170** Joseph V. Cavanagh, Jr., Esq., Mary C. Dunn, Esq., Robert J. Cavanagh, Jr., Esq., Providence, for Plaintiffs.

Michael W. Field, Lisa Pinsonneault, Malena Lopez Mora, Department of Attorney General, for Defendants.

Present: SUTTELL, C.J., GOLDBERG, FLAHERTY, and INDEGLIA, JJ.

## OPINION

Justice INDEGLIA, for the Court.

The Providence Journal Company and Amanda Milkovits (collectively, the Journal or plaintiffs), seek review of an order granting summary judgment entered against them and in favor of the Rhode Island Department of Public Safety, the Rhode Island State Police, and Steven G. O'Donnell, in his capacity as the Commissioner of the Rhode Island Department of Public Safety and Superintendent of the Rhode Island State Police (collectively, defendants). The Journal filed suit in Providence County Superior Court alleging violations of Rhode Island's Access to Public Records Act (APRA), G.L. 1956 chapter 2 of title 38, after they unsuccessfully requested records from the Rhode Island State Police concerning an investigation of an underage drinking incident at property owned by the then-Governor, Lincoln Chafee. On appeal, the Journal takes issue with the Superior Court's determination that the requested documents are not subject to public disclosure pursuant to the APRA. After careful consideration of the submitted memoranda and oral arguments, we affirm the judgment of the Superior Court.

## I

### Facts and Travel

The travel of the case is easily sketched. On May 28, 2012, Caleb Chafee (Caleb), the son of then-Governor Lincoln Chafee, hosted a party on property owned by the then-Governor, during which some underage attendees consumed alcohol. At some point, an underage female left the party and, shortly thereafter, she was taken to a local hospital for alcohol-related illness. As a result, the Rhode Island State Police went to the property<sup>1</sup> to conduct an investigation. This investigation resulted in the \*1171 compilation of 186 pages of investigative documents, including witness lists, witness statements, land evidence records, and narrative reports written by various officers (collectively, the requested records). At the conclusion of the investigation, Caleb was charged with the furnishing or procurement of alcoholic beverages for underage persons in violation of G.L. 1956 § 3-8-11.1, to which he pled nolo contendere in Rhode Island District Court on August 22, 2012, and received a \$500 civil

penalty. On March 13, 2013, a judge of the District Court granted Caleb's motion to expunge his record.

However, Caleb's liability was not the only product of the police investigation. In an effort to gather further information about the incident, on June 21, 2012, Amanda Milkovits (Milkovits), a reporter for the Providence Journal Company, sent an email to Colonel Steven G. O'Donnell (Col. O'Donnell), in which she "request[ed] copies of state police reports regarding the May 28 incident involving Caleb Chafee." This email further stated: "This is a public report, regarding the responses and actions of public employees. It's in the public interest to know how the situation was handled regarding the governor's son—especially since the state police answer directly to the governor. This is a matter of transparency." In a letter dated June 25, 2012, the Rhode Island Department of Public Safety (the department) denied Milkovits' request for access to the documents. The purported reason for the denial was two-fold: (i) "the requested records [were] exempt from disclosure at [that] time, due to an ongoing criminal investigation and/or prosecution"; and (ii) the records "could reasonably be expected to be an unwarranted invasion of personal privacy \* \* \*."

At some point, a state trooper revealed redacted copies of at least three of the requested records to a WPRO radio talk show host.<sup>2</sup> Apparently, this information suggested that Caleb demanded that the underage female who was treated for alcohol-related illness be removed from the premises and requested that no one call 911 until she was well away from the property.

On August 21, 2012, Milkovits sent another email to Col. O'Donnell in which she stated that she was "following up on the charging of Caleb Chafee in the Memorial Day party." Milkovits further indicated that "now that he's being charged, I'd like a copy of the report." In a letter dated August 29, 2012, the department again denied her request. As a reason for its denial, the department provided that the requested records "are not considered public records under Rhode Island law [because] \* \* \* Rhode Island General Law § 38-2-2 excludes records identifiable to an individual in any files and law enforcement records, the disclosure of which could reasonably be expected to be an unwarranted invasion of personal privacy." This letter also contained the following language: "[E]nclosed please find a copy of the summons issued in this matter, as well as the violation complaint as filed with the Rhode Island District Court. These records have been

entered into the District Court file and are therefore publicly available.”

By letter dated September 5, 2012, the Journal requested that the department reconsider its denial of the records request.<sup>3</sup>

\*1172 On September 10, 2012, the department stated that it had reconsidered its initial denial as requested, but its position had not changed; thus, it denied the Journal's request for the same reasons as provided in its letter dated August 29, 2012. On September 24, 2012, the Journal filed an appeal with Col. O'Donnell pursuant to § 38–2–8, which was also denied.

Finding no relief through this preliminary out-of-court skirmishing, on October 22, 2012, the Journal filed a complaint in Providence County Superior Court, alleging violations of, *inter alia*, the APRA, the United States Constitution, and the Rhode Island Constitution. On March 5, 2013, pursuant to the Journal's request, defendants provided the Journal with a Vaughn index<sup>4</sup> of each item withheld by the government.

In due course, the parties filed cross-motions for summary judgment. In the Journal's motion, it argued that summary judgment should be granted because it was entitled to the requested records pursuant to the APRA. In response, defendants argued that public disclosure of the requested records would be inconsistent with the District Court's expungement order in Caleb's case. The defendants also argued that the records were exempt from public disclosure pursuant to the APRA, which deems not to be public “[a]ll records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, \* \* \* [where] the disclosure of the records or information \* \* \* could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]” Section 38–2–2(4)(D), as amended by P.L. 2012, ch. 482, § 1.

After conducting an *in camera* review of the documents, analyzing memoranda submitted by the parties, and hearing oral arguments, the hearing justice determined that the order of expungement in Caleb's case did not prevent the Journal from accessing the records if allowable under the APRA. However, the hearing justice determined that the Journal had failed to “demonstrate[ ] a belief by a reasonable person that alleged government impropriety might have occurred.” In addition, he determined that “disclosure would not advance the public interest” and “that the records are not reasonably segregable” because the documents make plain, even if redacted, that it was Caleb's event that was being investigated.

Accordingly, he granted summary judgment in favor of defendants and denied that of the Journal. The Journal timely appealed.

## II

### Standard of Review

[1] [2] [3] Our standard of review in this case is multifaceted. This Court's review of the grant of a motion for summary judgment is familiar and well-settled: We review such a grant *de novo*, “apply[ing] the same standards and rules as did the motion justice.” *Symonds ex rel. Symonds v. City of Pawtucket*, 126 A.3d 421, 424 (R.I.2015) (quoting *Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1109 (R.I.2014)). In so doing, “[w]e view the evidence in the light most favorable to the \*1173 nonmoving party.” *Id.* (quoting *Narragansett Indian Tribe*, 81 A.3d at 1109). “Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law.” *Beacon Mutual Insurance Co. v. Spino Brothers Inc.*, 11 A.3d 645, 648 (R.I.2011) (quoting *National Refrigeration, Inc. v. Travelers Indemnity Co. of America*, 947 A.2d 906, 909 (R.I.2008)).

[4] [5] [6] [7] Additionally, this Court conducts a *de novo* review of a trial justice's ruling concerning the interpretation of a statute. *Twenty Eleven, LLC v. Botelho*, 127 A.3d 897, 900 (R.I.2015). “In matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I.2001). “[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I.2012) (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I.2009)). In so doing, however, “[we] will not construe a statute to reach an absurd result.” *Id.* at 289 (quoting *Long v. Dell, Inc.*, 984 A.2d 1074, 1081 (R.I.2009)). “Further, ‘[a] statute \* \* \* may not be construed in a way that would \* \* \* defeat the underlying purpose of the enactment.’ ” *Id.* (quoting *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I.1987)).

[8] [9] However, a trial justice's determination in balancing the public interest in disclosure against the privacy interests at stake presents a mixed question of law and fact, and we accord

such questions the same amount of deference that we provide to a trial justice's findings of fact. *See Direct Action for Rights and Equality v. Gannon*, 819 A.2d 651, 662 (R.I.2003). “[W]e will not overturn a trial justice's findings of fact absent a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong.” *Id.*

### III

#### Discussion

In 1979, the General Assembly enacted the APRA in recognition that “[t]he public's right to access to public records and the individual's right to dignity and privacy are both \* \* \* principles of the utmost importance in a free society.” Section 38–2–1, as enacted by P.L. 1979, ch. 202, § 1. Thus, the General Assembly provided a two-fold function of the APRA: “The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” *Id.* In addition, “this Court has ‘long recognized that the underlying policy of the APRA favors the free flow and disclosure of information to the public.’ ” *In re New England Gas Co.*, 842 A.2d 545, 551 (R.I.2004) (quoting *Providence Journal Co. v. Sundlun*, 616 A.2d 1131, 1134 (R.I.1992)).

In recognition of these competing purposes, the General Assembly carefully defined, on the one hand, what is subject to public disclosure and, on the other, what is protected. *See* § 38–2–2. Specifically, to perform its purpose of “facilitat[ing] public access to public records[.]” the APRA pronounces a general rule of disclosure, providing:

“Except as provided in § 38–2–2(4), all records maintained or kept on file by any public body, whether or not those \*1174 records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.” Section 38–2–3(a).

However, the exception provided in § 38–2–2(4) serves to curtail this general rule of disclosure by defining “public records” to include only certain records. These limitations illustrate the General Assembly's desire to “protect from disclosure information \* \* \* when disclosure would constitute

an unwarranted invasion of personal privacy.” Section 38–2–1.

Section 38–2–2(4) defines “public records,” in pertinent part, as, “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data \* \* \* or other material \* \* \* made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” However, the provision continues by providing that certain records “shall not be deemed public.” *Id.* Among those records deemed to not be public, are:

“All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information \* \* \* could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]” G.L.1956 § 38–2–2(4)(D)(c).

It is this provision—exempting from disclosure records that “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” *id.*—that forms the basis of this appeal.<sup>5</sup>

Because the APRA mirrors the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we look to federal case law interpreting FOIA to assist in our interpretation of the APRA. *See, e.g., In re New England Gas Co.*, 842 A.2d at 551. Like the APRA, the FOIA provides for public disclosure of records unless those records fall within one or more of the several exemptions. *See National Archives and Records Administration v. Favish*, 541 U.S. 157, 160, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004). One such exemption, 5 U.S.C. § 552(b)(7)(C), “excuses from disclosure ‘records or information compiled for law enforcement purposes’ if their production ‘could reasonably be expected to constitute an unwarranted invasion of personal privacy.’ ” *Favish*, 541 U.S. at 160, 124 S.Ct. 1570 (quoting 5 U.S.C. § 552(b)(7)(C)).

\*1175 In *Favish*, 541 U.S. at 171–75, 124 S.Ct. 1570, the United States Supreme Court considered the applicability of this exemption to certain photographs depicting the condition of a decedent's body at the scene of death. In so doing, the Court stated that “[t]he term ‘unwarranted’ requires us to

balance the \* \* \* privacy interest against the public interest in disclosure.” *Id.* at 171, 124 S.Ct. 1570. To effectuate this balance, the Court provided a two-step process by which a citizen must prove that it is entitled to disclosure of the records. Specifically, it provided that: “First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.” *Id.* at 172, 124 S.Ct. 1570. In our opinion, the framework that the Supreme Court sets forth in *Favish* is sound; thus, we follow this example and adopt this scheme in our interpretation of the APRA.

[10] As a threshold matter, we address the Journal's contention that this Court's adoption of the interpretation of the FOIA in *Favish* would displace the burden that the APRA places upon the public body to demonstrate that “the record in dispute can be properly withheld from public inspection.” Section 38–2–10. What the Journal fails to recognize in making this argument is that the FOIA contains a nearly identical statutory provision. *See* 5 U.S.C. § 552(a) (4)(B) (granting the district court “jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant \* \* \* and the burden is on the agency to sustain its action”). In *Favish*, 541 U.S. at 172, 124 S.Ct. 1570, the Supreme Court observed that “[t]o effect [the balance of privacy interest against the public interest in disclosure] and to give practical meaning to the exemption, the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable.” We agree, and so we place the same gloss upon the APRA.

[11] We now proceed to the thrust of the Journal's appeal. Here, the Journal seeks the investigatory files related to the facts underlying the charge of a private individual in hopes of potentially uncovering some hint of impropriety. Like *Favish*, where the Court dealt with “photographic images and other data pertaining to an individual who died under mysterious circumstances,” the justification most likely to satisfy the APRA's public interest requirement “is that the information is necessary to show the investigative agency or other responsible officials acted negligently or otherwise improperly in the performance of their duties.” *Favish*, 541 U.S. at 173, 124 S.Ct. 1570. Of course, this standard would be toothless if disclosure were required based upon mere speculation, without the need to provide some evidence of

negligence or impropriety. *See id.* at 174, 124 S.Ct. 1570. Thus, we hold, in line with *Favish*, that:

“[W]here there is a privacy interest protected by [G.L. 1956 § 38–2–2(4)(D)(c)] and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure. Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.” *Favish*, 541 U.S. at 174, 124 S.Ct. 1570.

Before assessing whether the Journal presented any such evidence in this case, \*1176 we pause to address the Journal's contention that the standard presented in *Favish*, 541 U.S. at 174, 124 S.Ct. 1570, is inapplicable to the case at hand. Specifically, it contends that this “governmental impropriety” standard should apply only when the sole alleged public interest is government impropriety. *See Citizens for Responsibility and Ethics in Washington v. United States Department of Justice*, 746 F.3d 1082, 1095 & n. 5 (D.C.Cir.2014) (declining to apply the standard announced in *Favish* where no impropriety was alleged on the part of the FBI or the DOJ). It then asserts that it alleged two public interests in the case at hand: (i) discovering potential government impropriety; and (ii) disclosing to the public how the State Police investigated the Governor under the circumstances. For our purposes, however, this is a distinction without a difference: the Journal's second alleged public interest amounts to nothing more than another way of describing the first. Put another way, the information that the Journal hopes to uncover under its second asserted public interest is, in fact, government impropriety. Thus, to accept the Journal's argument that there are two public interests in the case at hand would allow parties to avoid the *Favish* standard merely by exercising creative semantics. We decline this invitation. We do not, however, foreclose the possibility that the *Favish* standard may be inapplicable where a party asserts an authentic secondary public interest.<sup>6</sup>

[12] We now turn our analysis to whether the Journal has presented evidence that “the information is necessary to show the investigative agency or other responsible officials acted negligently or otherwise improperly in the performance of their duties.” *Favish*, 541 U.S. at 173, 124 S.Ct. 1570. In conducting our review, we remain mindful that “there is a presumption of legitimacy accorded to the Government's official conduct \* \* \* [and] where the presumption is



applicable, clear evidence is usually required to displace it.” *Id.* at 174, 124 S.Ct. 1570. Even without the disclosure of the contents of the sought after records, it is clear that the State Police performed a comprehensive investigation of Caleb’s violation of the Social Host Law. Indeed, the volume of records requested under the APRA illustrates that a thorough investigation was performed. \*1177 The Vaughn index (which was provided to the Journal) indicates that the investigation resulted in the compilation of 186 pages of documents, including at least eighteen witness statements, seven narrative documents from members of the State Police, incident reports, and land evidence records. In addition, the investigation resulted in charging Caleb under the Social Host Law. The Journal has not pointed to a shred of evidence to suggest that “the investigative agency or other responsible officials acted negligently or otherwise improperly,” *id.* at 173, 124 S.Ct. 1570, other than to speculate as to the mere possibility that some venality or irregularity may have occurred in the investigation due to the then-Governor’s position. When the release of sensitive personal information is at stake and the alleged public interest is rooted in government wrongdoing, we do not deal in potentialities—rather, the seeker of information must provide some evidence that government negligence or impropriety was afoot. Because the Journal failed to provide any such evidence, the public interest can, at best, be characterized merely as an uncorroborated possibility of governmental negligence or impropriety. Such a tenuous “public interest” is insufficient to mandate disclosure under the *Favish* standard that we today adopt and thereby imbue upon the APRA.

While we conclude that the Journal failed to satisfy the *Favish* standard, we nonetheless continue our analysis (for the sake of completeness and to provide future guidance) to weigh the seemingly negligible public interests asserted by the Journal against the privacy interests at stake. The parties vigorously dispute the proper valuation of the privacy interests in this case. The Journal contends that (i) Caleb’s privacy interest was substantially diminished because of the publicity that the incident received in the media and because he pled nolo contendere to violating the Social Host Law; (ii) the then-Governor’s privacy interest was *de minimis* because his “status as a public official operates to reduce his cognizable interest in privacy” (quoting *Citizens for Responsibility and Ethics in Washington v. United States Department of Justice*, 846 F.Supp.2d 63, 71 (D.D.C.2012)); and (iii) the identities of third-persons who provided witness statements were “reasonably segregable” and, thus, could be redacted to prevent any invasion of privacy.<sup>7</sup>

Turning first to Caleb, we place little stock in the Journal’s contention that his privacy interest was significantly diminished because of the publicity that his charge for violating the Social Host Law received. Notably, a copy of the summons and complaint were produced to the Journal, which confirmed the existence of a charge against him. While the media coverage may have made known to the public the *existence* of the charge, it certainly did not reveal the intimate details underlying the charge. The privacy interest at stake flows not from the widespread knowledge of the fact that Caleb was charged, but, instead, from the information and personal details that may have been discovered in the police investigation. Moreover, while the charge was, in fact, public, “the fact that ‘an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information.’ ” *United States Department of Justice v. Reporters Committee For Freedom of Press*, 489 U.S. 749, 770, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989) (quoting Rehnquist, *Is an Expanded Right of Privacy Consistent with Fair and Effective Law Enforcement?*, Nelson Timothy Stephens Lectures, University of Kansas Law School, pt. 1, p. 13 (Sept. 26–27, 1974)). Therefore, we find the Journal’s argument in this regard unconvincing.

Similarly, we see no merit with regard to the Journal’s contention that Caleb is entitled to lesser privacy because he pled nolo contendere to violating the Social Host Law. While the plea might lessen the privacy extended to the conviction, it does not do so with respect to the facts underlying it. Indeed, in *American Civil Liberties Union v. United States Department of Justice*, 655 F.3d 1, 7 (D.C.Cir.2011), on which the Journal relies, the D.C. Circuit Court of Appeals provided “that the disclosure of convictions and public pleas is at the lower end of the privacy spectrum.” However, the court in that case was dealing with only the disclosure of the *fact of conviction*, not the facts underlying the conviction or information provided in the investigation of the crime. *See id.* at 8 (“It would disclose only information concerning a conviction or plea; it would not disclose mere charges or arrests. It would disclose only information that has already been the subject of a public proceeding (either a trial or public guilty plea), rather than actions (like arrests) that may not have taken place in public.”). Thus, the Journal’s argument that Caleb’s privacy interest in the police investigative documents was diminished because he pled nolo contendere also lacks force.<sup>8</sup>

In the case of the documents developed by law enforcement in the investigation of a private individual, the privacy interest is considerable and should not be easily displaced absent a particularly noteworthy public interest. *See Reporters Committee For Freedom of Press*, 489 U.S. at 769, 771, 109 S.Ct. 1468 (“We have \* \* \* recognized the privacy interest in keeping personal facts away from the public eye. \* \* \* The privacy interest in a rap sheet is substantial.”). As such, we are satisfied that Caleb’s privacy interest is significant,<sup>9</sup> and, consequently, we cannot allow the Journal’s unsubstantiated assertion—pointing to the mere possibility that government impropriety occurred in the investigation due to the then-Governor’s position—to mandate disclosure of sensitive information.<sup>10</sup> Accordingly, we cannot conclude “that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong,” *Direct Action for Rights and Equality*, 819 A.2d at 662, in his balancing of Caleb’s privacy interest against the public interests at issue.

At oral argument, the Journal posed the following question: “[I]s there a good reason the people shouldn’t see what the state police did?” We answer that question in the affirmative.

Pursuant to the APRA, records need not be disclosed where such disclosure could create an unwarranted invasion \*1179 of privacy—here, Caleb’s privacy interest created a barrier that the public interests in disclosure as asserted by the Journal could not overcome.

#### IV

#### Conclusion

For the reasons set forth above, we affirm the judgment of the Superior Court. The materials associated with this case may be remanded to that tribunal.

Justice ROBINSON did not participate.

#### All Citations

136 A.3d 1168, 44 Media L. Rep. 1709

#### Footnotes

- 1 The property at which the party occurred is located in Exeter, Rhode Island. It is notable that the Rhode Island State Police responded because the Town of Exeter does not maintain its own police force.
- 2 This state trooper was charged administratively for revealing the material.
- 3 In addition, this letter provided that it was to serve as “a new request, this time under the recently amended [APRA] \* \* \*, which became effective September 1, 2012, for all records relating to Caleb Chafee \* \* \* and the investigation which arose from occurrences at his home on May 28, 2012 \* \* \*.” Before us, both parties in their arguments rely on the APRA as amended in 2012.
- 4 A “Vaughn index” is “[a] comprehensive list of all documents that the government wants to shield from disclosure in Freedom of Information Act (FOIA) litigation, each document being accompanied by a statement of justification for nondisclosure.” *Black’s Law Dictionary* 1788 (10th ed. 2014). In the case at hand, the index contained a description of each withheld record and the number of pages contained in each item.
- 5 In an effort to avoid the interpretation of the APRA entirely, the state contends that the fact Caleb’s records were expunged precludes their disclosure under the APRA. Specifically, the state cites to G.L. 1956 chapter 1.3 of title 12, the general “Expungement of Criminal Records” statute, which provides that, “[w]henver the records of any conviction and/or probation of an individual for the commission of a crime have been expunged under the provisions of this chapter, any custodian of the records of conviction relating to that crime shall not disclose the existence of the records upon inquiry from any source \* \* \*,” subject to certain exceptions not applicable here. Section 12–1.3–4(c). However, it is unclear whether Caleb’s expungement was granted under chapter 1.3 of title 12, or, rather, pursuant to another statute. Because we conclude that the records should not be disclosed in accordance with the APRA and that Caleb’s privacy interest is sufficient to preclude disclosure without consideration of the expungement, we need not determine the effect of the expungement on the records at issue.
- 6 The Journal also contends that the public interest was increased by (i) “the fact that the State Police were investigating a possible violation of such an important law [ the Social Host Law ]”; and (ii) “the close relationship under Rhode Island law between the State Police, the Governor, and his family \* \* \*.” With regard to the public interest in viewing the implementation of the Social Host Law, the Journal’s argument is unavailing. Any information provided by the investigatory documents in this isolated incident would provide facts in relation to just that—a single incident. The documents would not

provide the public with any indication of how this law is enforced generally. See *Hunt v. Federal Bureau of Investigation*, 972 F.2d 286, 288–89 (9th Cir.1992) (contrasting a FOIA request for a single investigatory file with requests for numerous disciplinary files and concluding that “[t]he single file \* \* \* will not shed any light on whether all such FBI investigations are comprehensive”). With regard to the close relationship between the Governor and the State Police, we note that this appears to be yet another circuitous way of describing the “government impropriety” public interest. That is, the public interest in the contents of the investigatory documents would flow from whether the State Police adequately investigated the then-Governor, or whether corners were cut. Further, such a relationship between the Governor and the State Police will be present in any investigation or interaction involving the two. Thus, if we were to allow this relationship to rise to the level of a significant public interest without proof of some impropriety, then nearly every investigation by the State Police involving the Governor would be subject to disclosure as a matter of course. We decline to give the mere presence of a relationship such a pervasive effect.

- 7 Both parties agree that the third-party identities could be redacted and, thus, none of their privacy interests are implicated by disclosure of the records. Accordingly, we do not consider the third-party privacy interests for purposes of our analysis.
- 8 In addition, we note that the distinction between the existence of a plea and the facts underlying the charges that gave rise to such a plea is further supported by practicality: it is a common tactical move for a defendant to plead guilty or nolo contendere rather than take his chances in court, to avoid the exposure of unfavorable facts during a public trial.
- 9 In view of Caleb's considerable privacy interest that would be compromised if the investigative documents were released, we need not pin down the exact valuation of the privacy interest of the then-Governor. That is, a disclosure of the records would constitute an unwarranted invasion of Caleb's privacy; thus, the records may be withheld under the APRA regardless of the privacy interests of the then-Governor.
- 10 We note that redaction would be ineffective to reduce Caleb's privacy interest in this case. Given the media attention that the investigation of Caleb has received from its onset, the subject of any records would be abundantly clear, even if redacted.

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# **EXHIBIT R**

127 A.3d 897  
Supreme Court of Rhode Island.

TWENTY ELEVEN, LLC  
v.  
Michael J. BOTELHO et al.

No. 2014-10-Appeal.  
|  
Dec. 4, 2015.

#### Synopsis

**Background:** Purchaser at condominium association's lien foreclosure sale brought action against mortgage holder, seeking to quiet title to unit and seeking declaratory and injunctive relief to prevent holder's subsequent foreclosure. The Superior Court, Kent County, Stephen P. Nugent, J., granted holder's motion to dismiss. Purchaser appealed.

**Holdings:** The Supreme Court, Indeglia, J., held that:

[1] when super-priority assessment lien is foreclosed on, a first mortgage is extinguished, and

[2] holder forfeited its opportunity to preserve its security interest in condominium.

Reversed and remanded.

Robinson, J., filed dissenting opinion.

West Headnotes (13)

[1] **Pretrial Procedure** ⇌ Insufficiency in general

The solitary purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the sufficiency of the complaint. Superior Court Rules Civ.Proc., Rule 12(b)(6).

[2] **Pretrial Procedure** ⇌ Availability of relief under any state of facts provable

A motion to dismiss for failure to state a claim upon which relief can be granted should be granted only when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.

[3] **Appeal and Error** ⇌ Failure to State Claim, and Dismissal Therefor

**Appeal and Error** ⇌ Failure to state claim, and dismissal therefor

In undertaking the review of a motion to dismiss for failure to state a claim upon which relief can be granted, the appellate court is confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in the plaintiff's favor.

[4] **Appeal and Error** ⇌ Statutory or legislative law

Appellate courts review questions of statutory interpretation de novo.

2 Cases that cite this headnote

[5] **Statutes** ⇌ Purpose and intent

The ultimate goal on questions of statutory interpretation is to give effect to the purpose of the act as intended by the Legislature.

3 Cases that cite this headnote

[6] **Statutes** ⇌ Plain Language; Plain, Ordinary, or Common Meaning

On questions of statutory interpretation, the plain statutory language is the best indicator of the General Assembly's intent.

3 Cases that cite this headnote

[7] **Statutes** ⇌ Unintended or unreasonable results; absurdity

Statutes should not be construed to achieve meaningless or absurd results.

1 Cases that cite this headnote

[8] **Statutes** ⇌ Context

Courts must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.

[9] **Quieting Title** ⇌ Sufficiency in general

Purchaser at condominium association's lien foreclosure sale had sufficient interest in property to bring action to quiet title; purchaser was not seeking to assert association's lien rights, rather it was seeking to quiet title to property in its name, and purchaser obtained condominium lien foreclosure deed to the property from association. Gen.Laws 1956, § 34-16-4.

[10] **Common Interest**

**Communities** ⇌ Perfection and priority

**Mortgages and Deeds of**

**Trust** ⇌ Government Claims and Liens

The Condominium Act effectively splits condominium-assessment liens into two liens of differing priority: (1) a lien for six months of assessments that is higher in priority than the first mortgage or first deed of trust, and (2) a lien for any additional unpaid assessments that is lower in priority than the first mortgage or first deed of trust. Gen.Laws 1956, § 34-36.1-3.16(b)(1, 2).

1 Cases that cite this headnote

[11] **Common Interest**

**Communities** ⇌ Perfection and priority

**Common Interest Communities** ⇌ Lien foreclosure; other remedies and proceedings for nonpayment

When a super-priority, condominium association's assessment lien established by the Condominium Act is foreclosed on, a first mortgage is extinguished. Gen.Laws 1956, § 34-36.1-3.16(b)(1)(ii).

[12] **Common Interest**

**Communities** ⇌ Perfection and priority

**Common Interest Communities** ⇌ Lien foreclosure; other remedies and proceedings for nonpayment

Mortgage holder forfeited its final opportunity to preserve its security interest in condominium by failing to redeem condominium association's super-priority lien within statutory time period following association's lien foreclosure sale; even though holder was not statutorily required to redeem lien, foreclosure of super-priority lien extinguished first mortgage unless holder had redeemed. Gen.Laws 1956, § 34-36.1-3.21(c).

1 Cases that cite this headnote

[13] **Liens** ⇌ Foreclosure and sale without action

Foreclosure eliminates liens, not debt.

**Attorneys and Law Firms**

\*898 Frank A. Lombardi, Esq., Mary-Joy A. Howes, Esq., for Plaintiff.

Peter F. Carr, III, Esq., for Defendant.

Present: SUTTELL, C.J., GOLDBERG, FLAHERTY, ROBINSON, and INDEGLIA, JJ.

**OPINION**

Justice INDEGLIA, for the Court.

The plaintiff, Twenty Eleven, LLC (plaintiff or Twenty Eleven), purchased a condominium unit at a condominium association lien foreclosure sale in August 2011. On April 18, 2013, the plaintiff filed suit in Superior Court seeking to quiet title to the unit in its name and also seeking declaratory and injunctive relief to prevent a foreclosure by the prior owner's first mortgage holder, the defendant, PNC Bank, National Association (defendant or PNC).<sup>1</sup> The plaintiff now

appeals from the Superior Court's dismissal of its complaint pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure. On appeal, the plaintiff asks us to address the novel question of whether a condominium foreclosure sale conducted pursuant to the Rhode Island Condominium Act, G.L. 1956 chapter 36.1 of title 34 (the act) extinguishes a prior-recorded first mortgage on the unit following the mortgagee's failure to exercise the right of redemption provided for in § 34-36.1-3.21(c). After careful review of the record and of the parties' written submissions and oral arguments, we answer that question in the affirmative. Thus, we reverse the Superior Court's dismissal of the plaintiff's complaint and remand this case for further proceedings.

## I

### Facts and Travel

The relevant facts pertaining to this appeal are fairly straightforward and largely undisputed. On or about December 15, \*899 2004, Michael J. Botelho (Botelho) purchased a condominium unit, Unit 905, in the Lockwood at Warwick Condominium development located at 3524 West Shore Road, Warwick, Rhode Island (the property). On the same day, Botelho also executed a promissory note in favor of First Franklin Financial Corp., d/b/a FFFC, Inc. (FFFC), in the amount of \$114,400. The note was secured by a first mortgage on the property. Some time later, Botelho became delinquent on his condominium assessment fees. On July 19, 2011, the Lockwood at Warwick Condominium Association (the association) sold the property at a lien foreclosure sale due to the outstanding condominium assessment obligation owed by Botelho. A statutory condominium lien foreclosure deed conveying title to the property in exchange for payment in the amount of \$21,000 was conveyed by the association to plaintiff on August 25, 2011.

Coincidentally, Botelho had also fallen behind on his first-mortgage payments, which had been assigned to defendant. On January 18, 2013, plaintiff was notified by letter from defendant's attorney that the property was to be sold at a mortgage foreclosure sale on March 14, 2013. The mortgage foreclosure sale was ultimately rescheduled; but, in the meantime, plaintiff instituted the present action on April 18, 2013, seeking to quiet title to the property in its name and also seeking a declaratory judgment that defendant had no further interest in the property. It also sought an injunction permanently enjoining defendant from foreclosing on the

property.<sup>2</sup> In addition to opposing plaintiff's motion for injunctive relief, defendant filed a motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(6).

According to plaintiff, the act provides that the association's lien for outstanding condominium assessments held a priority position over defendant's first mortgage. Thus, when the association foreclosed on that lien, defendant's mortgage was extinguished, subject only to its right to redeem within thirty days in accordance with § 34-36.1-3.21(c) of the act. Because defendant failed to redeem within the thirty-day period, plaintiff posits that it obtained title to the property free and clear of defendant's mortgage.

In a bench decision, the hearing justice disagreed, and instead determined that plaintiff took title to the property subject to defendant's mortgage, finding that “nothing in the plain and unambiguous language of the statute \* \* \* would extinguish a first mortgagee's priority position with respect to a subsequent condominium lien foreclosure deed.” Moreover, the hearing justice stated that “[n]othing in [the right to redemption] indicates that a first mortgage is extinguished absent timely redemption by the mortgagee. In fact, the word extinguish does not appear in the statute \* \* \*.” As such, the hearing justice found that defendant's mortgage survived the association's lien foreclosure sale and that plaintiff took the property subject to its mortgage.

On August 28, 2013, the hearing justice entered an order granting defendant's motion to dismiss pursuant to Rule 12(b)(6).<sup>3</sup> The plaintiff filed a timely appeal to this Court.

## II

### Standard of Review

[1] [2] [3] “The solitary purpose of a Rule 12(b)(6) ‘motion to dismiss is to test the \*900 sufficiency of the complaint.’ ” *Tarzia v. State*, 44 A.3d 1245, 1251 (R.I.2012) (quoting *Narragansett Electric Co. v. Minardi*, 21 A.3d 274, 277 (R.I.2011)). “[A] Rule 12(b)(6) motion to dismiss should be granted only ‘when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.’ ” *Chhun v. Mortgage Electronic Registration Systems, Inc.*, 84 A.3d 419, 421–22 (R.I.2014) (quoting *Palazzo v. Alves*, 944 A.2d 144, 149–

50 (R.I.2008)). “In undertaking this review, we are ‘confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in [the] plaintiff’s favor.’ ” *Id.* at 422 (quoting *Minardi*, 21 A.3d at 278).

[4] [5] [6] [7] [8] Furthermore, “we review questions of statutory interpretation *de novo*.” *State v. Whiting*, 115 A.3d 956, 958 (R.I.2015) (quoting *State v. Morris*, 92 A.3d 920, 924 (R.I.2014)). We must keep in mind that “our ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *Id.* (quoting *State v. Oster*, 922 A.2d 151, 160 (R.I.2007)). To that end, “[i]t is well settled that ‘the plain statutory language’ is ‘the best indicator’ of the General Assembly’s intent.” *Zambarano v. Retirement Board of the Employees’ Retirement System of Rhode Island*, 61 A.3d 432, 436 (R.I.2013) (quoting *McCain v. Town of North Providence*, 41 A.3d 239, 243 (R.I.2012)). We are also mindful that “statutes should not be construed to achieve meaningless or absurd results.” *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I.2011) (quoting *Berthiaume v. School Committee of Woonsocket*, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979)). We must “consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.” *Id.* (quoting *Sorenson v. Colibri Corp.*, 650 A.2d 125, 128 (R.I.1994)).

### III

#### Discussion

[9] In 1982, the Legislature enacted chapter 36.1 of title 34 (P.L. 1982, ch. 329, § 2), the Rhode Island Condominium Act. “The act essentially incorporated the language contained in the Uniform Condominium Act [UCA] and was made applicable to any condominium created in Rhode Island after July 1, 1982.” *America Condominium Association, Inc. v. IDC, Inc.*, 844 A.2d 117, 127 (R.I.2004) (citing § 34–36.1–1.02(a)(1)), *decision clarified on reargument sub nom.*, *America Condominium Association, Inc. v. IDC, Inc.*, 870 A.2d 434 (R.I.2005). It is undisputed that, since the condominium in this case was built in 1985, the act applies.<sup>4</sup>

#### A. The “Super–Priority” Lien

[10] Section 34–36.1–3.16 of the act, titled “Lien for assessments,” is the statutory provision directly at issue in this case. Section 34–36.1–3.16(a) provides that “[t]he \*901 association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due.” Section 34–36.1–3.16(b) goes on to establish the priority of the association’s lien as compared to other encumbrances on the unit. It provides as follows:

“(1) A lien under this section is prior to all other liens and encumbrances on a unit except:

“(i) Liens and encumbrances recorded before the recordation of the declaration and not subordinated to the declaration,

“(ii) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and

“(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.” (Emphasis added.)

Based on this statutory language, it would appear that a first mortgage recorded “before the date on which the assessment sought to be enforced becomes delinquent,” like defendant’s mortgage here, is senior to a condominium association’s assessment lien. The statute, however, does not stop there. Section 34–36.1–3.16(b)(2) further provides:

“The lien is also prior to any mortgage or deed of trust described in subdivision (b)(1)(ii) of this section to the extent of the common expense assessments based on the periodic budget adopted by the [condominium] association \* \* \* which would have become due in the absence of acceleration during the six (6) months immediately preceding the foreclosure of the interest of the unit owner including any costs and reasonable attorney’s fees not to exceed two thousand five hundred dollars (\$2,500), incurred in the collection of any delinquent assessment or other charges by legal proceedings or otherwise and all costs of foreclosure held pursuant to section 34–36.1–3.21, including, but not limited to, publication, advertising and auctioneer costs, said foreclosure costs not to exceed five thousand dollars (\$5,000) (for a total aggregate of attorney’s fees and costs of seven thousand five hundred dollars (\$7,500)).”

It is this portion of the lien that is colloquially referred to as a “super-priority” lien. *See 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 979 F.Supp.2d 1142, 1147 (D.Nev.2013).



“Thus, the [a]ct effectively splits condominium-assessment liens into two liens of differing priority: (1) a lien for six months of assessments that is higher in priority than the first mortgage or first deed of trust \* \* \* and (2) a lien for any additional unpaid assessments that is lower in priority than the first mortgage or first deed of trust.” *Chase Plaza Condominium Association, Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 173 (D.C.2014) (*Chase Plaza*); accord *Trustees of MacIntosh Condominium Association v. FDIC*, 908 F.Supp. 58, 62–63 (D.Mass.1995) (distinguishing between an association's super-priority lien for delinquent assessments for the six months preceding a foreclosure action, which is superior to a first mortgage, and a lien for any remaining unpaid assessments, which does not enjoy super-priority status); Commissioners' Comment 2 to § 34–36.1–3.16 (“[S]ubsection (a) provides that the association's lien takes priority over all other liens and encumbrances except those recorded prior to the recordation of the declaration \* \* \*. However, as to prior first mortgages, the association's lien does have priority for 6 months' assessments based on the periodic budget.”).

**\*902** It is undisputed that § 34–36.1–3.16(b)(2) operates so as to create a super-priority lien for at least some portion of a condominium association's outstanding assessments.<sup>5</sup> The dispute arises over what effect that super-priority lien, upon its foreclosure, has on a first mortgage. Does the statute operate such that foreclosing on this super-priority lien extinguishes a first mortgage, as plaintiff would have us hold, or does it merely create a payment priority, as defendant suggests?

We start by looking at the plain language of the statute. See *Zambarano*, 61 A.3d at 436. Here, the General Assembly used the words “prior to” to describe the priority of the condominium assessment lien relative to other encumbrances on the unit. This phrase has a very distinctive meaning in the mortgage and lien context. “‘Prior’ refers to the lien, not payment or proceeds[.]” *SFR Investments Pool 1, LLC v. U.S. Bank*, — Nev. —, 334 P.3d 408, 412 (2014) (*SFR Investments*). “And ‘priority lien’ and ‘prior lien’ mean the same thing, according to *Black's Law Dictionary* 1008 (9th ed. 2009): ‘A lien that is superior to one or more other liens on the same property, usu[ally] because it was perfected first.’”<sup>6</sup> *SFR Investments*, 334 P.3d at 412.

[11] To be sure, “[t]he [a]ct does not expressly address what happens when, as in this case, a condominium association forecloses solely on its super-priority lien and the proceeds of

the sale are not sufficient to pay off a [first mortgage or] first deed of trust.” *Chase Plaza*, 98 A.3d at 173. But § 34–36.1–1.08 of the act directs us to look to “[t]he principles of law and equity” to “supplement the provisions of this chapter.” And in this case, “[a] general principle of foreclosure law \* \* \* potentially provides an answer: liens with lower priority are extinguished if a valid foreclosure sale yields proceeds insufficient to satisfy a higher-priority lien.” *Chase Plaza*, 98 A.3d at 173 (citing *Pappas v. Eastern Savings Bank, FSB*, 911 A.2d 1230, 1234 (D.C.2006)); see *Pehoviak v. Deutsche Bank National Trust Co.*, 85 Mass.App.Ct. 56, 5 N.E.3d 945, 951 (2014) (noting that “[s]o long as timely and proper notice \* \* \* is given to junior lienholders, these subsequent liens are extinguished with the foreclosure of a senior mortgage lien”); 59A C.J.S. *Mortgages* § 838 at 74–75 (2009) (“In the absence of a statute to the contrary, usually, the foreclosure of a valid senior mortgage \* \* \* will cut off junior liens or encumbrances \* \* \*.”) (citing *United States v. Brosnan*, 363 U.S. 237, 80 S.Ct. 1108, 4 L.Ed.2d 1192 (1960)). “We are inclined to think that if the [Legislature] had intended to depart from well-settled principles of foreclosure law, it would have done so explicitly.” **\*903** *Chase Plaza*, 98 A.3d at 174; see *Barrett v. Barrett*, 894 A.2d 891, 898 (R.I.2006) (stating that “[a]s a general principle of statutory construction, we presume the General Assembly knows the state of the law when enacting new legislation”) (citing *Shelter Harbor Fire District v. Vacca*, 835 A.2d 446, 449 (R.I.2003)); see also *7912 Limbwood Court Trust*, 979 F.Supp.2d at 1150 (“Moreover, the Nevada Legislature presumably was aware of the normal operation of foreclosure law when it enacted Chapter 116 [of the NRS] in 1991. If the Legislature intended a different rule to apply to [a Homeowner's Association] foreclosure sale, it could have said so.”). Because the Legislature did not so explicitly depart from these general principles, of which we assume it was aware, we are equally inclined to think it meant to adhere to them. It is therefore our view that when a super-priority lien established by § 34–36.1–3.16(b)(1)(ii) is foreclosed on, a first mortgage is extinguished.

Below, the hearing justice looked only to § 34–36.1–3.16(b)(1)(ii) to determine lien priority rather than looking at the statutory scheme as a whole. See *Ryan*, 11 A.3d at 71. Undeniably, § 34–36.1–3.16(b)(1)(ii) carves out an exception to the priority assessment lien in favor of a prior-recorded first mortgage. However, § 34–36.1–3.16(b)(2) creates an additional exception by providing that the assessment lien is still superior to a first mortgage under § 34–36.1–3.16(b)(1)(ii), up to a certain value.

This split-lien concept is indeed unconventional, but the drafters of the UCA were aware that they were creating an unusual statutory scheme. The Commissioners' Comments to the act describe the split-lien as “[a] significant departure from existing practice,” but go on to say that this scheme was created to “strike[ ] an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders.” Commissioners' Comment 2 to § 34–36.1–3.16; see *Sisto v. America Condominium Association, Inc.*, 68 A.3d 603, 611 (R.I.2013) (noting that the official comments to the act “are to be used as guidance concerning the legislative intent in adopting the chapter”) (quoting *America Condominium Association, Inc.*, 844 A.2d at 127). In any event, the plain language of the statute suggests that “however unconventional, the super[-]priority piece of the [condominium assessment] lien carries true priority over a [first mortgage or] first deed of trust.” *SFR Investments*, 334 P.3d at 413. And, “if the super [-]priority piece is a true priority lien, then it is senior to the first [mortgage] \* \* \* and its foreclosure will extinguish the first [mortgage]” *Id.* at 412 (citing Restatement (Third) *Property: Mortgages* § 7.1 (1997)); accord *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wash.2d 754, 328 P.3d 895, 900 (2014) (*en banc*) (noting that as a result of the condominium association instituting a foreclosure action, the first mortgagee's lien was “reprioritized” and “at that instant [the first mortgagee] became a subordinate junior lienholder whose lien interests were extinguished” following foreclosure).

We recognize that this statutory scheme may result in a lien for relatively minimal condominium assessment fees nullifying a security interest on a much larger loan, as is the case here.<sup>7</sup> This \*904 concern was not lost on the drafters of the UCA or the other courts that have tackled this issue. In light of this concern, they identify several practical solutions for first mortgagees to avoid extinguishment of their security interest by foreclosure on a super-priority lien. First, “[a]s a practical matter, secured lenders will most likely pay the 6 \* \* \* months' assessments demanded by the association *rather than having the association [foreclose] on the unit.*” *SFR Investments*, 334 P.3d at 413; see Commissioners' Comment 2 to § 34–36.1–3.16. This payment can then be added on to the principal balance of the mortgage. Another option is for lenders to require payment of assessments into an escrow account, much as they sometimes do with insurance premiums or real estate taxes. See *Chase Plaza*, 98 A.3d at 175 (citing UCA § 3–116, cmt. 2). Regardless of whether or not lenders choose to

employ these safeguards, the bottom line is that “statutory principles of priority, not the monetary value of the respective liens, control.” *7912 Limbwood Court Trust*, 979 F.Supp.2d at 1151.

The defendant argues that the language “to the extent of” in § 34–36.1–3.16(b)(2) suggests that this provision operates merely as a payment preference. That is, if a first mortgagee were to foreclose, the provision would merely ensure that the condominium association would get paid first “to the extent of” its priority outlined in § 34–36.1–3.16(b)(2) before the first mortgagee could reap any funds from the foreclosure sale to satisfy its own mortgage. We disagree. The phrase “to the extent of” in § 34–36.1–3.16(b)(2) only limits the value of the super-priority lien (up to six months of delinquent assessment fees, plus up to \$7,500 in attorney's fees and costs). “There is no indication that the words [‘to the extent of’] were intended to impose any other limit, much less to create a novel lien with higher priority and the right to foreclose, but without the ability to extinguish a lower priority lien.” *Chase Plaza*, 98 A.3d at 176. Furthermore, “[i]f the super [-]priority piece of the [association's] lien just established a payment priority, the reference to a first security holder paying off the super [-]priority piece of the lien to stave off foreclosure would make no sense.” *SFR Investments*, 334 P.3d at 413.

The defendant also argues that extinguishing a first mortgage would render the language in § 34–36.1–3.21(b) meaningless. Section 34–36.1–3.21(b) provides that “[a]ny foreclosure sale held by the association pursuant to [this section], and the title conveyed to any purchaser or purchasers pursuant to such sale, shall be subject to any lien or encumbrance entitled to priority over the [association's lien] \* \* \*.” However, in light of the split-lien concept, this section is not rendered entirely nugatory. For example, had the association foreclosed on the sub-priority portion of its lien (if there was one), defendant's first mortgage would have priority over that portion of the association's lien. Consequently, any purchaser at the foreclosure sale would take the property subject to the defendant's mortgage. See, e.g., *Armand's Engineering, Inc. v. Town & Country Club, Inc.*, 113 R.I. 515, 520, 324 A.2d 334, 338 (1974) (noting that foreclosure on a junior mortgage does not extinguish a senior mortgage, and a buyer at a junior foreclosure sale takes the property subject to the senior mortgage). Here, the association foreclosed on its *priority* portion of \*905 the lien, so § 34–36.1–3.21(b) offers defendant no reprieve.<sup>8</sup>

## B. Right of Redemption

[12] Following foreclosure of the super-priority lien, a first mortgagee has another opportunity to preserve its security interest. Section 34–36.1–3.21 of the act governs the foreclosure of a condominium lien. In 2008, the act was amended to include a right of redemption in favor of the holder of the first mortgage. It states as follows:

“Any foreclosure sale held by the association pursuant to [this section], shall be subject to a thirty (30) day right of redemption running in favor of the holder of the first mortgage or deed of trust of record. The right of redemption shall be exercised by tendering payment to the association in full of all assessments due on the unit together with all attorney's fees and costs incurred by the association in connection with the collection and foreclosure process within thirty (30) days of the date of the post-foreclosure sale notice sent by the association \* \* \*. Otherwise, the right of redemption shall terminate thirty (30) days from the date of the post-foreclosure sale notice \* \* \*.”

The fact that the statutory scheme was amended in 2008 to include a right of redemption is indicative of the Legislature's intent that foreclosure of a super-priority lien extinguishes a first mortgage, for it is true that one cannot redeem what it has not lost.<sup>9</sup>

It is undisputed that defendant did not redeem the association's lien within the statutory period. While defendant is correct in arguing that it was not required to redeem the association's lien, nevertheless, by failing to do so, it forfeited its final opportunity to preserve its security interest in the property. At best, the right of redemption creates a conditional foreclosure: foreclosure of the super-priority lien extinguishes the first mortgage (and any other junior liens on the unit) unless the first mortgagee redeems within the statutory period. Here, defendant did not redeem and, as such, relinquished its last chance to save its security interest in the property.

[13] Notably, there is no right of redemption in the UCA, and its absence further supports our interpretation of the \*906 statute. By amending the act in 2008 to include this right (as well as the notice provisions, discussed *supra* note 9), the Legislature took an affirmative step to offer more protection to lenders in recognition of the harsh reality that foreclosure on a condominium assessment super-priority lien could wipe out their security interests.<sup>10</sup>

## IV

### Conclusion

In concluding, we are mindful of the implications of our holding today and the draconian nature of its effects. And yet, we are also reminded of the ancient maxim “*dura lex sed lex*,” which stands for the proposition that although the law may be harsh, it is still the law. Here, the defendant could have avoided such harsh results had it availed itself of any one of the options available to it before or after foreclosure of the association's assessment lien. Unfortunately for the defendant, “[t]he inequity [it] decries is thus of its own making and not a reason to give [the statute] a singular reading at odds with its text and the interpretation given it by the authors and editors of the [UCA].” *SFR Investments*, 334 P.3d at 414.

It is not our task to rewrite the statute or circumvent the Legislature's intent to achieve a more temperate result. Rather, our task is to interpret the legislation as it is written. In so doing, we reverse the Superior Court's dismissal of the plaintiff's complaint and remand for further proceedings not inconsistent with this opinion.

Justice ROBINSON, dissenting.

“You say you want a revolution

Well, you know

We all want to change the world.”

— The Beatles

“Revolution” (1968)<sup>1</sup>

I respectfully, but very vigorously, dissent from the majority opinion. That opinion is well written and seeks earnestly to sail carefully between Scylla and Charybdis. However, I am convinced that the conclusion reached by the majority is far-reaching and indeed radical, if not revolutionary; and, in my view, it is not founded on an adequate basis in clear legislative authorization.

I do not question the prerogative and ability of the General Assembly to enact a legislative scheme similar to the one that

the majority concludes is dictated by the existing statutory scheme. But I do not believe that, as of this point in time, the General Assembly has done so with anything near the degree of clarity that should characterize legislation that so fundamentally alters venerable principles of the law governing secured transactions. Indeed, it is truly remarkable that, in connection with the survival (*vel non*) of the prior recorded first mortgage after the condominium foreclosure sale, the statutes at issue are utterly *silent*; they never use the word “extinguish,” nor any synonym thereof.<sup>2</sup> Also notable is the fact that, in addition \*907 to not using the word “extinguish,” the statutes do not use the term “super-priority” which the majority employs to describe that portion of the association's lien that, by the terms of the statutes, is given priority over other recorded liens and mortgages.

A review of this Court's well-established precedent indicates that, when a statute is devoid of any language indicating that it was intended to extinguish a first recorded mortgage we should simply interpret the act as it is worded; “it is not the office of the [C]ourt to insert in a statute that which has been omitted and \* \* \* what the legislature omits, the courts cannot supply.” 73 Am.Jur.2d *Statutes* § 114 at 353 (2012); see *Iselin v. Retirement Board of the Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I.2008); see also *Raiche v. Scott*, 101 A.3d 1244, 1249 (R.I.2014). Moreover, we must be guided by “what the legislature said in a statute, and not by what [we] may think the legislature said.” 2A Norman J. Singer and Shambie Singer, *Statutes and Statutory Construction* § 46:3 at 184 (7th ed. 2014).

In applying our precedent and analyzing the statutory scheme at issue, I have remained cognizant of Justice Felix Frankfurter's powerful metaphorical warning: “The search for significance in the silence of [the Legislature] is too often the pursuit of a mirage.” *Scripps-Howard Radio, Inc. v. Federal Communications Commission*, 316 U.S. 4, 11, 62 S.Ct. 875, 86 L.Ed. 1229 (1942). I simply cannot perceive the necessary degree of clarity in the General Assembly's language that would be required for this Court to avoid the pursuit of such a mirage. Moreover, the unsettling absence of clarity in the statutes before us renders it impossible for me to be able to concur that the General Assembly has knowingly rendered insecure transactions that for generations have been understood to be the *nec plus ultra* in the world of secured transactions—*viz.*, prior recorded first mortgages. It

is certainly not the custom of the General Assembly to sound an uncertain trumpet when so much is at stake. As just one of several examples of that point, I note that, when this Court concluded that the General Assembly had intended to repeal the illusory transfer test in the trusts and estates context, the Court went out of its way to note the “*clear, precise, and broad language*” of the subject amendatory provision that was passed by the General Assembly. *Barrett v. Barrett*, 894 A.2d 891, 898 (R.I.2006) (emphasis added). I do not believe that any objective speaker of English would be inclined to use those adjectives to describe the statutory scheme presently before us.

I note that the statutory scheme at issue includes a thirty-day right of redemption for the mortgage holder after the condominium foreclosure sale; the majority relies on that right of redemption in arriving at its conclusion that the mortgage in the instant case was extinguished. However, I do not believe that the inclusion of such a provision renders the statute clear enough to be interpreted in the manner that the majority endorses. In fact, I believe that it merely adds to the lack of clarity in the statutory scheme at issue.<sup>3</sup>

\*908 The majority opinion, with laudable candor, acknowledges its awareness of “the draconian nature” of the effects of its own holding.<sup>4</sup> But the very word “draconian” constitutes the nub of what prevents me from joining my colleagues in the majority. The majority opinion perceives in the admittedly complicated and interrelated statutes at issue a scheme which radically unsettles very venerable principles concerning prior recorded first mortgages. I repeat that the General Assembly has the inherent right to change those principles—provided, of course, that there is adherence to pertinent state and federal constitutional norms. However, I believe that, in order to do so, the General Assembly would have to announce the parameters of the regime which it intended to impose in a far clearer manner than it has sought to do in the present highly complex and exception-riddled statutory miasma.

Consequently, I must respectfully, although forcefully, record my dissent.

#### All Citations

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#### Footnotes

- 1 The only defendants in this appeal are PNC Bank, National Association, the assignee of the first mortgage, and its servicer  
Select Portfolio Servicing, Inc. We will refer to them collectively as "PNC" or "defendant."
- 2 It is unclear from the record what the status of the foreclosure sale is at this time and whether it has been rescheduled.  
3 On November 27, 2013, the Superior Court entered judgment of dismissal *nunc pro tunc* as of August 28, 2013.
- 4 As a threshold matter, defendant argues that plaintiff does not have standing to assert the association's statutory lien  
rights. However, plaintiff is not seeking to assert the association's lien rights; rather, it is seeking to quiet title to the  
property in its name. "General Laws 1956 § 34-16-4 provides that any person claiming 'any interest or estate, legal or  
equitable, in real estate, including any warrantor in any deed or other instrument in the chain of title to the real estate' may  
bring a civil action against other people claiming any adverse interest in the property." *Arnold Road Realty Associates,  
LLC v. Tiogue Fire District*, 873 A.2d 119, 130 (R.I.2005). The plaintiff, which obtained a condominium lien foreclosure  
deed to the property from the association, certainly has sufficient interest in the property to bring an action to quiet title.
- 5 The defendant argues that the super-priority provision of the act has not been triggered in this case because plaintiff  
never alleged facts in its complaint that substantiate the claim that the association's lien was for common expenses as  
required by G.L. 1956 § 34-36.1-3.16(b)(2). However, a review of plaintiff's complaint reveals that plaintiff did assert that  
"a portion of [the association's] lien is prior to the first mortgage or deed; this super-[p]riority portion is comprised of six  
months of common expense assessments \* \* \*." On a motion to dismiss pursuant to Rule 12(b)(6) of the Superior Court  
Rules of Civil Procedure, we must assume this allegation is true and resolve any doubts in plaintiff's favor. *See Chhun  
v. Mortgage Electronic Registration Systems, Inc.*, 84 A.3d 419, 422 (R.I.2014).
- 6 Pursuant to § 34-36.1-3.16(d) of the act, "[r]ecording of the [association's] declaration constitutes record notice and  
perfection of the [association's] lien. No further recordation of any claim of lien for assessment under this section is  
required but is permitted." It is undisputed that the association's declaration of condominium was recorded on April 5,  
1985; therefore no further recordation of the association's lien was required to perfect it.
- 7 It is unclear what the balance of the mortgage was at the time of the association's lien foreclosure, but we note that  
Botelho's original mortgage was for \$114,400. The plaintiff bought the property at the foreclosure sale for \$21,000,  
\$13,501.57 of which was sent to defendant as surplus (which it did not accept), meaning that the lien for outstanding  
assessments was for only \$7,498.43.
- 8 The defendant also asserts that extinguishing its mortgage contradicts the express language in plaintiff's deed to  
the property, which states that it is "subject to mortgages of record, if any \* \* \* which may survive the [foreclosure]  
sale." (Emphasis added.) But, as stated above, there were no mortgages of record (including defendant's) that survived  
the foreclosure sale.
- 9 In addition to the right of redemption, several notice requirements were added to the act in 2008. First, the notice provision  
found in § 34-36.1-3.16(b)(4) requires the association to send a notice of delinquency, including the amount that is  
delinquent, to the unit owner as well as to the first mortgagee. Additionally, two notice provisions were added to § 34-  
36.1-3.21 (the foreclosure section)—subsection (a)(2) requires the association to mail notice to the unit owner and the  
first mortgagee of the time and place of the foreclosure sale at least twenty days prior to publishing notice of the sale,  
and subsection (a)(4) requires the association to send notice to the first mortgagee within seven days of the foreclosure  
sale. The addition of these provisions further indicates that it was the Legislature's intent that foreclosure on a super-  
priority lien would operate to extinguish a first mortgage because it provides the first mortgagee with notice of the lien  
and an opportunity on the front end to satisfy the lien in order to avoid foreclosure (and, thus avoid losing its security  
interest), as well as after the foreclosure sale (to redeem). The defendant does not contest the sufficiency of any notice  
provided by the association in this case.
- 10 As an aside, we note that the association's foreclosure sale extinguished only defendant's security interest in the property,  
not the obligation stemming from the underlying note. *See 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 979  
F.Supp.2d 1142, 1152 (D.Nev.2013). Foreclosure eliminates liens, not debt; defendant can still sue Botelho on the note  
for the unpaid balance of the loan, though we do acknowledge that this effort may be futile.
- 1 See The Beatles, *Revolution*, <http://www.thebeatles.com/song/revolution> (last visited November 20, 2015).
- 2 In the course of his decision granting defendant's motion to dismiss pursuant to Rule 12(b)(6) of the Superior Court Rules  
of Civil Procedure, the trial justice in the Superior Court similarly noted the absence in the statute of verbs or nouns  
connoting extinguish or extinguishment or the like. In lapidary language he said:  
"Nothing in this section indicates that a first mortgage is extinguished absent timely redemption by the mortgagee. In  
fact, the word extinguish does not appear in the statute \* \* \*."
- 3 A right of redemption is conventionally used to allow a debtor to redeem its property from a creditor. *See, e.g., Desseau v.  
Holmes*, 187 Mass. 486, 73 N.E. 656, 657 (1905) (noting that an agreement between a debtor and a creditor stating that

there would be no right of redemption for the debtor under a mortgage was void as against public policy). The statutory scheme with which this Court is contending specifically grants a right of redemption to the holder of the first mortgage rather than the debtor. See G.L.1956 § 34–36.1–3.21. Thus, while the language used by the General Assembly in the right of redemption section may be clear when viewed in and of itself, when viewed in light of the other provisions of the statutes at issue, it still lacks the clarity which I believe is necessary for the General Assembly to so radically alter the principles of the law of secured transactions.

- 4 “Draconian” is defined as “[e]xceedingly harsh; very severe.” The American Heritage Dictionary of the English Language 543 (5th ed. 2011).

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