EXHIBIT O

In The Matter Of:

PPL/NARR. ELECTRIC PETITION

DOCKET NO. D-2021-09

December 15, 2021

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Page 1

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

HEARING IN RE:

PETITION OF PPL CORPORATION, PPL RHODE ISLAND HOLDINGS, LLC, NATIONAL GRID USA, AND THE NARRAGANSETT ELECTRIC COMPANY FOR AUTHORITY TO TRANSFER OWNERSHIP OF THE NARRAGANSETT ELECTRIC COMPANY TO PPL RHODE ISLAND HOLDINGS, LLC AND RELATED APPROVALS

DOCKET NO. D-21-09

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DECEMBER 15, 2021
10:00 A.M.

89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND

BEFORE JOHN SPIRITO, ESQ., HEARING OFFICER

Page 2

APPEARANCES:

FOR PPL CORPORATION AND PPL RHODE ISLAND HOLDINGS, LLC:

HINCKLEY ALLEN
BY: ADAM M. RAMOS, ESQ.
JERALD J. PETROS, ESQ.

FOR NATIONAL GRID USA AND NARRAGANSETT ELECTRIC:

KEEGAN WERLIN, LLP
BY: ROBERT J. HUMM, ESQ.
CHERYL KIMBALL, ESQ.

FOR THE DIVISION'S ADVOCACY SECTION:

CHRISTY HETHERINGTON, ESQ.
LEO WOLD, ESQ.

FOR THE ATTORNEY GENERAL:

NICHOLAS VAZ, ESQ.
TIFFANY PARENTEAU, ESQ.

FOR THE ARCADIA CENTER:

HENRY WEBSTER, ESQ.

FOR THE GREEN ENERGY CONSUMERS ALLIANCE:

JAMES RHODES, ESQ.

FOR THE CONSERVATION LAW FOUNDATION:

MARGARET CURRAN, ESQ.

Page 3

I-N-D-E-X

Page 4

(COMMENCED AT 10:02 A.M.)

THE HEARING OFFICER: I'd like to go back on the record. Good morning. I'd like to take appearances for the record, please.

MR. PETROS: Good morning, Mr. Hearing Officer. Jerry Petros for PPL.

MR. RAMOS: Adam Ramos also for PPL.

MS. HETHERINGTON: Good morning. Christy Hetherington for the Advocacy Section.

MR. WOLD: Leo Wold for the Advocacy Section.

MR. HUMM: Good morning. Robert Humm for National Grid USA and the Narragansett Electric Company.

MS. KIMBALL: And Cheryl Kimball for National Grid.

MR. WEBSTER: Hank Webster for Arcadia Center, and as I noted yesterday, Mr. Hearing Officer, I might be leaving at some point today, so I'll try to be as undisruptive as possible.

Page 5

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

Page 6

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

Page 7

I just wanted to confirm that, indeed, it is admitted as a full exhibit. We did not move to have it so, and I wondered if there were any objections, and if not, we wanted to confirm that it is full.
THE HEARING OFFICER: Okay. My mistake. Any objections? All right. So marked.
MS. HETHERINGTON: Thank you.
THE HEARING OFFICER: Ms. Johnson, I'll remind you that you're still under oath from yesterday.
MR. PETROS: I think it's Mr. Vaz.
THE HEARING OFFICER: I thought Mr. Wold was still questioning.
MR. PETROS: He had finished.
MR. WOLD: I had pretty much completed my questioning. I do have one or two more questions if now is the appropriate time just to finish up.
THE HEARING OFFICER: I thought you were still questioning her, so --
MR. WOLD: No, I had pretty much wrapped up, but unfortunately, I kept

Page 8

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

Page 9

increases and decreases that would happen.
Q. The return on or return for debt you would use a different interest rate. We had used I think eight percent for the return on equity, but for the return on debt would it be fair to use something like two percent for that return, and then you would calculate it based on the same $65 million figure, but then you would utilize the capital structure to -- assuming, as we did yesterday, a 50/50 percent of equity and debt, if you allocate 50 percent of two percent of 65 million for the return on debt, and if I'm misspeaking, just let me know and take us through that calculation if you would.
A. Yes. The calculation would be the same, and if you were assuming a two percent cost of debt, then, again, you would do the same calculation that we did yesterday, but for the eight percent you would use two percent.
Q. Okay. And that's also the same for the other components, namely, for AMF and grid mod, too. You go through it the same way

Page 10

except you use two percent instead of the eight percent and you'd use the same capital structure, is that correct?
A. Yes, that's generally the ratemaking calculation.
MR. WOLD: Okay. Thank you. That's all the questions I have.
THE HEARING OFFICER: Thank you. Mr. Vaz?
MR. VAZ: Actually, I'm go to let Attorney Parenteau speak.
MS. PARENTEAU: Good morning, Miss Johnson.
THE WITNESS: Good morning.
CROSS-EXAMINATION BY MS. PARENTEAU
Q. So today we'd like to just go over to gain a better understanding of the Pennsylvania regulatory structure and how you understand the differences with it between the Rhode Island regulatory structure and also just a few clarifications from your testimony.
A. Okay.
Q. So if you could start by just giving us a description of the typical ratemaking

Page 11

process in a little more detail than what was in the testimony for Pennsylvania.
A. Sure. In Pennsylvania we use a -- we use three test years. There's an historic test year, a future test year and what we refer to as the fully projected test year. To start out, it's similar with the historic test year in that the utility provides the most recent -- or 12 months of data for the fiscal year. There are regulations around timing, so PPL Electric typically files in March of -- say we're going to file a case in 2022, we would file in March -- and that's hypothetical. We would file in March using an historic test year of 2021, so that would be the 12 months for that calendar year. We would also provide all of the same information that we do for an historic test year, we would file that for 2022 which is the future test year. And then for the fully projected future test year we, again, file all of the same data for what would be 2023. And in Pennsylvania the rates are based on -- are based on that 2023 data.

Page 12

So we do the similar adjustments to what happens to develop the rate year in Rhode Island, however, we actually do that essentially three times. We do the ratemaking -- we do those adjustments to the historic test year, we do them to the future test year, that 2022 data, we do those adjustments to 2023 data as well. So we -- in a way you could say we show three rate years compared to Rhode Island and we provide what I'd call a walk from year to year. It's a bottoms up budget process. So we demonstrate what costs may have been in the historic test year that don't carry through to other years, we eliminate those. For costs that would be included in the future test year budget, we add those back in. And so it's three complete comprehensive years of financial data that we provide in Pennsylvania, and again, that fully projected future test year is what forms the basis of rates.
So we have to justify that data, that budget in the future as well as

Page 13

providing the essentially two years prior to demonstrate how we got there and just the -- again, the walk and the comparison year over year.

Q. In terms of opportunities for stakeholder involvement during those proceedings, when does that happen?

A. So initially upfront there's -- because of the different procedural legal rules, which I'm not an attorney so I won't attempt to go further than that, but we don't typically engage stakeholders prior to filing, filing our rate case. Once that rate case is filed and -- let me backup.

While we typically file at the end of March, there is a notification that must happen 30 days prior to the utility filing. So we send out a letter notifying the Commission and other statutory parties that we will be filing a rate case in approximately 30 days. So that notification would happen at the end of February, and then once we file, or actually the day of filing we have -- and this is not required,

Page 14

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

Page 15

Q. And once the AL judge recommends a proposed order, is there opportunity for further comment from intervenors or parties or does it just go straight to the Commission?

A. No, there is opportunity for comment. There's also exceptions and reply exceptions that are available throughout the case and, of course, an appeal process if necessary.

Q. So how does that compare to your understanding of the order timing in a Rhode Island rate proceeding?

A. My understanding in a Rhode Island rate proceeding is certainly different from Pennsylvania in terms of stakeholder engagement. I understand there's engagement essentially prior to filing the case as well as throughout the discovery process and then kind of I think similar as the case progresses.

Q. And do you have any understanding of how orders develop in Rhode Island at the end or --

A. I don't think I can speak to that quite yet.

Page 16

Q. So what about the standard in Pennsylvania that is used when you're developing your rate filings? Do you take a -- are you part of determining and applying that when you prepare the rate filings?

A. In terms of prudency and reasonableness?

Q. Yes.

A. That's public interest. That's all part of what we're providing in our rate case. One of the documents that we provide, we call it a statement of reasons, and I would say that's sort of the -- really, the summary of the case that walks through why are we looking for this, why is it beneficial to customers, what generally are our investments that we're making and seeking cost recovery for, what accomplishments have we had that are providing benefits customers that we believe justifies why we're seeking cost recovery.

Q. And it's your understanding that it's the same, similar in Rhode Island for the rates?

A. Similar. I would say similar. I mean, certainly, again, from a ratemaking

Page 17

perspective reasonableness, prudency, fair return to the utility, public interest of the customers and certainly somewhat more recently in Rhode Island -- we talked a little bit about this yesterday, is the Rhode Island benefit/cost test.

Q. And also based on your understanding that you may have on the standard in this proceeding, do those standards differ, the standard in this proceeding with the standard from the rate proceeding?

MR. RAMOS: Objection.

MS. PARENTEAU: Just your understanding. If she doesn't know -- I just want to know if she has an understanding of it. That's all.

THE HEARING OFFICER: If she can answer.

A. I wouldn't feel comfortable answering that.

Q. Thank you. With respect to the potential transition costs, your understanding would be that what you just discussed in terms of reasonableness and prudency would be the

Page 18

standard that PPL may seek to recover later on?

A. Certainly that's part of it. As part of our commitments, which I don't have in front of me, I think we also used some language there regarding how or why we would seek cost recovery for those.

The other thing I'll mention, and I want to point out here, this goes I think, again, to some of the concern around recovering costs. We did make the commitment to not file a rate case for three years. And so to the extent that costs are incurred as -- particularly expenses are incurred throughout that three years, one of the requirements for -- under the ratemaking rules is that those costs have to be in your historic test year, they have to be in the test period in which the company is putting forward for base rates. So to the extent that there are costs that the company is incurring from the time of close through what would be that -- or rather up to that historic test period, those expenses, we

Page 19

don't just get to accumulate them and put them in for cost recovery, so I think that provides, I'd say, some potential from including those in base rates.

Q. Do you have your testimony with you?

A. I do.

Q. Take a look at Page 4 of your testimony, please. And there -- Line 18 you discuss PPL's general approach to cost recovery and its treatment of transition costs. That sentence there, can you just -- in the context of that sentence, can you discuss a little bit more about your general approach to cost recovery in the context of that sentence, please?

A. Sure. I mean, again, I think it goes to not just the written testimony but the other verbal testimony that you've heard from some of my colleagues as well as the commitments that we made. In terms of what we would be looking for in cost recovery proposals is, again, making sure that we can quantify the costs, that we can defend the costs, that they are reasonable, prudent, in the public

Page 20

interest, they're not duplicative, they -- I believe the language in the commitments -- actually I think I already said this, quantifiable, verifiable. We are -- and again, we've made some commitments here.

I'll go back to the rate case commitment that -- the stay-out for three years. What we're trying to do here I think is provide some reassurance that we understand the concern that the parties have raised on behalf of Rhode Island customers. We're trying to be responsive to that in terms of potential risk. But again, I think from a cost recovery perspective, our philosophy for Rhode Island isn't different from our cost recovery philosophy for Pennsylvania and our other jurisdictions. I think we're really looking to make sure that we're making the right investments and doing right by the customers.

Q. Do you see a stay-out also as a way of potentially protecting ratepayers from harm in the meantime following the transition? Do you think it can function in that

Page 21

respect?
A. Well, I don't believe that the transaction will cause harm to Rhode Island customers, so I'll preface my response with that. I'd say to the extent that one perceives harm, even if approved, I think what the stay-out provision does is provide rate stability throughout the transition period for customers.
Q. And you mentioned the word duplicative and there's words -- incremental and like for like, and if somebody is not familiar with the regulatory framework and not used to hearing rate filings, someone in the public that might be watching this, can you just provide either definitions that PPL may use for that or an example to better explain what that would mean, what those words would mean?
MR. RAMOS: Objection. We did this for 20 minutes yesterday.
THE HEARING OFFICER: Overruled.
A. So I will refer to I think my answer from yesterday regarding the like for like and

Page 22

duplicative. But if I were -- I use the example often with folks to try to explain things like you were explaining it to my mom, or at least that's how I explain things, certainly not from a utility background.
So how I would explain the cost recovery is, again, to the extent that customers may have already paid for these costs, to the extent that PPL is providing a widget that National Grid has already provided, it's not doing anything more for the customer, it's not making their reliability better, it's not really providing anything new for them, then the company will not be seeking cost recovery for that. I think that's how I would attempt to explain it.
Q. And in terms of incremental, can you think of any examples for recent PPL filings where there's been a showing of an incremental benefit that you could provide as an example?
A. I think our last rate case was a little

Page 23

while ago. We've had steady rates for quite a few years.
Q. I appreciate your consideration of the question.
A. I think -- and I don't know if this will be specific enough, and it might be difficult for me to get too specific because I'm not an engineer, but I'd say in Pennsylvania, and you've heard from some of my colleagues, about what's referred to as grid mod, and we don't have specific or separate plans in Pennsylvania for that, so our costs for -- largely for our smart grid system and the devices on the system have been recovered through base rates. And so I think there what I would describe as an incremental benefit in some of those systems or costs and even to the extent that we would seek cost recovery for things that we've invested in since our last rate case, there it's really about reliability and improving reliability for customers, and so an incremental benefit to some of the equipment that we've invested in there is

Page 24

that it's -- it keeps the power on longer, it keeps the -- not necessarily longer but through different events, have fewer outages for customers during what's referred to as blue sky days, during storm events, provides better -- just better service.
Also, to the extent that we've invested in things, as another example, customer service systems like an IVR system or website functionality for customers, it's easier for them to go on, they have access 24/7, and to the extent that that didn't exist before, that's a new benefit, right, that's something that's making their lives easier, giving them more access to information, and so I would say that's an incremental benefit to customers that didn't exist prior.
Q. Thank you. You mentioned that it's been a few years since your last rate filing. Can you just discuss what are normal drivers for PPL moving to file a new full rate case?
A. I think I discussed in my testimony there's a number of drivers. Of course, one

Page 25

of them is financial, that's not necessarily the first one, but we also look at what's happening in the state and the policies of the state, what are -- what's happening with customers, what are other rules by which -- currently within our tariff that we would seek to change that may provide benefits to customers, and in Pennsylvania that's all done through a base rate case. So I think those are the things that -- just some of the things in addition to what may be mentioned in my testimony that we consider when we look at filing a distribution base rate case in Pennsylvania.

Q. I believe it was during Mr. Bonenberger's testimony he was being asked about regulatory assets on the books, and I believe he said you might be able to explain a little bit better how that fits into the rate proceeding. Would you be able to?

A. Is there a specific or just generally?

Q. Just in general.

A. So a regulatory asset is typically something that sits on the accounting books

Page 26

of the utility and it's really -- it's called a regulatory asset because it's something that the company hasn't -- cost that the company looks to seek, would seek cost recovery from customers for but hasn't yet, kind of like reserved on the books, if you will. And there's different mechanisms and ways that things get onto -- get to be a regulatory asset. At least in Pennsylvania, generally there needs to be a rule or regulation or prior Commission approval for PPL Electric to be able to put that regulatory asset on its books. So in cases where we have that approval, it's usually, I'd say, kind of a timing difference than from when those costs are incurred versus when the company is permitted to seek cost recovery for those.

Q. And also just generally speaking another thing that I believe he said you could provide a little more explanation was just in general the service cost analysis and how that's done, how that's looked at. I believe that's what I have in my notes what

Page 27

he mentioned, but --

A. Could you be more specific in what you're looking for on that? It might be I'm asking because it may be better for Mr. Jirovec to answer.

Q. I believe it may have been in terms of the cost sharing analysis, a service cost sharing.

A. Oh, from an allocation --

Q. From an allocation perspective. Sorry.

A. Okay. I think that was around the -- I think it may have been mentioned around a three-factor allocation methodology that PPL uses. So PPL has a three-factor allocation methodology, and what that looks at, it's a way for costs that aren't able to be directly assigned to the utility, it's a way for -- a calculation for those costs to be allocated.

And so there's three factors that we use, it's employee head count, capitalization and O&M. And so we look at that for each of the functions or businesses that those costs need to be allocated to,

Page 28

and based on that math, that's ultimately how they get there.

Q. And I believe it was said that that's part of the synergies that PPL believes they'll be able to use is some of those shared service costs. Is that --

A. That's correct.

MS. PARENTEAU: Thank you. I believe that's all I have. Thank you.

THE WITNESS: You're welcome.

THE HEARING OFFICER: Mr. Webster?

MR. WEBSTER: How are you?

THE WITNESS: Good.

CROSS-EXAMINATION BY MR. WEBSTER

Q. Yesterday, when speaking with Mr. Bonenberger, I referenced the 2021 PPL climate assessment report entitled Energy Forward. Are you familiar with that report?

A. Vaguely. I mean, I'm aware that PPL has one, but I did not participate in the preparation of it.

Q. Your position is director of regulatory affairs, is that correct?

A. That's correct.

Page 29

Q. And in your testimony you submit that you're responsible for utility and energy policy.
A. Yeah. I should say a member of my team has provided inputs to it, so I may have misspoken there. I personally, but with oversight of my team we provide input.
Q. Well, in your estimation, then, given the familiarity you do have with it, why did that report lack a discussion of reducing greenhouse gas emissions associated with the use of gas in buildings?
A. I can't speak to that.
Q. Given your position, are you familiar with Rhode Island's Act on Climate law enacted in 2021?
A. Yes.
Q. And do you recognize that the law mandates economy-wide greenhouse gas emissions reductions?
A. I'm aware of that.
Q. Do you recognize the law also states that addressing the impacts on climate change shall be deemed within the powers, duties and obligations of all state departments,

Page 30

agencies, commissions, councils, instrumentalities, including quasi-public agencies?
A. I have read that.
Q. Do you recognize that the Public Utilities Commission, the Division, the Energy Facility Siting Board and others would be included in that grouping?
A. Yes, I understand that.
Q. And so in your position that would mean that the plans that are designed and filed by PPL Rhode Island, assuming this transaction goes through, would benefit from being crafted with the Act on Climate in mind?
A. Yes. I certainly think that it would be taken into consideration.
Q. And do you agree that reducing greenhouse gas emissions is in the public interest?
A. For me personally or for the company? I mean, either way, the answer is yes.
Q. Let's just get that clear on the record. Let's do the company first.
A. The answer is yes, of course. I mean, as Mr. Bonenberger testified to, the company --

Page 31

and it's probably going to sound like a parrot of his testimony, but the company is very interested in working with stakeholders to put together what those plans are going to look like.
Q. And the last one is maybe the softball. You personally, do you feel that it's important, since you raised it?
A. Yes. I did walk into that, didn't I? Yes, of course.
MR. WEBSTER: Thank you. I think that's all the questions I have.
THE WITNESS: Thank you.
THE HEARING OFFICER: Thank you. Mr. Rhodes.
CROSS-EXAMINATION BY MR. RHODES
Q. I just have a couple questions. I recognize I am not expert in base case -- base rate cases or the construction thereof, so I apologize if my questions are either misphrased, or if I get terms wrong, please correct me on that. But in your testimony previously I believe you said that the -- in Rhode Island, and I understand this is

Page 32

consistent with the last base rate case, is that the return on equity is eight percent for the current, or is that --
A. No. I believe that's what Mr. Wold was using in his example.
Q. Do you know what the return on equity is in Rhode Island, then?
A. It's just above nine percent. I can't remember exactly what it is. I can't remember exactly what it is. It's a little over nine percent.
Q. The decimal points I'm not going to ask for.
A. There's two numbers. I can't remember which order they go in.
Q. Are you familiar with the same return on equity in Kentucky and Pennsylvania for their ratemaking process?
A. I am not -- I don't remember offhand for Kentucky, and in Pennsylvania our last return -- the return on equity from our last base rate case, it's what we call black box settlement, the company and the parties agreed to all terms. So there was no determined ROE coming out of that rate case.

Page 33

The Pennsylvania Public Utility Commission does issue a quarterly report where they look at -- they look at -- well, the utility submits a quarterly financial report and then the Commission consolidates all of the input from the utility and issues their own report, and so that's issued on a quarterly basis, and what they're issuing right now for a reasonable return on equity for electric companies is 9.45 percent.

Q. So similar to, but maybe not exactly the same return.

A. Yeah. I would say they're approximately the same.

Q. And you don't have the same information for Kentucky?

A. I do not.

MR. RHODES: Could I issue that as a data request for the return on equity?

THE HEARING OFFICER: Yes.

Q. I'm not -- this might be outside the scope here, but I was also -- given that you've already closed on the transaction for WPD in the UK, but I was also curious if there was

Page 34

a similar structure for those operations and whether -- I was curious if you are familiar with that ratemaking process and if there's a similar provision for rate of return on equity in the UK.

A. So I can speak to it very generally. Their process is very different and I can't get into the details of it, I'm just not as educated on that, but there is a return on equity component. I don't recall what it is or necessarily -- they have different -- they have a different ratemaking structure and calculation, so I couldn't speak to how exactly that fits in or compares, but there's certainly a return on equity component.

Q. Final question for the potential -- the expectation that you'll file a future base rate case in Rhode Island. My understanding would be that as part of that you would be filing a proposed rate of return on equity for that future rate case.

A. Yes.

Q. Can you describe what components or how the

Page 35

company would come up with a proposal for that rate of return?

A. I don't know that I'm necessarily comfortable speaking to that in detail. I mean, certainly there's an extensive study that goes into determining what the proposed return on equity would be. That involves not only looking at -- it looks at the industry and other comparable companies, it looks at the utility, how the utility is positioned, and that's probably about as far as I can go on that. But often utilities present specific return on equity experts in the case to defend that.

Q. Do you intend to follow Narragansett Electric's current practice of adopting the way that they have done that or do you expect that the change in the corporate structure would lead to an alternative process for making that proposal in Rhode Island?

A. In terms of determining what the cost of equity would be?

Q. Yes.

Page 36

A. I think generally -- I mean, there's certainly differences in how utilities -- how utilities ultimately get to the end number, but generally, the methodology is consistent in terms of, again, looking at comparable utilities, looking at the individual utility's position, so I would say it would be largely consistent.

MR. RHODES: Thank you. No further questions.

THE HEARING OFFICER: Thank you. Ms. Curran?

MS. CURRAN: Sorry. I don't have any questions.

THE WITNESS: Don't apologize.

THE HEARING OFFICER: Any redirect?

MR. RAMOS: No redirect.

THE HEARING OFFICER: Thank you, Ms. Johnson.

THE WITNESS: Thank you.

THE HEARING OFFICER: Next witness?

MR. RAMOS: PPL calls Gregory Dudkin.

GREGORY DUDKIN (Sworn)

Page 37

DIRECT EXAMINATION BY MR. RAMOS
THE COURT REPORTER: Would you state your full name for the record, please?
THE WITNESS: Gregory Dudkin.
Q. Good morning, Mr. Dudkin.
A. Good morning.
Q. Could you tell me who your current employer is?
A. PPL Services Corporation.
Q. And what is your position with PPL Services Corporation?
A. Executive Vice President and chief operating officer.
Q. And what are your responsibilities in that position?
A. I oversee the three utilities of PPL, that's PPL Electric Utilities in Pennsylvania, Kentucky Utility -- Kentucky Utilities, Louisville Gas and Electric in Kentucky, also the chief information security officer reports to me, and as part of this effort I'm also responsible for the integration management office.
Q. Thank you. And could you describe a little

Page 38

bit about your utility industry experience?
A. Sure. After graduating college with an engineering degree I went to work for PECO Energy which is Philadelphia-based utility, had a number of positions there rising up to executive positions in the transmission and distribution end of the business as well as in charge of gas field operations as well as customer service. At PECO Energy I was responsible for the safe delivery and reliable delivery of electric and gas service to 1.6 of million electric customers and 400,000 gas customers.
From there I went to work for Commonwealth Edison which is an electric utility in Chicago where I was -- I headed up the transmission distribution group there, responsible for the safe delivery of service to over 4 million customers. I went to PPL in 2009. I was Senior Vice President of transmission distribution there, was promoted in 2012 to be President of PPL Electric Utilities and, again, responsible for the safe delivery of -- and reliable

Page 39

delivery for 1.4 million customers, and during that time we were fortunate to win a number of awards for customer service, for our innovations. We've been a leader, as many witnesses have talked about, in deploying smart grid but also innovative in customers experience as well. And in April of this past year I was promoted to chief operating officer.
Q. Thank you. Now Mr. Dudkin, as part of this proceeding did you submit prefiled direct testimony in connection with the initial petition in this matter?
A. I did.
Q. And do you have a copy of that testimony before you?
A. I do.
MR. RAMOS: And I'll note that that testimony has been marked as a part of Joint Petitioners Exhibit 1 for the record.
Q. Have you had an opportunity to review that testimony in advance of the hearing today?
A. Yes.
Q. And were the answers that you gave to the

Page 40

questions contained in that testimony true and accurate at the time that you gave them?
A. Yes.
Q. And do you adopt that testimony under oath here today?
A. I do.
MR. RAMOS: I would ask that Mr. Dudkin's portion of Joint Petitioners Exhibit 1 be admitted in full.
THE HEARING OFFICER: Any objections?
MS. HETHERINGTON: None.
THE HEARING OFFICER: So marked.
MR. RAMOS: And Mr. Hearing Officer, I note that that completes all of the direct testimony from that exhibit. I would also move that the petition itself be entered in full as well.
THE HEARING OFFICER: Any objections? So marked.
Q. Thank you, Mr. Dudkin. I'm going to show you Joint Petitioners Exhibit 2 and Joint Petitioners Exhibit 3 which have been marked as -- which are the statement of existing

Page 41

and additional commitments and also the supplement to that statement. Mr. Dudkin, have you had an opportunity to review the content of those two documents?
A. I have.
Q. And to the extent that those documents contain additional or new information beyond what was set forth in your direct testimony, do you adopt the content of those statements of commitments under oath?
A. Yes, I do.
Q. Thank you. I just have a couple more questions for you, Mr. Dudkin. You mentioned that during the time that you've been at PPL, PPL had been fortunate enough to win certain awards. Do you recall that testimony?
A. Yes.
Q. And I believe you mentioned some of those awards in your direct testimony, is that correct?
A. Yes.
Q. And I believe Mr. Bonenberger maybe added some additional ones in rebuttal testimony.

Page 42

A. Yes.
Q. Are there any other awards that PPL has been fortunate enough to win since the filing of Mr. Bonenberger's rebuttal testimony?
A. Yes, we were. For J.D. Power we won two more awards for business customer satisfaction, both Kentucky Utilities and PPL Electric Utilities won that, and we just found out yesterday that both PPL Electric Utilities and Kentucky Utilities won the residential J.D. Power awards, and that's ten straight years for PPL Electric Utilities and six straight years for Kentucky Utilities.
Q. Thank you. I'm going to show you another document which we'll mark as an exhibit. I believe this is -- I'll have the Hearing Officer do it. I don't want to make a mistake.
THE HEARING OFFICER: The proposed exhibit is Division Data Request and Response 2-20, revision on June 20, 2021, and that will be marked as PPL and PPL Rhode Island Holdings Joint Exhibit 9 for ID.

Page 43

MR. RAMOS: Thank you very much, Mr. Hearing Officer.
Q. Now Mr. Dudkin, you have before you what has now been marked as PPL and PPL Rhode Island Holdings Joint Exhibit 9, and this is a response to a data request and it includes a settlement response. Do you see that?
A. Yes.
Q. And it refers to an attachment, right?
A. Yes.
Q. And that attachment begins on the following page, correct?
A. Yes.
Q. If you recall, on Monday, when Mr. Sorgi was testifying, he had indicated that there had been agreement on amended terms to the transition services agreement.
A. Correct.
Q. Does this attachment reflect that amended transition services agreement?
A. It does.
Q. And one of the things that Mr. Sorgi had testified to was that the amended language of the transition services agreement

Page 44

provided a mechanism whereby the -- it could be extended at the option of PPL if necessary at the conclusion of the transition service term. Do you recall that?
A. Yes.
Q. If I could turn your attention to Section 3.1 of the transition services agreement, and that's on Page 18 of 30 of the attachment but it's got a page number 10 at the bottom. Are you there?
A. Yes.
Q. Could you just explain what the language is in Sections 3.1(a) and 3.1(b) that provides that ability for PPL to extend the transition services agreement at its option?
A. Yes. It says that -- well, Rover shall have the right upon written notice to service provider at least 180 days prior to the date set forth in Exhibit A provided that if the date set forth in Exhibit A is less than or equal to the 180 days after the date hereof, that such written notice must be delivered within ten business days of the

Page 45

date hereof to extend such date with respect to any transition services and if reasonably expected to be necessary to complete the successful transition to Pluto.
Q. And what is the intent behind that language?
A. The intent is to allow if, for whatever reason, we need to extend the TSAs beyond the 24 months, we can request that. We just need to do it 180 days in advance of the 24-month term.
Q. What does Rover refer to?
A. Narragansett.
Q. And what does Pluto refer to?
A. PPL.
Q. And this provides Rover with the option that you just described?
A. Correct.
Q. And the transition services agreement is between which parties?
A. It's -- well, it's between Rover and Newquay.
Q. And who is Newquay?
A. Newquay is National Grid.
MR. RAMOS: So this is fun with

Page 46

words.
THE HEARING OFFICER: Very creative.
Q. And the language that you referred to in Section 3.1(a), that also -- similar language also appears in Section 3.2 as well, correct?
A. That's correct.
Q. And that applies to the complete 24-month term as opposed to the individual terms of the TSAs, correct?
A. Correct.
MR. RAMOS: I'd like to move that PPL and PPL Rhode Island Joint Exhibit 9 be entered full.
THE HEARING OFFICER: Hearing no objections, so marked.
MR. RAMOS: And I have no further questions for Mr. Dudkin at this time. He is available for cross-examination.
THE HEARING OFFICER: Mr. Wold?
MR. WOLD: Good morning, Mr. Dudkin. How are you?
THE WITNESS: All right. Good

Page 47

morning.
CROSS-EXAMINATION BY MR. WOLD
Q. I wanted to ask you in the chain of command from the individuals of PPL we've heard from today, Mr. Sorgi is the CEO?
A. Correct.
Q. And you're No. 2, is that correct?
A. That's correct.
Q. And then Mr. Bonenberger is further down the chain?
A. He reports to me, yes.
Q. And Mr. Bellar also reports to you?
A. Correct. He's within my organization. He actually reports to John Crockett who's the President of Kentucky.
Q. You had mentioned on Page 12 of your testimony, and if you go down to the bottom of that page -- I'll wait for you to get it.
A. Yes.
Q. You indicate that most recently PPL Electric Utilities was named Energy Star Partner of the Year for 2021 by the Environmental Protection Agency and the Department of Energy based on energy savings we

Page 48

accomplished through our residential energy efficiency programs, correct?
A. Correct.
Q. But with respect to that award, PPL is not the only company that gets named that particular award for that particular year, is that right?
A. That's correct.
Q. All right. So there are other companies that get named that award. Do you know how many other companies get named that award?
A. No.
THE HEARING OFFICER: The document provided by Mr. Wold is titled Partner of the Year 2021 Energy Star Award Winners. This will be marked as Advocacy Section Exhibit 35 for ID.
Q. So Mr. Dudkin, if you take a look at Exhibit 35, it lists the Energy Star Partners of the Year for 2021 and it shows that there are over 150 organizations that get named for that particular award, is that correct?
A. Yes.
Q. Okay. And if you turn to Page 11, and I

Page 49

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

Page 50

Q. Did you -- were you here in the room when Mr. Bonenberger -- I asked him some questions about the service company and how it related to the electric company? Do you recall that?
A. I do remember, yes.
Q. And I had asked him about -- regarding the transfer of billing and statement remittence, and I had asked him if the billing and payment remittence function was going to be transferred from National Grid to the service company, correct?
A. Correct.
Q. And he said that it was, right?
A. Yes.
Q. And I also asked him whether the billing and service company performed the same function for PPL Electric in Pennsylvania, correct?
A. Correct.
Q. And he affirmed that.
A. Yes.
Q. What he said was accurate and true, is that correct?
A. Yes.

Page 51

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

Page 52

appears to be a letter from Christopher Andreoli to the Pennsylvania Public Utilities Commission.
MR. WOLD: That's correct.
Q. And attached to the letter there's a settlement agreement, and the settlement agreement concerns the billing issue that was the subject of an investigation in Pennsylvania by the Commission of Bureau Investigation and Enforcement regarding the failure of Pennsylvania Electric Utilities to provide notice of bills to customers, multiple customers over multiple consecutive billing cycles, correct?
A. I'm sorry. Could you -- I was reading.
Q. No problem. I just said the attachment to the letter that was -- I believe it was Advocacy Section 38.
THE HEARING OFFICER: 36.
Q. For identification, and there's a settlement agreement, and the settlement agreement concerns the review or investigation of the Commission of Bureau and Investigation and Enforcement of Pennsylvania Electric

Page 53

Utilities for the company's alleged failure to bill for multiple consecutive billing cycles, failure to provide notice to customers, is that right?
A. Yes.
Q. Okay. And that settlement agreement occurred, am I correct, during the rollout of PPL Electric Utilities' second generation AMI project, is that right?
A. Let me just take a look at the dates here.
Q. Sure.
A. So we were rolling out AMI, but I don't know if that was the root cause of this issue.
Q. So in connection with the settlement agreement, if you turn to Page 4 of the settlement agreement, it indicates that multiple customers ultimately were on -- that PPL Electric failed to bill multiple customers during the period that I mentioned, June 2018 to April 2019, and that they did, in fact, receive very large makeup bills from PPL Electric Utilities, correct?

Page 54

MR. RAMOS: Objection. It mischaracterizes Page 4 of this document.
THE HEARING OFFICER: Sustained.
Q. Mr. Dudkin, if you take a look at Page 4, the complaint that was resolved, in fairness, by PPL Electric Utilities, what does it say that the PPL Electric Utilities did and ultimately agreed that it did relative to the failure to bill multiple customers over that period of time that I indicated?
MR. RAMOS: Objection. I don't know why he would have to tell him what this document says.
THE HEARING OFFICER: Mr. Wold, what page? Page 4?
MR. WOLD: That's right.
THE HEARING OFFICER: You want a summary of what's on Page 4?
MR. WOLD: I didn't want to put words in Mr. Dudkin's mouth since the objection had been sustained, so I can read from parts of the paragraph or I could try to just elicit what the settlement is about,

Page 55

but I thought, since Mr. Dudkin is familiar with it, he could perhaps just give a brief summary of the settlement.
THE HEARING OFFICER: Mr. Dudkin, can you summarize this?
THE WITNESS: I'm not familiar with this settlement.
THE HEARING OFFICER: All right. The document speaks for itself.
Q. Are you aware that the Pennsylvania Public Utility Commission Or Public Service Commission ultimately -- it's Pennsylvania Public Utility Commission, ultimately issued an order approving the settlement, Mr. Dudkin?
A. I'm not aware.
THE HEARING OFFICER: This is a Pennsylvania PUC decision dated August 5th, 2021, and this will be marked as Advocacy Section 37.
Q. Mr. Dudkin, have you seen that order of the Pennsylvania Public Utility Commission?
A. I see it right here.
Q. You have seen it, but you haven't seen it

Page 56

before today, is that correct?
A. I have not seen it before, correct.
Q. Now this was -- it was a billing issue, and my understanding is is that Narragansett is going to be billing -- the billing function of Narragansett is going to be transferred to the service company of PPL, correct?
A. Can you just say that again?
Q. Under -- there's a TSA and Narragansett has certain billing services that are performed for Narragansett by the service company of National Grid, and under the TSA that function is going to be transferred to PPL Electric Utilities Service Company, correct?
A. Certain of the billing functions will, so the bill print and mailing of the bill will be out of the service company.
Q. And there was a snafu in connection with the ability of the service company as reflected in the settlement and agreement due to technical issues to provide the notice to customers over a period of time that I previously indicated, correct?
MR. RAMOS: Objection.

Page 57

THE HEARING OFFICER: So I'm trying to understand where you're going with this line of questioning. The witness is not familiar with this. So if you're going to ask him for detail concerning this agreement, he's already answered that he doesn't know.

MR. WOLD: I'm not asking him for the agreement, details of the agreement. I'm indicating to him that if he is familiar -- because he testified prior to our discussing the order and opinion that he's familiar with the function of the service company relative to the billing and payment remittence functions that the Pennsylvania Electric Utilities Service Company, PPL Services would be obtaining from National Grid. So it's exactly the same function that is the subject of this billing dispute and resolution that was issued.

THE HEARING OFFICER: So you're not asking him details about this decision.

MR. WOLD: Well, I'm asking him not

Page 58

the subject of the particular billing problem, but I'm asking him as to what -- you know --

Q. In short, Mr. Dudkin, why should ratepayers in Rhode Island be confident that a similar snafu will not occur when the Narragansett Electric billing payment and remittence functions are transferred from National Grid to PPL Service Company?

MR. RAMOS: Objection. And my objection is based on the characterization of these documents contained within the question.

THE HEARING OFFICER: So you're asking the witness to give an opinion as to whether or not there's going to be a similar snafu, as you used the word, in Rhode Island when he's not familiar with what happened in this case. So you're asking him for a comparison on an issue that he's not familiar with. If you want to get into what his plan is for operating in Rhode Island, that's a little different than asking if what he's going to do in Rhode Island is as

Page 59

bad as what happened in Pennsylvania.

Q. Well, Mr. Dudkin, would you concede that there was a problem in Pennsylvania in 2018 and 2019 apart from these documents?

A. It looks like that we didn't bill five customers for a period of time.

Q. And so there was a problem. And that was a problem that was -- would have been some kind of lack of coordination between or at least the responsibility of PPL Services Company that provides that function to PPL Electric, correct?

MR. RAMOS: Objection.

THE HEARING OFFICER: So the witness has admitted that there was some issue in Pennsylvania. I think that's not in dispute. So -- what's your question, Mr. Wold?

Q. So there was a problem that transpired in Pennsylvania, correct, and the service company, because it provides the billing function to Pennsylvania -- PPL Electric, would have been responsible for that problem, correct?

Page 60

A. Not necessarily. I don't know what the root cause of the problem was. I don't know what caused the problem.

Q. But you do know there was a problem, correct?

A. From these documents it looks that way.

Q. Do you want to take some time to look at the documents, because the problem is described within those documents in fair amount of detail. Do you want to take a brief recess and look at the documents?

A. I guess I can.

MR. RAMOS: I object to the notion that there's relevancy to these documents, but if Mr. Dudkin can read them and know what's in them, I don't mind a brief recess for him to read.

THE HEARING OFFICER: We'll take a 15-minute recess.

(RECESS)

THE HEARING OFFICER: Okay, Mr. Wold. Please continue.

Q. So Mr. Dudkin, you had an opportunity to review the settlement agreement and the

Page 61

order, and the only question I had to ask you is there was an issue in Pennsylvania, as we talked about, and the same functions being transferred over to PPL Service Company relative -- due to this transaction, and I want to ask you, with PPL going to be embarking on an AMI rollout for Rhode Island, isn't there a concern that a similar billing issue with the transfer occurring almost at the same time as the AMI rollout, there would be a similar concern of billing problems might arise in Rhode Island?

A. From my review of the document, I'd like to really just point to two things. On Page 12 it shows that, "The record does not show a widespread issue with regard to PPL's compliance with the Commission's billing frequency regulations at issue in this matter. Rather, we find that the record demonstrates that the violations may be classified as more isolated and not frequent or recurrent violations by PPL." So that would indicate this is sort of a one-off. When I took a look at the cause of the

Page 62

issue, it appears to be due to a backlog of meter change orders. When we were replacing meters, the meter records didn't get into the billing system. That is a responsibility that in Rhode Island's case will remain in Rhode Island. That does not go to the service company.

Q. That would not go to the service company?

A. That's correct.

MR. WOLD: All right. Thank you very much, Mr. Dudkin. That's all the questions I have.

THE HEARING OFFICER: Mr. Vaz?

MR. VAZ: Good morning, Mr. Dudkin.

THE WITNESS: Good morning.

CROSS-EXAMINATION BY MR. VAZ

Q. Am I correct that you have your testimony in front of you?

A. I do.

Q. Can we start by going to Page 11, please?

A. Yes.

Q. Thank you. Beginning on Line 17 of that page, you talk about PPL's commitment to efficient and effective management of its

Page 63

operations has allowed it to make these significant investments for the benefit of customers without increasing operational costs and while maintaining affordable rates for customers. Did I read that correctly?

A. Yes, you did.

Q. How does PPL expect to invest in the upgrades we've talked about with respect to technology and infrastructure while removing Rhode Island from Grid's regional system that it currently operates within without increasing the operational costs? For instance, the facilities that we've talked about being built, the operation, the O&M costs and the general maintenance costs will now be held entirely on the back of ratepayers in Rhode Island as opposed to being split between the region. So can you speak to those issues?

A. Just I'd say generally our focus, the way we are going to be organized in Rhode Island is to have basically customer-facing parts of the organization be located in Rhode Island. I think there's a tremendous

Page 64

benefit for that. I've been extremely impressed by the Rhode Island employees that I've met here, how committed they are to Rhode Island, and I talked to one employee that I think is a seventh generation Rhode Islander. They have a tremendous amount of pride and commitment to the people of Rhode Island. So for me, as a business leader, I think it's important to leverage that. So that's a very important part of our organizational structure. We do, however, also -- for support services we do try to get economies of scale by things like supply chain IT. With that structure that we've deployed in PPL Electric Utilities when I compare our costs, and you can go on publicly available FERC information, our costs per customer are very competitive and, in fact, they compare favorably to National Grid's.

So we've been able to operate an organization in the structure that I described very, very efficiently. We believe we can bring that same approach to

Rhode Island to basically keep costs down and provide some opportunity to invest while mitigating rate increases. It says in the testimony, I believe, that we were able to maintain our operation and maintenance costs flat from 2011 to 2020, and Ms. Johnson talked about us not going in for a rate case since -- we went in for a rate case in 2015 and it became effective January 1st of 2016, so we've been able to run a very efficient operation for a very long time. We intend to employ that same discipline here.

Q. Okay. And with respect to those efficiencies that you expect PPL to be able to integrate, has PPL identified areas where National Grid is currently less efficient specifically?

A. Well, I would say there was some discussion about grid mod, for example. National Grid is embarking on grid mod. We've been embarking for a long time, 2009 for 2010. We believe that the heart of grid mod is basically a technology platform that is able to make our grid smart, if you will.

We believe we can deploy that to Rhode Island at a fraction of the cost that we had to in Pennsylvania. So I think from a technology perspective we have a suite of platforms that I think are really world class. We'll be able to deploy those in Rhode Island for the betterment of Rhode Island customers very, very cost effectively.

Q. And you might not know the answer to this, but do you know if there are any documents or reports prepared by PPL to show how that might affect rates in Rhode Island or what the expected benefits of that might be in a dollars and cents sort of way?

A. I do not.

Q. To the extent that there may be such documents, do you think PPL would be able to locate that? I guess I can also just ask to enter a record request for any such document that may exist.

THE HEARING OFFICER: Any objections?

MR. RAMOS: I didn't hear what the --

THE HEARING OFFICER: Why don't you repeat the request, please?

MR. VAZ: Sure. To the extent that there are expected efficiencies from the upgraded systems that Mr. Dudkin was just testifying about, the question was -- the initial question was whether PPL has internally found any reports or prepared any reports that show what types of savings that might mean for ratepayers in Rhode Island. So if any such documents exist, we would like to have those produced.

MR. RAMOS: Okay. He can make the record request and we'll see if any documents exist in response.

MR. VAZ: That's the best I can ask for.

THE HEARING OFFICER: Thank you.

Q. Mr. Dudkin, you had also mentioned that you believe there are many benefits to having facilities located in Rhode Island, and I assume that has to do with both the proposed operations on the gas side and on the

electric side which would be moving from the regional facilities that National Grid currently utilizes and now would be stand-alone in Rhode Island, is that correct?

A. That's correct.

Q. Could you expound on what those benefits might be other than the general geographic benefits that I assume you heard Mr. Bonenberger talking about when we spoke with him?

A. Yes. I think it goes to what I talked about before, it's that focus on Rhode Island both from a control center point of view, gas control and distribution control. When you have people that are focused 100 percent on a particular customer base, and again, I've seen that from talking to National Grid Rhode Island employees, they want to really do well by the customer, and that -- you can't buy that, that is in their bones and I think the customers will get the benefit, of that focus and energy and commitment to the customer.

Page 69

Q. So is it fair to say, and I don't want to mischaracterize what you're saying, but is it fair to say it's more like an tangible that you're talking about?
A. Well, so it's -- if culture is intangible, but it results in better results. So I would say that that focus results in better -- I would expect better customer satisfaction, better reliability, better gas service because of that focus. It's not just intangible. I believe it will end up with better results for the customers.
Q. So maybe unquantifiable. Would that be fair?
A. Maybe.
Q. Okay. Can we look at Page 13 of your testimony? In response to the question that's posed on Line 3 of that page you outline the four main prongs of PPL's clean energy transition strategy. Do you see that?
A. Yes, I do.
Q. And you're familiar with that general

Page 70

commitment that PPL currently has?
A. Yes.
Q. Can you outline -- we've talked a lot about how Rhode Island is considerably more aggressive with respect to climate change issues and environmental goals and their energy sector compared to some of the jurisdictions where PPL currently operates. Can you speak to how PPL plans to effectuate these same goals and how those might change in a place such as Rhode Island, or specifically in Rhode Island I guess, not just a place like Rhode Island.
A. Well, so actually I think the leadership team is really excited about the prospects of coming to Rhode Island. We really believe that we bring a lot to the table.
So we talk quite a bit about smart grid. We believe that in deploying a smart grid and we believe that obviously the PUC will determine the pace of the rollout, but we believe we can get a smart grid up and running very quickly here and that will enable more renewable generation to be

Page 71

deployed in Rhode Island and help really meet -- have Rhode Island meet its decarbonization goals. So we think that we can bring a lot to the table, and because we're the primary utility, or hopefully will be the primary utility in the state, we can work with the PUC, the Division, all of the folks in this room to figure out the best path forward.
That goes also to the gas plan. We understand the questions about the long-term strategy around gas. We really welcome the opportunity to work with everyone on figuring out what that path is so we can be on the same page and work to achieve those goals. So we really believe we can be a great partner for the state in helping the state achieve its goals.
Q. Okay. And with respect to that -- actually, the next question that does begin on Page 13 and goes on to Page 14 of your testimony talks about things that PPL is currently doing. But on Page 14 it notes, and it begins on Line 10, that, "Our experience in

Page 72

this area will serve Rhode Island well as the state pursues clean energy ambitions of net zero by 2050 and potentially drives for 100 percent renewable energy by 2030." So with respect to that potential commitment by 2030 for 100 percent renewable energy, I assume that references the previous Governor's position and the position currently being addressed potentially by Governor McKee. Are you aware of how PPL plans to work towards that should the Governor move forward?
A. We don't have specific plans right now, but our intent is to, again, work with the different stakeholders in the state to figure out how we can support that going forward.
Q. So we had spoken about the physical facilities that PPL plans to have in Rhode Island. We spoke about them also with Mr. Bonenberger. So my understanding is that a Lincoln facility that's currently used for backup on the electric side of things will be converted to be a primary facility for

Page 73

PPL should it come into Rhode Island, is that correct?
A. That's correct.
Q. Okay. So this may be a good question, or not a good question, I guess, you're going to have to tell me, but is there going to be a backup?
A. Yes, there is going to be a backup.
Q. What's the plans for that?
A. I believe it's going to be in Pennsylvania.
Q. Would that be something that Rhode Island ratepayers would be asked to pay for?
A. Not if it's duplicate or without a customer benefit.
Q. Can you explain more about what might be duplicative? I'm trying to understand.
A. So I'm not an accountant or rate maker, so I'm probably not the best person to talk about that.
Q. Okay. So there's no set plan on what the backup would be as of now, like, there's no facility that can be identified, is that correct?

Page 74

A. I believe there is. I just don't have the specifics about it.
Q. Okay. Might someone who's testifying after you have that information?
A. No. Dave Bonenberger who testified before me would have it.
MR. VAZ: Can we just enter that as a record request, a data request, that we receive information concerning the facility that's going to be used as a backup as well as what it currently does so that we can compare to the backup facility that is being used by Rhode Island currently, a description of that?
THE HEARING OFFICER: Yes.
MR. VAZ: Thank you.
Q. Are you familiar with the issues surrounding the Block Island wind farm and the characterization of the power lines? It's been in the news in Rhode Island, the potential -- it's been called by the papers as a windfall of $46 million. Do you know what I'm talking about generally?
A. I've heard about it generally.

Page 75

Q. Okay. Does PPL have a position about the characterization of lines coming from offshore wind and how they plan to address that?
A. I'm not sure I understand the question.
MR. VAZ: I can try to rephrase.
Q. Has PPL given consideration to the issues that have been brought up in the Block Island wind and how they might categorize lines distributing power from offshore wind? It's fine to say you don't know.
A. I don't know.
Q. Okay. We had spoken about customer service as well, and I'm not sure if -- I think we received an answer that generally customer service, as it affects Rhode Island customers, would be handled via phone as far as, like, day-to-day questions and billing questions and concerns, that type of thing. But are you aware of any plans to have in-person customer service where people could walk into a facility should PPL take over and speak to somebody?
A. There are -- I believe Mr. Bonenberger

Page 76

testified yesterday that there currently are not any plans for that.
Q. I just wanted to confirm. I believe that is what he said.
A. Yes.
Q. And you had talked about as far as the service company in Pennsylvania taking over billing operations, you had mentioned specifically bill print and mailing would be taken over. Can you just clarify what billing functions would not be taken over by the Pennsylvania Service Company and what PPL entity might be taking those over?
A. Well, in the matter of this Public Utility complaint, within Rhode Island there would still be customer service agents, folks that would put billing information into the customer system. That's what this issue was. Those would all be Rhode Island employees.
Q. And what specific functions would happen in Pennsylvania? I know that you already said that it would be bill print and mailing, but would there be anything else?

Page 77

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

Page 78

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

Page 79

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

Page 80

THE HEARING OFFICER: Sure, to the extent that they exist, yes.
MR. VAZ: That's all I have for you. Thank you very much.
THE HEARING OFFICER: Mr. Webster?
MR. WEBSTER: Good morning, Mr. Dudkin. How are you?
THE WITNESS: Good.
CROSS-EXAMINATION BY MR. WEBSTER
Q. When speaking with previous witnesses, I had referenced the 2021 PPL climate assessment report entitled Energy Forward. Are you familiar with that report?
A. I am.
Q. In your position were you involved with the creation of that report or the 2017 predecessor to that report?
A. I was involved in the review of the report.
Q. Of the 2021?
A. Correct.
Q. And were you able to monitor the hearings over the past two days leading up to today?
A. Yes.

Page 81

Q. We've heard from many of the company's top executives that were chosen to present testimony to Rhode Island that -- and it seems that only about half of them have more than a passing familiarity with the -- that companywide climate report. Is that a fair characterization of what we heard from the testimony?
A. I don't know that it's fair. I think people understand what's in the report.
Q. I'm not seeking to call anyone out specifically, but -- and I recognize these are all important decisions, the company has lots of competing priorities, but several witnesses indicated that they were only slightly familiar with it. I can't remember the exact language, but we proceeded down a line of questioning where it was clear that they had not personally engaged in the development of the report and -- do you feel that it's not fair to say that they didn't have more than a passing familiarity with the report, though?
A. I believe that -- I believe that our

Page 82

leaders understand what our principle goals are. That zero by 2050, I think they understand that and many of the components of that.
Q. Okay. In your estimation why did that report lack a discussion of reducing greenhouse gas emissions associated with the use of gas in buildings?
A. I would say that I don't know.
Q. The corporation does operate a distribution gas company, right, an LDC?
A. Yes.
Q. Do you agree that reducing greenhouse gas emissions are in the public interest?
A. Yes.
Q. And that reducing greenhouse gas emissions in a local distribution company distributing gas is an opportunity to reduce greenhouse gas emissions, that would be within the company's control or certainly the company would be able to influence that?
A. Yes.
Q. Okay. I want to turn to the Energy Facility Siting Board proceeding around Aquidneck

Page 83

Island. Are you familiar with that proceeding?
A. Yes.
Q. As the Attorney General's office mentioned yesterday, Narragansett is required to submit its final proposal for Aquidneck Island in April. This is also part of the EFSB order, so it's not just on their good word. Is PPL willing to commit to proceeding along the established timeline in that docket given, if this transaction is approved, it will occur shortly before that plan is filed? It will be a plan that is largely developed by Narragansett under its current corporate ownership, so is that a commitment that PPL is committed to make?
A. We are familiar with the plan and, if approved, we are prepared to implement the plan.
Q. And is PPL willing to commit that it will not seek to delay or restart the EFSB proceedings in that matter?
A. If it's approved, we will not delay it. We will move forward with it.

Page 84

Q. If this transaction is approved. There will be another approval for the EFSB plan, so I just want to be clear.
A. I'm talking about the EF -- if the plan is approved there, we will move forward with it.
Q. Let me rephrase that, and I recognize I might not have been clear. The plan that we're discussing in the EFSB is the order requires that it be submitted for review and eventual approval or denial or alteration throughout the course of the proceeding. So I'm asking right now if the company, if PPL is willing to commit to not delaying those initial proceedings in April where it needs to submit the plan?
A. We will commit to not delaying the proceedings.
MR. WEBSTER: Thank you. I believe that's all the questions I have for you. Thank you.
THE WITNESS: Thank you.
THE HEARING OFFICER: Thank you. Mr. Rhodes?

CROSS-EXAMINATION BY MR. RHODES
Q. I'm going to turn back to I think the Attorney General's office brought this up on Page 13 of your testimony, about PPL's commitment to renewable energy and the environment. I'm going to just paraphrase and pull a couple of things that the four main prongs to your strategy include enabling third-party decarbonization, that includes investing in transmission distribution networks for large-scale connection of DER and delivery of renewable energy, furthering research and development by investing in new clean energy technologies to achieve net zero by 2050, decarbonizing our generation assets in Kentucky and building and acquiring renewable projects across the US, and four is decarbonizing non-generation operations.

One of the things that -- my question is is there a reason why energy efficiency efforts and energy efficiency programs is not included in those commitments to renewable energy and the

investment, or if they are included, how so?
A. I would say this was more of a -- I would say these commitments were more focused on the company. So for example, on No. 4, that includes energy efficiency of our company-owned buildings. So this wasn't really a statement about customers' energy use, but in No. 4 it's a focus on our intent to deploy solar on service centers. We have set up goals on reduction of energy use at all of our facilities. So I would say energy efficiency is in this, but it's primarily focused on company facilities.
Q. Are you familiar with the energy efficiency obligation of PPL and its operations in Pennsylvania?
A. Yes.
Q. I want to refer to -- I apologize here -- Exhibits -- Green Energy Consumers Alliance Exhibits 3 and 4. I don't know if you have them. They've already been entered in, but I can bring copies to you if that would be helpful. And just as a reminder, these are -- the questions that Green Energy

Consumers Alliance asked is with regard to energy efficiency programs and least cost procurement programs for which PPL is currently obligated in Pennsylvania and Kentucky.

So I had previously asked Mr. Bellar about the numbers reported here, the statistics and the like for operations in Kentucky, but obviously he was not able to testify as to the accuracy of the information provided for Pennsylvania. But understanding your familiarity with these programs, can you describe in some way PPL's energy efficiency obligations in Pennsylvania?
A. Just from a high level. It says here that the energy efficiency program is really set out under Act 129 that was set out in 2008. What it sets up is I believe it's two percent of revenue in actually 2006, that's the amount of money that the utility should be investing in energy efficiency and demand side management. In the case of PPL Electric Utilities, that's somewhere around

$60 million. And we are actually in Phase 4 of this program. We just concluded Phase 3 a few months ago. And at a high level the programs are broken into -- we have residential programs, we have commercial programs, low-income programs and also what's called GNE, government non-profit educational programs. And the results of Phase 3 is we exceeded the targets in each of those programs. And now we have a Phase 4. That plan was presented to the PUC and approved and we're off and running on that.
Q. Can you give a sense as to how PPL decides -- so I understand the two percent of revenue is the amount to be dedicated to this, but how does PPL propose plans for how to allocate that among the different programs?
A. Yeah. I would say that I haven't been intimately involved in that process, but it does involve stakeholder involvement and understanding what the needs are, particularly in the low-income side as well as where we think there are economic

Page 89

opportunities for energy efficiency.
Q. Is there a public structure that guides that stakeholder engagement or is it just internal to PPL and the folks who have organized it to develop it?
A. I don't know the answer.
Q. Okay. I ask that question specifically because in Rhode Island we have the Energy Efficiency Resources Management Council, it's a mouthful, but they do important work actually providing a public forum on which to engage in those questions. So I guess my curiosity is around whether PPL had experience facilitating a program whose operational guidance comes from a third-party process and whether -- how that might influence the way that you go about proposing how to spend money in the energy efficiency field. I'm not sure if I asked a question in there. So to rephrase would be how do you expect PPL to adapt to having to work with a third-party government -- essentially, a government-sponsored Resources Management Council?

Page 90

A. I look forward to it very much so. I think -- again, we want to be a very close partner in Rhode Island, and to the extent we can get feedback from agencies that really care about this matter, I think it is wonderful.
Q. So just to finish up with these data requests, do you feel that the information provided here in describing PPL Electric's work here is a fair and accurate representation of the success or at least performance of the programs in Pennsylvania?
A. I'm not familiar with the exact numbers on here.
Q. Okay.
A. I will assume that they are correct.
Q. I'm not presenting any information as to why they're not. I'm just seeking the understanding of it. So what level of familiarity do you have with the energy efficiency obligation of Narragansett Electric and National Grid at this point here in Rhode Island?
A. It is a -- what I would say is it's a --

Page 91

I don't have the details of it. It's a very impressive program. I've talked to the person that's conveying hopefully over to Rhode Island, David -- I forget his last name, M, but he's very, very bright, very committed to energy efficiency programs, very, very knowledgeable. So again, this is one of the things that I think we're excited about is Rhode Island's commitment on these energy issues and we look forward to getting involved. But as far as the details of the program, I'm not familiar with the details here.
Q. Would you be able to offer an opinion about the -- how the program or how the goals, ambitions, the goals of the programs are seeking to accomplish compare in Pennsylvania versus in Rhode Island?
A. I would say just the dollars invested it appears that Rhode Island's is pretty aggressive comparatively speaking.
Q. The other piece I want to just refer back to is the Advocacy Section's Exhibits 32 and 33 that were presented yesterday. I don't know

Page 92

that you have them in front of you. They were the 2019 and 2020 State Energy Efficiency Scorecard. I'll be happy to provide those for you as well. So those were entered into evidence yesterday. I'll give you moment just to familiarize yourself with them.
A. Okay.
Q. So one of the things that was brought up, I believe Mr. Bonenberger brought this up yesterday as well, is the ability for Rhode Island to benefit from the -- I think the word he continually used is synergies, though I find that a little bit vague, I'm not sure what fully encompasses that, but to use a consistent term, the synergies between the work in Kentucky and Pennsylvania with the work in Rhode Island.
So when it comes to energy efficiency, I'm not sure if you have the information available, but do you believe that in Rhode Island, Rhode Island ratepayers have benefited from shared operations of energy efficiency programs

Page 93

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

Page 94

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

Page 95

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

Page 96

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

Page 97

clouds went overhead, they saw voltage dips and brownouts and they had power problems and that's what we wanted to avoid at PPL. And the way that you can avoid it is by getting visibility to this distributed energy resources, the solar, et cetera, and when you have a smart grid, you can actually identify what's happening with that solar array, see the changes in output and make automatic adjustments to your system in order to maintain your voltage, your power quality, et cetera. So it's a way to manage the grid to maintain power quality.

The other benefit that we've seen is we can reduce the need for capital -- big capital expenditures on the grid because we're managing it better and we can host more solar on the grid without having to invest more capital.

Q. And so are you saying that that visibility helps you to determine in advance whether or not costly upgrades are needed at substations, for example?

A. Correct.

Page 98

Q. And you're talking about this system operating on utility-scale, ground-mounted solar systems as well as rooftop, like residence solar?

A. Yes.

Q. How long has that system been in operation?

A. Probably two years.

Q. Isn't it also the subject of the docket, though, that's before the Pennsylvania PUC that talked about a pilot that started in January of this year?

A. Yes. That's correct.

Q. And how is that different from the earlier application of the system that you mentioned?

A. So the -- what the pilot is -- so we installed the system and it gives us visibility into what's happening across the grid.

Q. But what did you mean by "this system"?

A. DERMS.

Q. So you have a central system.

A. We have a central system.

Q. That then is connected -- that then new

Page 99

connections are tied up with?

A. So our -- let me just backup. So we have a DERMS system that has been in place for two years. That DERMS system is able to see what's happening out on our grid with solar, et cetera. The application that we've submitted with the PUC is we asked for -- it was an interconnect change to our interconnection requirements. And what we were asking for is basically if we are able to monitor and control during peak periods the output to some degree, either change the power factor or the output, we could reduce interconnection costs for those facilities and also avoid increased distribution costs. The PUC said basically that issue of control ability, we want to see a pilot to see if those benefits are actually there or not. So the three-year pilot is to get actual results to see if that control element of the -- of our request is actually resulting in benefits to customers.

Q. And so the initial system that you installed has visibility but no control?

Page 100

A. Correct.

Q. And the system as it's now being piloted includes control over of the --

A. Pilot group.

Q. I'm sorry. The pilot group. All of the developers who want to interconnect now will go through that if they're part of the pilot?

A. If they're part of the pilot, correct. I would just add, just to give you an idea, Mr. Bonenberger in his testimony yesterday talked about an example. We had a -- just to summarize, we had a three-megawatt solar array that wanted to connect to our distribution system and we really offered the developer you can connect without control or you can connect with control. The difference is is that -- and again, the control we think is only going to be probably, you know, no impact, but maybe just a few hours a year, the change in interconnection costs would have been -- was a $700,000 difference because without the control we would have had to have

Page 101

reconductored that distribution line. So it reduced that person's interconnection costs by $700,000 and he said yeah, I'll sign up for the pilot.
Q. And so in the commitments, the list of commitments that were provided this weekend, No. 12.
A. Yes.
Q. That's the commitment to implement DERMS, the Pennsylvania DERMS, what exactly is it that that's committing to install? Is that the initial DERMS system that just has visibility or the control system?
A. So this one, this one is to make sure -- is to submit a report to the Division about the results of our pilot and say these are the results of the pilot that we had in Pennsylvania.
Q. Okay. Thanks. In No. 11 of the commitments it talks about a decarbonization report as well as the specific decarbonization goals to support -- I'm sorry -- the decarbonization goals to support Act on Climate as well as the long-term strategy

Page 102

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

Page 103

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

Page 104

A. Yes.
Q. And I believe you testified that there are sort of two phases going on right now, is that right? There's both the -- what you installed originally and then the pilot program, right?
A. Yes. So just to be clear, there is a -- the DERMS system is in both the initial rollout as well as piloted. What's being piloted is the interconnection approach.
Q. And that interconnection approach is what provides you with the functionality to control as opposed to not control?
A. Right.
Q. But I believe you were also testifying earlier that the DERMS system gives you visibility into what's happening with all of the renewable distributed energy generation that's on the system, correct?
A. Correct.
Q. And it gives you the ability to respond to that knowledge by managing other aspects of your grid, is that right?
A. That's correct.

Page 105

Q. Can you just describe a little bit more what the -- how that visibility in and of itself provides benefits to your ability to manage the grid?
A. Yes. Well, maybe the best way to describe it is to describe an unfortunate event in the UK, and this happened a number of years ago. But they had a cascading generation failure in the UK, and what happened was they have a lot of distributed generation on their system in the UK, and the utilities really don't -- they didn't have visibility into those sources of electricity. So what happened was there was unexpected loss of one or two central generation stations, and the operator didn't understand that once -- because he didn't have visibility, or he or she didn't have visibility that when that power went off, it actually took out a line that had distributed energy generation on it and that also went. So that distributed generator was supplying energy to the system. So when the line went off, that generator went off.

Page 106

And so they -- because that went off, other generators went off, so it was a cascading failure that they had a very large blackout. So it's that lack of visibility for the grid operator can cause significant reliability issues, and so having that visibility and having a grid that can -- because these things happen in split seconds, having visibility and having a smart grid that can react instantaneously to those changing conditions is what we are building and what we'll be proposing to bring to Rhode Island customers and it becomes more important as you get more distributed energy on the system.
Q. Thank you. And turning to the idea of more distributed energy on the system, you referred to your testimony on Page 13 during questions from multiple parties. Could you just turn back there for just a moment? Do you recall that in your testimony at Page 13, the Q and A that starts on Line 3, there was a discussion of the four main prongs of PPL's clean energy transition strategy? Do

Page 107

you recall that?
A. Yes.
Q. So the first one was enabling third-party decarbonization which includes investing in transmission and distribution networks to allow for large-scale connection of DER and delivery of renewable energy to load centers. Can you describe how the DERMS system and other smart grid investments that you've done in Pennsylvania and would hope to do in Rhode Island would facilitate moving forward with that strategy?
A. Yes. So as I mentioned, the DERMS system and our smart grid allows us to -- because we have visibility, allows us to -- it's called host, but have more DER on a particular distribution feeder or circuit than if you don't have visibility. So what that means, that's lower overall interconnection costs, lower need to upgrade costly distribution system upgrades. So we'll be able to have more DER on our system for a lower cost than those that don't have our smart grid and DER system.

Page 108

Q. And when you say for a lower cost, that's a lower cost for interconnection?
A. Interconnection, but also for all customers because if you have to continually upgrade substations and distribution circuits more than you need to, that's going to fall on the overall ratepayers.
Q. And does it have any benefits for the timing of interconnection as well?
A. Well, one of the benefits, and I think Mr. Bonenberger talked about this, is that with our smart grid, one of the benefits is that we have a -- I'll call it a digital twin model, if you will, so that when a customer -- if a customer was interested in installing a solar array on their home, they could go on a web portal and put in the information on that web portal, and within 24 hours -- over 90 percent of the time within 24 hours we can respond back to that person and say yes or no, we need to do additional information, but yes, your approval to move forward.
When I've -- well, I'll attempt to

Page 109

be humerus here. But I've been on panels with regulatory groups and I've talked about this quick response to interconnection requests, and I've almost gotten standing ovations because I know across the country there are a lot of complaints about backlogs of looking at interconnection complaints. What this technology does is it allows us to evaluate those requests much quicker and move things along much quicker.
Q. And you mentioned the speed of response for residential customers who do install rooftop solar. Are there also time benefits for a large renewable energy developer as well?
A. Yes, there are. We -- in Pennsylvania for folks that are connecting to our transmission system, we're part of an RTO or regional transmission organization called PJM, and, again, we are only one of two companies that have 100 percent of the time met its commitment on turning around interconnection requests and that's because of our information we have on the smart grid.

Page 110

Q. And how about developers who would be looking to interconnect to the distribution system?
A. Yes, that, too.
Q. Only one more brief line of questioning. There have been a number of questions regarding whether PPL has an approach that would focus on decarbonizing the delivery of natural gas through the gas distribution system. I just want to turn your attention to Item No. 4 which starts on Line 13 on Page 13 which is one of those four main prongs to the clean energy transition strategy. And I'll just read it. It's decarbonizing non-generation operations including reducing company energy use and emissions associated with our electric equipment and delivery from natural gas. Is it fair to say that one of the four main prongs of the clean energy transition is -- for PPL is decarbonizing through the -- making adjustments to the delivery of natural gas?
A. Yes, it is.

Page 111

MR. RAMOS: I have no further questions. Thank you.
THE HEARING OFFICER: Anything else for this witness?
MR. WEBSTER: Could I based on that last line of questioning?
THE HEARING OFFICER: Surely. Yes.
RECROSS-EXAMINATION BY MR. WEBSTER
Q. Yesterday Arcadia Center introduced Arcadia 1-5 and 1-7 exhibits in the proceedings. Are you familiar with those?
A. No.
Q. I can provide a copy.
A. Great. Thank you.
Q. I'll give you a second to review those.
(BRIEF PAUSE)
A. Okay.
Q. In those documents there's a question asked if the company has any plans to use alternative gaseous fuels in the gas distribution system, is that correct?
A. We do not have any plans right now, but I would fully expect the -- that gas plan that we're going to be putting together that will

Page 112

include a discussion or evaluation of that.
Q. But PPL does not have experience with those alternative approaches?
A. No.
Q. And it also discusses repurposing or using geothermal technologies, I believe that's 1-7, to achieve some of the same goals of reutilizing some infrastructure with non-carbonized energy sources, and does PPL have any experience with those alternative technologies?
A. Geothermal?
Q. Geothermal, network or anything like that.
A. So I a long time ago had experience with geothermal heat pumps, but beyond that, I'm not aware of any other.
Q. Not at utility scale.
A. Correct. Absolutely.
Q. And are you aware of National Grid's efforts in Massachusetts to explore a geothermal pilot to network a series of buildings and provide energy resources that way?
A. No, I'm not aware.
Q. And are you familiar with National Grid's

Page 113

corporate-wide efforts to advance the use of hydrogen as a potential decarbonized fuel in the gas distribution system?
A. No, I'm not.
Q. And PPL does not have any direct experience in that field as well?
A. Correct.
MR. WEBSTER: Thank you. No further questions.
THE HEARING OFFICER: Thank you. Anyone else? So what's the order of witnesses for this afternoon?
MR. RAMOS: PPL has two more witnesses. Well, I guess it's three, but two of them are going up together. It will be first Mr. Jirovec and then Mr. Dane and Mr. Reed, and then after that I believe the Advocacy Section has some witnesses that will be ready to go.
MS. HETHERINGTON: Thank you. We have on deck Mr. Gregory Booth who would be appearing virtually, so at the conclusion of your three witnesses, we would propose to put him on next. And I think that IT may

Page 114

need a little bit of lead time so maybe a recess after that just to get everything running smoothly and doing a test. That's our proposal.
THE HEARING OFFICER: Okay. Thank you. Good time for a lunch break. Let's return in 60 minutes.
MS. HETHERINGTON: May I do just one more housekeeping matter? May I move that Exhibits 35 through 37 marked for identification for the Advocacy Section be admitted in full, please?
THE HEARING OFFICER: Any objections? So marked.
MS. HETHERINGTON: Thank you.
THE HEARING OFFICER: All right. One hour for lunch.
(LUNCHEON RECESS)

Page 115

AFTERNOON SESSION
DECEMBER 15, 2021
THE HEARING OFFICER: Okay. We're going to go back on the record. Mr. Ramos?
MR. RAMOS: Thank you, Mr. Hearing Officer. PPL now calls Todd Jirovec.
TODD JIROVEC (Sworn)
DIRECT EXAMINATION BY MR. RAMOS
THE COURT REPORTER: Would you state your full name for the record, please?
THE WITNESS: Todd J. Jirovec.
Q. Good afternoon, Mr. Jirovec.
A. Good afternoon.
Q. How are you?
A. Good.
Q. Mr. Jirovec, could you tell everybody your current employer?
A. I work with Strategy& which is a part of PricewaterhouseCoopers.
Q. And what is your position?
A. I'm a principal.
Q. And what is your role at Strategy& at PricewaterhouseCoopers?
A. I am a member of our strategy practice

Page 116

that serves the power and utility industry in a consulting capacity.
Q. And can you tell us a little bit about your professional experience and educational background particularly as it relates to the utility industry?
A. Sure. I started after graduating with a Bachelor's degree in accounting with Deloitte in the audit practice, worked on utility audits there, subsequently went back for an MBA and joined Deloitte Consulting focused primarily on the power and utility sector with Deloitte. I then went to -- our team went to Booz Allen which was subsequently acquired by Pricewaterhouse back in 2015. Over the course of that period of time I've worked on dozens of utility transactions, over 12 of which have been publicly announced. Some examples of those are the Exelon Constellation transaction, AltaGas's acquisition of WGL Holdings, the Center Point Vectra transaction, UIL's acquisition of the gas properties from Iberdrola and the spinoff

Page 117

between Columbia and NiSource.
Q. Thank you. And Mr. Jirovec, did you submit any prefiled rebuttal testimony in this matter?
A. I did.
Q. And do you have a copy of that in front of you?
A. I do.
MR. RAMOS: I'll note that your prefiled rebuttal testimony has been marked for identification as PPL and PPL Rhode Island Holdings Joint Exhibit 5.
Q. Have you had a chance to review that testimony in advance of the hearing today?
A. I have.
Q. And were the answers that you gave to the questions in that prefiled testimony true and accurate at the time that you gave them?
A. Yes.
Q. Do you have any changes or corrections that you need to make to your testimony?
A. No.
Q. And do you adopt that testimony here today under oath?

Page 118

A. I do.
MR. RAMOS: I'd like to move that PPL and PPL Holdings Joint Exhibit 5 be admitted in full.
THE HEARING OFFICER: Any objections?
MS. HETHERINGTON: No.
THE HEARING OFFICER: So marked.
Q. Now Mr. Jirovec, I'm going to show you a document that's been marked as Advocacy Section Exhibit 12 and it had been admitted as full. Advocacy Section Exhibit 12 is the response to Division Data Request 1-54 that contains the attachment that is the -- that is a cost comparison document that has been discussed in this hearing, right?
A. Right.
Q. And you have been involved in the preparation of that document?
A. I was.
Q. With respect to that document, are there any corrections that need to be made to the content of that document?
A. Yes, one in Figure 8.

Page 119

Q. Could you describe where Figure 8 is in the document and what the correction is that needs to be made?
A. Figure 8 is on Page 22 on the top, and there was a typographical error in the preparation of that table and we've corrected it for the record.
Q. Well, you need to correct it for the record.
A. I'm sorry. On the left side of that bar chart it says PPL estimate 2022. It totals up 115.8. That actually should be 119.8.
Q. Are there any other corrections that need to be made to that document?
A. No.
Q. And does that correction have any impact on anything else contained within the document?
A. No, it doesn't.
THE HEARING OFFICER: Just for the record, I've made that change, that edit on the original. So this is from 115.8 to 119.8?
THE WITNESS: That's correct.
THE HEARING OFFICER: Okay.
Q. I have just a couple more questions for you,

Page 120

Mr. Jirovec. In your prefiled rebuttal testimony, and I can point you to where I'm referring to, it is Page 8, it's the question that begins at Line 8, and it's really just the first sentence of an answer which is on Lines 7 and 8. Do you see that question and answer?
A. I do.
Q. And in that answer you indicated that, "The proposed transition period is aligned with the length of transition periods I've observed in other utility transactions."
A. Yes, I see that.
Q. And in the surrebuttal testimony of Mr. Booth and Mr. Oliver there was some -- do you recall that there was some suggestion that you had not identified any particular transactions that you were referring to there?
A. Right.
Q. Could you describe what experience you were referring to and what you had observed in other utility transactions when you made that statement in your prefiled testimony?

Page 121

A. Sure. A couple examples I gave earlier, the UIL's acquisition of the gas properties from Iberdrola had a two-year transition period as part of that transaction. The same as when NiSource spun Columbia pipeline from its portfolio. There was a two-year transition agreement. I'm also aware of another one where SJI, South Jersey Industries purchased the gas businesses of Elizabethtown Gas and Elkin Gas from Southern Company, and they actually had an 18-month transition services agreement.
Q. And are you aware of any issues with the transition period in any of those transactions?
A. I am not.
MR. RAMOS: I have no further questions for Mr. Jirovec at this time. He's available for cross-examination.
THE HEARING OFFICER: Mr. Wold?
MR. WOLD: The Advocacy Section has no questions for this witness?
THE HEARING OFFICER: Mr. Vaz?
MR. VAZ: Good afternoon.

Page 122

THE WITNESS: Good afternoon.
CROSS-EXAMINATION BY MR. VAZ
Q. So with respect to the correction you just made on Page 22 of Division 1-54-1 -- you know what I'm speaking of, correct?
A. Correct.
Q. With respect to that change to 119.8, do any of the numbers underneath need to change?
A. Yes. The number that changed within that buildup would be the allocations number, the 72.9.
Q. And what should that change to?
A. It would increase by four, 76.9.
Q. Would you agree to have that changed on the record?
A. Sure.
THE HEARING OFFICER: Can you point that out to me again?
THE WITNESS: Adam, do you have the exhibit?
MR. RAMOS: We can do that. Just tell them.
THE WITNESS: If you look at the third set of numbers from the bottom, the

Page 123

72.9 in the original compilation --
THE HEARING OFFICER: This is Page 22?
MR. VAZ: Within the bars.
THE HEARING OFFICER: Oh, I see. I see. Say again. 72.9. Yes. Thank you.
THE WITNESS: It increases by four to 76.9.
THE HEARING OFFICER: I've made that change.
Q. Was that a typographical error or was there additional information that that was based on?
A. It was a typographical error. If you refer back to the previous page, 21, the fourth line of that bottom paragraph references the 119.8. It just wasn't reflected in the chart.
Q. Okay. And that's where the issue was, was the 72.9?
A. That's correct.
Q. Thank you. So with respect to that same document, that analysis was submitted on September 30th, is that correct?

Page 124

A. That's correct.
Q. Has any additional analysis been done since that time?
A. No.
Q. And within this analysis is it fair to say that there are certain assumptions and embedded uncertainties in the data?
A. Well, the approach that was taken was to compare National Grid's cost to operate Narragansett against PPL's anticipated costs to operate Narragansett. Those estimates were developed and informed by the integration planning work that had been proceeded on throughout the course of the year in the summer to drive those estimates.
Q. But those are not hard numbers, correct?
A. What is your definition of hard?
Q. So there are certain assumptions that needed to be made in order to come to the numbers that were used.
A. Sure. And again, those assumptions were informed by the organization that was being developed in Rhode Island to be able to support the Narragansett business and the

Page 125

support infrastructure that PPL would provide to be able to support that business.
Q. Okay. Thank you. And you have a copy of your testimony in front of you?
A. I do.
Q. If you can go to Page 11. So in response to the question posed at Line 13 your response on Page 17 starts with Mr. Ewen and Mr. Knecht -- Line 17 I apologize. "Mr. Ewen and Mr. Knecht have not provided nor developed their own analysis of PPL's anticipated cost to operate Narragansett that support their assertion that substantial uncertainty exists in PPL's operating costs." And if you don't mind just turning also to Page 16 of your testimony, you made a similar criticism of Mr. Booth at Line 6 where you said, "Mr. Booth provides no analysis to support that there are any potential additional costs associated with these alleged lost synergies." Did I read those correctly?
A. You did.
Q. And to the extent that you're making those

Page 126

assertions, you don't dispute that the burden in this matter falls on PPL to prove that there's a benefit as opposed to experts analyzing numbers based on things that PPL has.
A. I don't have a legal basis to answer that question.
Q. Okay. With respect to salary numbers that were used in developing the report, were those real numbers with respect to the individuals who have been signed on by PPL?
A. No. As explained in the analysis, those were average functional salaries that were applied to the functions that they related to to be able to drive the estimate.
Q. And was that an average based on the current wages paid in Pennsylvania?
A. We used PPL data to be able to apply against those averages, whether it was PPL corporate-type average salaries, PPL operational salaries or to the extent they were gas related we used Kentucky-related salaries.
Q. So for the electric side you used

Page 127

Pennsylvania PPL salaries?
A. Right.
Q. And for the gas side you used Kentucky salaries?
A. That's correct.
Q. And is it fair to say that salaries are different in different regions in the country?
A. Salaries are different in different regions of the county. Averages kind of account for that in that there's geographical differences potentially, there's leveling differences that comprise that average which would relate to the use of the average as a reasonable proxy for the costs in that particular function.
Q. But just to qualify, I think you already said this, but I just want to make sure I'm clear, you've only averaged salaries that were in PPL in Pennsylvania or in the Kentucky gas operations, correct, not the general region or anything like that?
A. We used actual data that PPL had on average salaries and comparable functions to

Page 128

be able to apply to the estimate.
Q. Okay. And you haven't updated -- I believe you've also answered this, but you haven't updated this report based on salaries that may have been negotiated since that point or included salaries that had been negotiated in the analysis, correct?
A. That's correct, for the reason I stated before, there's many components of actual salaries, different levels being applied that would render these averages as a reasonable method to estimate.
MR. VAZ: That's fine. I just wanted to confirm. Thank you. I have no further questions for the witness.
THE HEARING OFFICER: Mr. Rhodes?
MR. RHODES: No questions for the witness.
THE HEARING OFFICER: Ms. Curran?
MS. CURRAN: No questions. Thank you.
THE HEARING OFFICER: Thank you. Any redirect?
MR. RAMOS: No redirect.

Page 129

THE HEARING OFFICER: Thank you, Mr. Jirovec. You can step down. Next witness or witnesses?
MR. RAMOS: PPL calls Daniel Dane and John Reed as a panel.
DANIEL DANE JOHN REED
(Collectively sworn)
DIRECT EXAMINATION BY MR. RAMOS
THE COURT REPORTER: Would you state your full names for the record, please?
MR. REED: My name is John J. Reed.
MR. DANE: My name is Daniel S. Dane.
MR. RAMOS: Good afternoon, Mr. Reed and Mr. Dane. I'll start with you, Mr. Reed. Could you please tell me who your current employer is?
MR. REED: I'm the Chairman and chief executive officer of Concentrix Energy Advisors.
MR. RAMOS: And you've answered my next question. So can you tell me what you do as the Chairman and chief executive

Page 130

officer of Concentrix Energy Advisors?
MR. REED: I lead the firm's overall consulting and investment banking activities through our broker dealer business unit. I provide consulting services in energy economics and finance to the utility industry across North America including serving as an expert witness in numerous proceedings, both regulatory, civil, arbitration and in front of elected officials.
MR. RAMOS: Thank you. And as part of this proceeding, Mr. Reed, did you submit joint prefiled rebuttal testimony together with Mr. Dane?
MR. REED: I did.
MR. RAMOS: And is a copy of that testimony with you today?
MR. REED: I have that.
MR. RAMOS: And have you had a chance to review that testimony in advance of the hearing today?
MR. REED: Yes, I have.
MR. RAMOS: And were the answers

Page 131

that you gave to the questions contained in that testimony true and accurate at the time that you gave them?
MR. REED: Yes, they were.
MR. RAMOS: And do you adopt that testimony under oath today?
MR. REED: I do.
MR. RAMOS: Now Mr. Dane, could you tell me who your employer is?
MR. DANE: I'm employed by Concentrix Energy Advisors in our broker dealer subsidiary CE Capital Advisors.
MR. RAMOS: And what is your current position?
MR. DANE: I'm a Senior Vice President.
MR. RAMOS: And can you tell me what your role is as Senior Vice President, what your responsibilities are?
MR. DANE: Sure. My primary focus at Concentrix and CE Capital is in two areas, the first is advising clients on utility merger and acquisitions such as this proceeding, and the other area of focus is

Page 132

advising clients on regulatory and ratemaking matters.
MR. RAMOS: Thank you. And did you file prefiled joint rebuttal testimony with Mr. Reed in this proceeding?
MR. DANE: I did.
MR. RAMOS: Do you have a copy of that with you today?
MR. DANE: I do.
MR. RAMOS: And have you had a chance to review it in advance of the hearing today?
MR. DANE: Yes.
MR. RAMOS: And were the answers that you gave to the questions in that prefiled testimony true and accurate at the time that you gave them?
MR. DANE: Yes.
MR. RAMOS: And you adopt that testimony here today under oath?
MR. DANE: I do.
MR. RAMOS: PPL and PPL Rhode Island would move their Joint Exhibit 6 which is the joint rebuttal testimony of Mr.

Page 133

Reed and Mr. Dane as a full exhibit.
THE HEARING OFFICER: Hearing no objections, so marked.
MR. RAMOS: Just a few additional questions for you. Mr. Reed, or actually, this will be to both of you, could you describe some of your past experience in consulting on utility transactions and mergers?
MR. REED: I can begin. Yes. I've worked on more than two dozen electric and gas utility mergers in the past 25 years including having acted as an advisor to the buyer or the seller, including having acted as a consultant to customers and how they would be affected by the transaction. As part of that work I have prepared merger saving studies, merger impact analysis, regulatory applications testimony on how the transaction would or would not be consistent with the approval standard in that jurisdiction or the multiple jurisdictions. I've sponsored testimony and appeared as a witness in more than a dozen cases on that

Page 134

topic. I've opposed some transactions, offered testimony in support of others, and again, have about 25 years of experience on that specific topic.
MR. RAMOS: Mr. Dane?
MR. DANE: My experience is working alongside Mr. Reed on a number of those transactions. I have 20 years of experience in the energy industry and I've also worked on virtually all phases of energy asset and energy utility and water utility transactions including offering expert testimony in merger approval proceedings.
MR. RAMOS: And in your collective experience and working on other transactions and merger proceedings, is there anything about this particular transaction that would make it an outlier?
MR. REED: Again, I'll begin. The answer to that is no. In many ways it represents a very strong approach to a utility transaction. It brings together a very strong utility service provider in PPL with a utility that's already well run under

Page 135

National Grid. It is a strategic transaction, not financial, meaning it is a utility that intends to stay in the utility business as opposed to a private equity fund or international investor that may be in and out. We see strategic transactions as being typically more successful than financial private equity or other non-strategic, and it represents, again, a utility moving into a new market with new ideas and offering bases for improvement that I think are often a basis on which improvements can be achieved through diversity of experience and diversity of operations.
In some ways I think about my career as a consultant in New England over the last 40 years and I can even bring it specifically to Rhode Island. In my consulting career I've worked for Newport Electric, for Blackstone Valley Gas, for Blackstone Electric, for South County Gas, for Providence Gas, for Bristol Warren Gas and for Valley Gas and also now for Narragansett. Every one of those companies

Page 136

up to Narragansett, of course, were the subject of a transaction in Rhode Island, and having worked for those companies both before and after the transaction I can say in my experience the transaction was transformative for those companies and helped to improve the operations in each situation. And that's even with the fact that in the case of Providence Gas there were multiple transactions for that company over time. I don't expect this transaction to be any different. I see no reason, I see no evidence that would suggest it's going to be different than the prior experience.
MR. DANE: I would add to that that our prefiled testimony was submitted prior to the set of commitments that was filed over the weekend by PPL and I would add that those commitments even further strengthen the transaction from the time that we initially reviewed it.
MR. RAMOS: Thank you. Now, to both of you, in your prefiled rebuttal testimony you made reference to certain

Page 137

transactions in other contexts that had similar TSA periods. Do you recall that?
MR. DANE: Yes.
MR. RAMOS: And one of the transactions that you referred to was the sale of Granite State and Energy North to Liberty Utilities by National Grid USA. Do you recall that?
MR. DANE: I do.
MR. RAMOS: And in Mr. Oliver's and in Mr. Booth's rebuttal testimony they expressed some, I don't know, concerns or they made some comments with respect to your reliance or your reference to that transaction. Do you have a response to the comments that Mr. Oliver and Mr. Booth made in their surrebuttal testimony?
MR. DANE: I can start. We reference that transaction, among other transactions in our testimony, as examples where a TSA was used to transfer the utility from one company to another, and in that case, the specific case you referenced for the sale of Energy North and Granite State

Page 138

to Liberty Utilities there was a 24-month or two-year TSA, so it was similar in duration as the TSA in this transaction. I think that transaction is also relevant, however, because Liberty Utilities, the buyer in that case at that time was very inexperienced in US utility operations. It had zero gas distribution -- had no gas distribution business at the time and it had been the electric distribution business for about a year at that time. And so the TSA was used in that transaction to effectuate that, the transfer.
The testimony you referenced, Mr. Ramos, also brought up one aspect of that deal. One of the commitments made there was in regards to an escrow fund that was put aside for the TSA. But in that case, again, it was a very inexperienced at the time utility buying the assets, stepping into the ownership shoes, very different than this case where you have an experienced operator that's been operating electric and gas utilities for quite some time.

Page 139

MR. REED: I would just briefly add that, again, with my 24 plus mergers that I've worked on, that is unique in the establishment of that escrow fund and I think it was a unique solution to a unique circumstance.
MR. RAMOS: Thank you, both. I have no further questions at this time and the witness panel is available for cross-examination.
THE HEARING OFFICER: Mr. Wold?
MR. WOLD: Thank you. Just briefly.
CROSS-EXAMINATION BY MR. WOLD
MR. WOLD: So the escrow fund was about $28.5 million that had been put aside in the Granite State case, is that correct?
MR. DANE: That's correct.
MR. WOLD: And there's no escrow in this fund, and your argument is that PPL is experienced in the aspects of the services that Narragansett provides to its customers and, therefore, no escrow is needed. Is that your explanation?

Page 140

MR. DANE: Our view is that no escrow is required in this transaction.
MR. WOLD: And there was also a set of performance metrics that went along with the escrow, is that correct?
MR. DANE: I don't know that they went along with the escrow. I think there were certain reporting requirements in that transaction.
MR. WOLD: Well, there were different pools of the escrow fund, three pools, is that correct?
MR. DANE: That is correct.
MR. WOLD: And certain milestones and metrics for each pool to be released to National Grid had to be met, correct?
MR. DANE: I think there were three tranches of escrow, some based on time, some based on the services being transferred and others based on staff in New Hampshire certifying that certain metrics had been met.
MR. WOLD: And the staff of the New Hampshire Public Service Commission actually

Page 141

had to make sure that those metrics were met before each pool of those funds were released back to National Grid, and if they weren't met, then that money would be utilized to back up accomplishing those metrics, correct?

MR. DANE: Generally, I'd say that's correct. Staff did have to submit a certification releasing the escrow, and they did certify that all the escrow should be released and it was released in that case.

MR. WOLD: And we have no certification here, we have no metrics and we have no escrow, correct?

MR. DANE: We certainly have no escrow, and I'm not sure what you mean by certification or metrics.

MR. WOLD: Well, there's no certification by the Division of Public Utilities that as this transition of the 153 TSAs are accomplished throughout the two-year period, we have no milestones for those TSAs in terms of when they are accomplished, how they are accomplished and

Page 142

we have no ability for the Division to certify that they have been accomplished in accordance with any set of standards as was used in the Granite State case, correct?

MR. DANE: Again, it's a very different transaction and there is a commitment in this case for the parties to report regularly on the status of transition.

MR. WOLD: No, I understand there's reporting requirements, but there are no metrics that the Division of Public Utilities has to check to make sure that when a TSA is reported as complete, it satisfies those metrics. That doesn't exist here.

MR. DANE: Again, I'm not sure of the form of that reporting, but there's not a formal commitment around that, no. I don't think it's necessary.

MR. WOLD: No, I understand that you don't think it's necessary. I'm just asking you whether it exists here.

And the other issue in the Granite

Page 143

State case, though, of significance was with respect to the total amount of cost of the transaction. There was a cap on the costs, right? So if the costs exceeded -- for the transition happened to exceed the level that had been estimated, ratepayers would not bear the responsibility for that overage, is that correct?

MR. DANE: I don't know that to be the case.

MR. WOLD: I'll read to you from Page 13 of the Granite State case. You don't have that in front of you, do you?

MR. DANE: I don't.

MR. WOLD: I'm showing you Page 13, and actually --

THE HEARING OFFICER: Is this document in evidence?

MR. WOLD: It is not, but since it's come up in discussion, I do not have copies with me and I wasn't -- but I'm willing to tender it to the Hearing Officer and make copies for everybody in the hearing room and I'll provide that after I complete

Page 144

our cross-examination.

MR. RAMOS: I'd like to have a copy while the cross-examination is happening so that I can see what's going on here.

THE HEARING OFFICER: Why don't we take a couple minutes and make some copies of this exhibit. It will go a lot easier I think.

MR. RAMOS: Okay.

(RECESS)

THE HEARING OFFICER: We'll go back on the record. Mr. Wold has handed me a copy of a New Hampshire PUC decision, Order No. 25370 dated May 30th, 2012. This will be marked as Advocacy 38.

Q. So just going back to the Granite decision, this was a case where the Commission approved the purchase of -- or the sale of Granite to Liberty, but they put some conditions on the sale, and what we were talking about was there was an escrow that was put in place that had three tranches, correct, as you described it?

MR. RAMOS: I object to the

Page 145

question. I believe that it mischaracterizes the nature of the order in this case.

THE HEARING OFFICER: Mr. Wold, can you rephrase the question?

MR. WOLD: Well, again, I think the description is so generic and in general that the witness could correct me if I misdescribed what the order is. Is that fair to say?

MR. RAMOS: No. May I just point out my objection is that he described the order as having -- the Commission having imposed conditions on the sale. The order is the approval of a settlement agreement which included those conditions which is different than the Commission imposing those conditions. They were agreed to.

MR. WOLD: That's fair enough. It was a settlement agreement that was entered into between the buyer and seller, correct?

MR. DANE: Yes, that's correct.

MR. WOLD: And the settlement agreement had some terms in the settlement

Page 146

agreement, correct?

MR. DANE: And if I could clarify, the settlement was actually not between the buyer and the seller, it was between the buyer and the other parties to that case.

MR. WOLD: Fair enough. And one of the terms of the settlement was that there was an escrow arrangement that you previously described, correct?

MR. DANE: Yes. That was agreed to in the settlement.

MR. WOLD: And it was $28.5 million. And then there was also with respect to the transition-related IT capital investments an $8.1 million cap on the recovery of those, that amount, correct? That's on Page 13.

MR. DANE: Yes. I agree that in the settlement Liberty agreed to an $8.1 million cap on its transition-related capital IT investments.

MR. WOLD: And we don't have any type of cap in the commitments that PPL has filed with the Division in this matter,

Page 147

correct?

MR. DANE: The commitments do exclude certain costs from the transition. I think it excludes certain of those costs.

MR. WOLD: I understand that, but if the $408.1 million in transition costs is too low, in other words, the costs are higher than $408.1 million, there's nothing in the commitments of PPL that would prevent PPL from seeking recovery of the overage between the higher figure and the $408.1 million.

MR. RAMOS: Objection. That misstates the commitments.

THE HEARING OFFICER: Overruled. You can answer.

MR. DANE: PPL has reserved the right to seek recovery of certain costs, but it also in the commitments has certain tests, if you will, that it would meet or bear the burden of proof on in order to seek recovery of those costs.

MR. WOLD: I understand that, but with respect to that overage there is no

Page 148

cap. In other words, the $408.1 million is not a cap for the recovery of costs, right, and anything over that $408.1 million, subject to the test that you referred, PPL reserves the right to seek recovery of, correct?

MR. DANE: I don't think that's correct. There are certain amounts in that number that PPL has explicitly excluded from seeking recovery on.

MR. WOLD: I understand that, but if the amount -- if the costs are over that amount -- do you understand what I'm saying? If it's 500 million or 600 million, PPL reserves the right to collect the difference between the, say, $500 (sic) and $408.1 million. PPL reserves the right to go to the Commission and collect that overage, correct?

MR. DANE: I don't think that's the right characterization. PPL has committed to or -- committed to excluding certain costs and it has left open the ability to seek recovery of certain costs. It's not

Page 149

the 400 million in the question, it's a portion of that. And I do agree PPL is not capping that portion.

MR. WOLD: Are you aware of the AMF and grid mod programs that National Grid had filed in this particular -- well, in Rhode Island prior to the transaction that is pending before the Division being announced?

MR. DANE: I'm aware they were filed. I'm not familiar with the filings.

MR. WOLD: And are you aware of the exhibits that were submitted in this case where the -- and if you're not aware, that's fine, where there was a represented cost savings that would result from co-deployment of AMF and grid mod between National Grid's New York affiliate and Narragansett? Were you aware of that at all?

MR. RAMOS: Objection. This is beyond the scope of this witness' -- of this witness panel's testimony.

THE HEARING OFFICER: I'm going to overrule if the witness can answer. He's either aware of it or he's not.

Page 150

MR. DANE: I'm not aware of those documents.

MR. WOLD: If I could just have one moment.

(BRIEF PAUSE)

MR. WOLD: Are you aware of the cyber security and gas business enablement programs that were the subject of the National Grid's last rate case?

MR. DANE: Can you clarify National Grid's last rate case?

MR. WOLD: The last base rate case in 2018. Did you happen to review that in your preparation for today's hearing?

MR. DANE: No.

MR. WOLD: You're aware of the commitments that have been filed before the Division in this matter by PPL, correct, the commitments that are marked as Joint Exhibits -- I believe it's 2 and 3?

MR. DANE: Yes.

MR. WOLD: And there's nothing in those commitments that would protect ratepayers from stranded assets, is there?

Page 151

MR. DANE: Can you clarify your question?

MR. WOLD: Sure. If there are assets on the books of Narragansett that become stranded as a result of this transaction, there's nothing in those commitments to protect ratepayers from Narragansett -- or PPL telling Narragansett to go before the Rhode Island Public Utilities Commission and seek recovery for those assets, correct?

MR. DANE: I would say that the regulatory process and the accounting process, frankly, would provide those protections.

MR. WOLD: And similarly with respect to the commitments that are on file or before the Division of Public Utilities with respect to this case, you mentioned there's no cap on IT-related investment that PPL will be making that it has reserved its right to seek recovery, there's also no cap on the AMF or grid mod program that PPL has indicated that it will intend to file for

Page 152

the Rhode Island Public Utilities Commission.

MR. DANE: I'm not aware of that commitment.

MR. WOLD: That's all the questions I have. Thank you.

THE HEARING OFFICER: Mr. Vaz?

MR. VAZ: We have no questions. Thank you.

THE HEARING OFFICER: Anyone else? No. All right. Seeing no other -- redirect?

MR. RAMOS: Briefly. Thank you, Mr. Hearing Officer.

REDIRECT EXAMINATION BY MR. RAMOS

MR. RAMOS: Respect to the document that was marked as -- and shown to you as Advocacy Section Exhibit 38 regarding the New Hampshire Public Utilities Commission approval of the settlement, is there any significance to you that this was an approval of a settlement as opposed to an order in a contested case?

MR. DANE: I would offer, and Mr.

Page 153

Reed can add to this as well, but the settlement process naturally involves some gives and takes and it would have addressed the specific concerns that would have been present in that transaction so I think it is significant from that perspective.

MR. REED: Nothing further on my part.

MR. RAMOS: And in your view, you've evaluated this transaction and you've reached the conclusion that the same sorts of protections are not warranted, is that correct?

MR. DANE: That's correct. As I testified earlier, PPL has put forward its own commitments which I think provide a strong package in addition to its initial testimony. Those commitments do go further than what was settled on in New Hampshire with that transaction in regard to things like ring fencing, with regard to environmental commitments and the like. So each transaction does need to be evaluated on its own and on its own merits and I think

Page 154

that commitments also reflect the specificities of each individual transaction.

MR. REED: And I would just add one point which is that it's important to understand that the TSA in the Energy North transaction really provided a very different role than what's being proposed here. And again, the role there was not just the transfer of assets, the transfer of capabilities, but really the development of an entirely new management infrastructure for Liberty as part of the acquisition of Energy North and Granite State.

MR. RAMOS: Thank you. Just briefly, you don't have Exhibits 2 and 3 with the commitments in front of you, do you?

MR. REED: We do.

MR. RAMOS: Okay. Mr. Wold was asking you some questions on whether there was a cap on the recovery of any transition costs. Do you recall that?

MR. DANE: Yes.

Page 155

MR. RAMOS: And as part of that he was suggesting that if the transition costs were to increase above 408 million, that there was no protection from those, correct, no commitment to not seek the recovery of the additional costs above 408. That's what he was suggesting to you, correct?

MR. DANE: Correct.

MR. RAMOS: And you were explaining or attempting to explain that there were some categories of costs where there is a cap, isn't that right?

MR. DANE: That's correct.

MR. RAMOS: So if I just turn your attention to Commitment 2 and then Subparagraph A which is on Page 2 of Exhibit 2.

MR. DANE: I'm there.

MR. RAMOS: That defines certain categories of costs -- is it fair to say that that defines certain categories of costs for which PPL is committed and it won't be seeking recovery under any circumstances, correct?

Page 156

MR. DANE: It says Narragansett will not seek recovery, and then it goes on to list it looks like four or five categories of costs.

MR. RAMOS: Right. So would you say that that qualifies as protections against -- or effectively a protection against recovery of any transition costs even if they exceed the estimates that are set forth in that?

MR. WOLD: Objection.

THE HEARING OFFICER: Basis?

MR. WOLD: He said -- he's asking the witness to characterize whether this is for any transaction costs and the total transition cost is $408.1 million. These are all agreements for very specific subcategories within that amount. So that wasn't what he asked the witness. He asked him for any transition costs, whether it's a cap relative to that.

THE HEARING OFFICER: So I thought the question was -- you're characterizing these subcosts within the 408 as de facto

Page 157

caps. Is that the question?
MR. RAMOS: Slightly different than that, but I am --
THE HEARING OFFICER: Why don't you repeat the question?
MR. RAMOS: Yes. I'll just go about it in a slightly different way. I'll break it down piece by piece rather than trying to do it collectively. So the first clause of Subparagraph A states Narragansett will not seek recovery of any integration and regulatory planning costs, and then in parentheses it says currently estimated to be $48.1 million. Did I read that right?
MR. DANE: Yes.
MR. RAMOS: So the first statement is Narragansett will not seek recovery of any integration and regulatory planning costs. And then there's an estimate that follows, $48.1 million. Do you understand that to mean that if the integration and regulatory planning costs exceed $48.1 million that commitment to not seek recovery of those costs applies to the excess above

Page 158

$48.1 million as well?
MR. DANE: Yes. I think for this category the cap is effectively zero because they said they will not seek recovery of any of the costs.
MR. RAMOS: That's right. And then the next category is severance cost with a current estimate to be 15.4 million. And is it -- do you have the same interpretation with respect to that category of costs?
MR. DANE: I do.
MR. RAMOS: And then the next category is pre-close National Grid costs to be reimbursed to National Grid at close for branding currently estimated to be 4.4 million. Do you have the same understanding with respect to that category of costs?
MR. DANE: Yes.
MR. RAMOS: And then the final one is for enterprise resource planning separation for Day One transition service agreement needs currently estimated to be 8.2 million. You have the same understanding respect to that category of

Page 159

costs?
MR. DANE: I do.
MR. RAMOS: So there are several categories of costs for which the cap, as you read this agreement, is effectively zero dollars, correct?
MR. DANE: That's right.
MR. RAMOS: I have no further questions. Thank you.
THE HEARING OFFICER: Mr. Wold, any followup?
MR. WOLD: No followup.
THE HEARING OFFICER: Okay. Thank you, Mr. Reed and Mr. Dane. I appreciate your testimony today. Do we need a recess? It's my understanding we need 15 minutes to facilitate the next witness' remote participation.
MS. HETHERINGTON: Subject to IT's confirmation, yes.
THE HEARING OFFICER: So I'll leave that up to the Advocacy Section to figure out and we'll take a 15-minute recess.
MS. HETHERINGTON: Thank you.

Page 160

GREGORY BOOTH (Sworn via Zoom)
DIRECT EXAMINATION BY MS. HETHERINGTON
THE COURT REPORTER: Would you state your full name for the record, please?
THE WITNESS: Gregory Lee Booth.
MS. HETHERINGTON: Good morning, Mr. Booth, or good afternoon at this point. I want to thank everyone for being willing to allow this accommodation for you to appear today, and if at any time you can't hear me, raise your hand or let me know, and if I could ask everyone who will be speaking or cross-examining you to also use their mics so he can hear.
Q. So with that, let me ask you, Mr. Booth, were you retained by the Division's Advocacy Section to review the pending petition?
A. I was.
Q. And can you tell me what the focus and/or scope of this review was?
A. Yes. I looked at the entire petition, all of the data requests, responses, materials filed, all the testimony filed, and the scope was to establish whether there

Page 161

was any -- was public interest or lack of public interest being met, any harm to the ratepayers, what that harm potentially could be.

Q. And with respect to the specific part of the proposed transaction relative to the electric distribution system, was that the area also of your focus?

A. Yes. My primary focus was the electric distribution system and all of the transfer of electric assets and the operation of the electric system and the capital investments that may be required in that.

Q. Thank you. Your direct and surrebuttal testimony have your full experience and I won't go through all of that, but generally speaking, can you tell me what level of experience you have in that area of expertise, please?

A. Yes. So I've spent more than 50 years of my career providing electrical engineering and consulting services to over 300 electric utilities throughout the United States. I'm a licensed professional engineer in 23

Page 162

states and the District of Columbia, and that includes Rhode Island. I also have provided services to hundreds of other industrial and commercial clients. I've built up multiple engineering consulting businesses, served as president of several of those businesses. I was employed by the Southern Company through their acquisition, a whole group of businesses for which I was president. I am currently owner of Gregory L. Booth, PLLC, and also the Chairman of the advisory board of utility engineering.

Q. And with respect to Rhode Island and the Narragansett Electric distribution system, can you tell me what your familiarity is with this system?

A. Yes. So I've been providing consulting services to the Division for over 20 years. I have physically been across the majority of National Grid's system, in substations, in their duct bank systems, evaluating the system assets, their system reliability. I worked with Rob Sheridan years ago in the development of an asset management program

Page 163

for the company. I've been involved with the ISR planning process from Day One. I've been involved in many, many dockets for the Division, comprehensive evaluations of National Grid's electric distribution system and operations including most recently reviewing the 5113 and 5114 in the filing of the AMF and GMP.

Q. And with regard to the infrastructure, safety and reliability plans that you reference as ISR and the Dockets 5113 and 5114, are those dockets -- well, let me step back.

With regard to the ISR plan which I understand is -- well, I know is a yearly plan. Are you currently still engaged in that process here with Narragansett?

MR. PETROS: I have maybe --

A. Yes, I am.

MR. PETROS: I have maybe an objection or point of clarification. I'm sorry, Mr. Booth. This is Jerry Petros. I just have a point of clarification. So Mr. Hearing Officer, as you know this format far

Page 164

better than I, we have cross-examination that's prefiled and surrebuttal that's prefiled. Mr. Booth has I think filed over 55 pages in his direct and also 20 some other pages in his surrebuttal. I understand there's some initial preliminary questions, but it feels like we're heading down a full direct examination which is outside the confines of this process where the witness is supposed to be introduced and offered for cross-examination. So I didn't want to wait much longer to find out where we were going here.

MS. HETHERINGTON: I have a response for that. Thank you. First, I don't think this goes beyond the -- we just heard from Mr. Dane and Mr. Reed speaking to their experience. I think that's not outside the bounds. But with regard to the scope of this direct, we had talked in a procedural conference that we would keep it mostly limited to cross, however, I have two points first on timing and second on scope.

This matter was filed on May 4th.

Page 165

We propounded discovery throughout six months. We received not until September 30th a cost comparison analysis and on November 23rd we received an actual estimate of transition costs. This weekend on the eve of hearing we received a -- two documents which were additional commitments which the Advocacy Section considers as if it's an amended petition, if you will. The Advocacy Section has had zero opportunity, in fact, we had one hour before the start of the hearing to respond to these commitments.

So respectfully, I do ask that we are given some latitude with regard to this direct because -- based on the circumstances and we simply have not had time nor does the very aggressive procedural schedule account for any additional followup discovery. And so to that effect I am -- and as to relevancy, the commitments basically go to everything within the petition because the issue is whether this is in the public interest, and this has changed the terms of the petition. So respectfully, I would like

Page 166

to have some latitude in my questioning.

THE HEARING OFFICER: So as I understood the objection, again, it wasn't about you addressing the rebuttal testimony and what's come in recently. I thought it was more about the introductory dialog between you and Mr. Booth. Is that --

MR. PETROS: That's correct, Mr. Hearing Officer.

THE HEARING OFFICER: I'll give you little more latitude on that, but I think Mr. Booth's resume and his experiences are adequately documented in his testimony and his exhibits.

MS. HETHERINGTON: Thank you. I'm going to repeat that question. I don't know if your objection was pertaining to this most recent question.

Q. But are you currently engaged in the ISR program review?
A. I am.
Q. Thank you. Are you also familiar, and if you could be brief with any -- have you in the course of your consultation and in your

Page 167

experience have you dealt with any acquisitions or merges in your past?
A. Yes. Numerous.
Q. And those are contained in your direct, correct?
A. Yes.
Q. Thank you. Have you been watching some, if not all, of this hearing that started on Monday?
A. Yes, I missed yesterday morning because of some other things I had do, but I saw all of Monday's, I saw yesterday afternoon's portion and this morning's up until just recently, Mr. Dane and Mr. Reed.
Q. Okay. I referenced commitments just now. Have you a chance to see or review what came in this weekend which has been since marked as Exhibit 2 which are the two commitments -- which are the commitments and the supplemental commitments that they made on the weekend?
A. Yes, I've reviewed them.
Q. Okay. Did you prepare direct testimony that's been marked as Advocacy Section

Page 168

Exhibit 3?
A. Yes.
Q. And have you had a chance to review that since its filing?
A. I have.
Q. Do you have any corrections or changes to make to that?
A. I do not.
Q. And then do you adopt under oath today that testimony?
A. I do.
Q. And did you prepare rebuttal testimony that's been now marked as Advocacy Section Exhibit 8?
A. Yes, surrebuttal testimony.
Q. I'm sorry. Surrebuttal. Thank you. And have you had a chance to review that as well?
A. I have.
Q. And do you have any changes or cross-examinations to make to that surrebuttal?
A. I do not.
Q. And do you adopt today under oath that

Page 169

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

Page 170

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

Page 171

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

Page 172

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

Page 173

satisfactory to the issues you just discussed? Does that resolve the issues?
A. It does not because that doesn't resolve the synergies with National Grid and Rhode Island part of that. It doesn't resolve the increased costs that would play from PPL versus the synergies that come out of National Grid. It doesn't resolve the cost that's already been expended, and it doesn't resolve the future cost that stakeholders had already borne will have to bear again or the cost the ratepayers have borne.
Q. So you mentioned duplication of costs. Did you hear any of the testimony this week at which PPL witnesses committed that they would not seek recovery for duplicate costs?
A. I did hear that, and I guess the whole cost issue I think is quite convoluted at this point. So we have to keep in mind that the stay of the base rate case only affects two out of roughly 25 components of the rates to the customers. So AMF costs and GMP costs will most likely flow through the ISR plan. That's not part of a base rate

Page 174

case. That's part of a statute that has an annual adjustment. So all of those costs that have already been borne by the ratepayers and any future costs will flow through the ISR plan with no stay of that cost whatsoever, and that's true of all the capital costs under the ISR plan and the operating costs under the ISR plan.
Q. So if I can refer you to the commitment sheet again, Petitioners Joint 2. No. 1 speaks to a rate case -- a stay-out of filing a base rate case of three years. Are you familiar with that?
A. Yes.
Q. So to clarify what you've just testified to, does this commitment protect the ratepayers from any of the costs that we've just spoken of, namely, AMF, grid mod or ISR investments?
A. It does not. And in fact, maybe a simple example might help that. So if PPL puts in the ISR plan the duplication of mobile substations that National Grid currently has in Massachusetts that benefit Rhode Island,

Page 175

if that's $30 million, then that 30 million will flow through the ISR plan in the rates and the Division and the Commission would be put essentially between a rock and hard place. If they push back on that, that's going to adversely impact both reliability and safety, and if it's allowed to flow through the ISR, that's going to impact the rates so the customer is going to pay higher rates, and that's going to happen over and over again for all of these capital components that have to be duplicated. So I just don't see how that duplicative issue works relative to the ISR plan under any of the commitments at this point.
Q. So to make this -- what you've just said more tangible, can you give me one example of what the ISR program capital costs provide?
A. Yes. So the plan covers customer extensions, governmental issues, asset condition, additions, substation transformer additions, change-out, new substations, a mobile substation or spare transformer is

Page 176

going to flow through the ISR plan. If those spares and mobiles exist in Massachusetts and can be relied on for back-stand in Rhode Island, Rhode Island is benefiting from not having to bear all that cost, but if new equipment has to be duplicated for Rhode Island standing alone, the ratepayers are now going to have to bear that cost. And so I mean, from my perspective, if the ISR plan has been running at about 103 million and under PPL it jumps to 150 or 200 million, that's an enormous impact on the ratepayers.
Q. So let me break that down for a minute.
MR. PETROS: So I'm going to object at this point. I understand that the witness, obviously, Mr. Hearing Officer, can comment on the commitments, but we're now getting literally new opinions that could have been offered months ago. We're all playing under the same rules here, and one of those rules is you don't walk into the hearing and start offering new opinions, and there was nothing that the witness just

Page 177

described that wasn't known to him in September or October or November. So I object to new opinions being offered at this -- it gives us no chance and no time at all to consider or respond or, more importantly, to offer testimony in response to what he's now saying.

MS. HETHERINGTON: Respectfully, this has been referenced in both his direct and surrebuttal. I would also as to new opinion or new information, this is at the very root of the case. If PPL and Grid are not prepared to speak on this, this is literally the basis of the entire case.

THE HEARING OFFICER: All right. I'm going to overrule the objection.

MS. HETHERINGTON: Thank you.

Q. I just want to break down what you said, Mr. Booth. The ISR program is essentially exactly like its namesake, correct? It's the infrastructure to guarantee safety and reliability on the distribution system. Am I saying that correctly?

A. That's correct. It's the cost for

Page 178

infrastructure, it's the cost to accommodate safety, so damage failure and other issues like that, and it's the cost for reliability, so grid modernization additions, anything for reliability, so that would be asset condition and the like. That's all accounted for in the budget of the ISR plan on an annual basis and then on an annual basis as those dollars are spent, as that capital is put into service, that then goes into rates as separate line items. I think there's roughly four separate line items in the rates for that. It doesn't go through a base rate case.

Q. And you said -- previously you spoke to some -- working against itself if those costs are not provided. Let me ask this question.

Are you saying that if there is pushback on cost recovery for ISR capital costs, let me ask, what would be the consequence of that?

A. Well, there's -- the Division has always collaborated with the company and

Page 179

essentially it has developed plans -- gone from a proposed plan to a filed plan that was essentially completely agreed to by both parties and they've worked together collaboratively. But if a large mobile substation is added to the plan and the Division does not think that that's appropriate because it already existed in Massachusetts for the benefit of back-stand but if the ownership is under PPL, Narragansett has to maintain safety and reliability. So the Division and Commission both are basically going to be in a position they're going to have to approve it or they're going to have to accept lower safety and reliability. That's just a difficult position to be in.

Q. And you mentioned numbers, you said approximately 103 for ISR. Was that last year, subject to check, the budget for that?

A. Yes, last year, and the 2023 I think is about 105.

Q. And I knew you threw other numbers out which might have been the basis of the objection,

Page 180

but you gave us a hypothetical that it could be more for PPL. Can you tell me what your basis for opining on that is?

A. Yes. There are absolutely capital items that are going to have to be duplicated by PPL, spare power transformers, mobile transformers, because you've got the Narragansett system design for these items and voltage and capacity and you've got the close proximity that you want this equipment. So there's all these spare parts and equipment and items that have got to be duplicated that are going to go through the ISR plan and there will be immediate rate relief for those items. There won't be a three-year stay at all.

Q. And what you're describing are the loss of synergies, correct, from the service company?

A. Well, it's not just the loss of synergies, but it's also the physical capital components that -- for instance, that are in Massachusetts are spread across the entire National Grid company that now

Page 181

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

Page 182

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

Page 183

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

Page 184

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

Page 185

original budget, the original timeframe. So there's tremendous risk of the cost runaway and there's no protection of the ratepayer from any excess of cost beyond the estimate PPL has put out in the commitment.
Q. So we're talking numbers. I'm just going to refer everyone, what we're speaking of, it's appeared in two places, Mr. Bonenberger's Rebuttal Exhibit B, but also Exhibit A is what you're referring to in the commitment page, I believe, that has that total estimated transition cost of 408.1 million, is that correct? You're referring to that one page, Exhibit A?
A. I'm referring to that page. I'm referring to the line that says IT new system implementation, it has a Footnote 1 that lists at least some of what that will be at $315 million. I just -- No. 1, we don't have a detailed breakdown of that, and No. 2, I've never seen IT for these types of components come in at or under budget and they're generally significantly above. My testimony is that increased cost above the

Page 186

315 million is going to be borne by the ratepayer. There's no protection for the ratepayer and yet they're currently getting all the benefits of all of these programs, software, control centers that already exist with National Grid. So they're going to be paying for something again.
Q. So on the point of providing a basis for cost, in your expert opinion does this Exhibit A provide satisfactory analysis of these cost estimates?
A. It's neither a satisfactory analysis nor is it a comprehensive assessment of what all the costs will be. So we don't have a detailed breakdown to look at, we got no time even to get discovery or know the background to it and it doesn't cover all of the transition costs we're going to be looking at.
Q. With regard to the TSA that you mentioned, the transition service agreement and the time by which Grid will support PPL's transition, if you will, referring you again to the commitment page, there are several

Page 187

references to the TSA. One of them is actually the second document, Joint 3, which speaks to amending the TSA to extend -- to allow the ability to extend the two-year term as necessary. Are you familiar with that, No. 17?
A. I am. I have it in front of me.
Q. With regard to the two-year time -- transition time, did you hear the testimony from PPL, Mr. Sorgi, Mr. Bonenberger saying we put that in there to satisfy concerns but we really don't think it's necessary? In your opinion is the two years an achievable amount of time?
A. I do not think it is. In at least the acquisitions I've been directly involved in, I have not seen two years as being adequate and I don't see how this can be.
Q. Have you done any acquisitions that are of the same nature, if you will, the same magnitude, the same complications?
A. Not precisely because the one thing that's different about this acquisition is this is an out-of-state utility acquiring

Page 188

another utility in a different state. The acquisitions that I've been involved in both directly and testified on and peripherally were in-state acquisitions, so they were much easier to transition, and even in those cases the transitions took much more than 24 months, in some cases some portions took three to five years, and that was a utility in a state acquiring another utility in the exact same state with facilities essentially right across the street. So I just don't see how it's possible for an out-of-state utility to acquire the Rhode Island utility and make a transition in 24 months. And there's nothing in Commitment 17 that really holds National Grid to any standard of the quality or the services they provide even if PPL asks for the extension of the TSA. There's no performance metrics or anything else to be assured that it's done and done in a fashion that's comprehensive and complete and of adequate quality.
Q. Mr. Booth, in your surrebuttal did you provide an additional suggestion, if you

Page 189

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

Page 190

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

Page 191

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

Page 192

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

Page 193

Q. In his testimony do you recall he spoke about -- he mentioned that -- he was touting the benefits of the Rhode Island centric part of the organizational structure. Do you recall that?
A. I do.
Q. And then he said but we plan to add service company model benefits from Pennsylvania. Do you recall that?
A. I do.
Q. Can the two -- can you reconcile how -- based on your experience does that make sense? Can you reconcile the two models, if you will?
A. At this point I have no reconciliation for a local control approach system by PPL and then a service company approach. National Grid has a three-state service company jurisdiction approach. They obviously have local construction people and local people, but they mostly have a service company approach. It's very confusing as to how the local control approach would not, in fact, result in the loss of most of the

Page 194

National Grid synergies that Rhode Island and Narragansett have benefited from. It sounds like only a few of the synergies that may come from PPL Service Company will actually be utilized.
Q. When you said it sounds like, do you feel like you have enough information, have you been provided a picture of what the Pennsylvania synergies will look like?
A. There's no picture. Everything so far is they're working on it, they're going to come with that detail and that information. That's just like the filing of 1-54-1. I mean, I testified quite a bit on its deficiencies. That doesn't begin to analyze the deficiencies and the difference in operating costs between National Grid and all of its synergies and at a local control approach and the loss of those synergies and benefits and all of the -- and all the expertise that comes from that larger 5,100 employee service company at National Grid.
Q. When you say 1-54, for clarification, that is the document that was provided on

Page 195

September 30th, I believe, which is a supplemental response to our June request providing an analysis of the cost comparison between Grid and PPL, correct?
A. That's correct. That was a cost comparison and, again, there's no commitment by PPL in any of their commitments to back up those purported benefits they think will be -- offset the loss of the National Grid synergies by a Narragansett Rhode Island local approach.
Q. Referring also again to Mr. Dudkin's testimony, do you recall him speaking about how Pennsylvania runs a very efficient operation and that the O&M rates have been flat for several years? Do you recall that?
A. I do.
Q. Is it -- in your expert opinion does that bear a reflection on how things will play out here should the transaction go through?
A. It does not because it doesn't speak to how the National Grid Service Company synergies in three jurisdictions and the loss of that can be offset by what PPL is

Page 196

doing in its Pennsylvania jurisdiction which is a single-state jurisdiction now has to stretch across multiple states to get to Rhode Island.
Q. Do you recall Mr. Dudkin speaking to the grid mod for Pennsylvania?
A. I do.
Q. Do you recall that he said the grid mod will be cheaper with our platforms? Do you recall that testimony?
A. I do.
Q. Do you have an ability or do you have an opinion on whether that could be true? Do you have a basis to opine?
A. PPL has provided no petition support for that statement. We know National Grid has identified significant benefits to Narragansett Rhode Island by their service company, multi-state synergies for grid modernization plan. I can't state whether Mr. Dudkin will wind up correct or incorrect because there's no detail to back it up. It just seems -- you know, it's just an opinion with no support and there's no commitment to

Page 197

that statement, so the ratepayers are the ones at risk if he's wrong.
Q. And you said that you heard Mr. Dane and Mr. Reed testify this morning, is that correct?
A. I did.
Q. Do you recall them classifying or characterizing the transaction as a "strategic transaction" and not an outlier? Do you recall that?
A. I do.
Q. Is your interpretation of that strictly from a business perspective, correct, that's not speaking to the ratepayer strategies? Do you follow me? Is that strictly an assessment relative to a business transaction?
A. I mean, the way they characterized it was as a business transaction, as a strategic transaction -- versus certain strategic transactions. This is certainly an acquisition from an out-of-state utility that's several states away and that's just a more difficult acquisition to accomplish. It's not -- but it is done, it's just more

Page 198

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

Page 199

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

Page 200

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

Page 201

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

Page 202

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

Page 203

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

Page 204

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

Page 205

operates both electric and gas utilities in Kentucky and Pennsylvania.
A. I do.
Q. Thank you.
A. Yes.
Q. And do you understand it currently serves I think something more than 2.5 million customers?
A. Yes.
Q. And that it has over 80,000 miles of gas and power -- I should say power and gas lines?
A. Subject to check, that sounds right.
Q. And just to be a little more granular for a moment, let's talk about the various utilities themselves. PPL Electric Utilities, the operating company in Pennsylvania, that provides services I think to 1.4 million electric customers, is that accurate?
A. That sounds correct, yes, subject to check.
Q. And just approximations.
A. Sure.
Q. And about 50,000 miles of power lines in

Page 206

Pennsylvania that they operate.
A. I'll take your word for that. I don't recall that number, but that sounds about right.
Q. Okay. And about -- well, okay, and that operational history for PPL Electric Utilities dates back 100 years, sort of like Narragansett Electric. Did you see that in the course of your diligence?
A. Yes, I think that is correct. I don't know the exact date they were started, but it's about 100 years old, yes.
Q. Fair enough. Thank you. Similar question just for LG&E and KU, the two Kentucky utilities. LG&E has about 425,000 electric customers and 300,000 gas customers, again, subject to check. Is that approximately what you recall?
A. Yeah. I have pretty good familiarity with some negotiations with LG&E from years ago, so yes.
Q. Thank you. And KU has about 550,000 electric customers.
A. That sounds about right. That's about

Page 207

the same size as Narragansett actually.
Q. Just some comparisons. This might even come from Mr. Oliver's testimony or maybe your testimony, I think maybe yours, Narragansett's gas system in Rhode Island delivers about 40 million decatherms of natural gas on an annual basis compared to --
A. You know, I don't recall the natural gas numbers. That's Bruce Oliver's area of expertise. I would just be approximating that. I didn't testify to that.
Q. That's fine, Mr. Booth. I'll confirm that with Mr. Oliver. Thank you.
Do you recall that the LG&E gas system is larger than the gas system in Rhode Island operated by Narragansett?
A. Again, I didn't do the gas analysis so I didn't do that detailed analysis.
Q. And I take it you're also aware that prior to April or May of this year and for years before that PPL had an electric utility in the United Kingdom?
A. I'm aware of that, yes.

Page 208

Q. And that utility, which was referred to as WPD, had just under 8 million customers?
A. That's my understanding is what they sold to National Grid.
Q. And it covered roughly 55,000 square kilometers as far as the size of that system?
A. Yeah. It was quite large.
Q. Okay. So fair to say, Mr. Booth, that we know today that PPL has safely and reliably operated electric and gas utilities serving 2.5 million customers in the United States for a number of years now.
A. Correct.
Q. Okay. And we know that PPL safely and reliably operated an electric utility of 8 million customers in the UK before selling WPD to National Grid this past spring.
A. That would be the assumption. I don't know the details of the United Kingdom system.
Q. So you wouldn't be aware, for example, that they won the customer service excellence award, formally known as the Government's

Page 209

Charter Mark since 1992 in WPD?
A. I would not know that.
Q. I'm not surprised you didn't. So is it -- would it be fair for the Hearing Officer to conclude that PPL is a sophisticated utility operator with global experience?
A. Yes, it would.
Q. Now, Mr. Booth, I appreciate you acknowledging the testimony of the two fine witnesses from National Grid who testified I think it was yesterday. And I think you heard them say, and I think you reflected that they indicated that National Grid is committed to a successful transition and has pledged to do all that is required to meet that goal and protect Rhode Island customers. Did you hear them say that?
A. I did.
Q. And I think in your testimony today and in your written testimony as well you've acknowledged that you have great respect for the National Grid team, is that accurate?
A. I do. Excellent utility.
Q. And by the way, has National Grid ever been

Page 210

one of your clients?
A. They have not.
Q. Okay.
A. I've always worked for the Division and collaborated with National Grid.
Q. Okay. How about PPL? Has PPL ever been one of our clients?
A. They have not.
Q. Okay. And over the many, many years that you've had the -- I think in your own words the privilege of working with the National Grid team have you found them to be a team that delivers on their promises and meets their obligations?
A. They strive pretty hard to do that. I mean, they have obviously missed budgets, missed schedules, not completed projects on time, but I mean, they certainly work hard and strive to. Have they always met budget and met their commitments? No.
Q. Mr. Booth, during your review of the information presented throughout the course of this particular docket and proceeding did you have an opportunity to review the

Page 211

transition plan materials?
A. I did, in detail.
Q. Okay. And so you are aware, then, that in some detail PPL and National Grid have put together a transition plan that has multiple levels and pathways for transitioning functions from National Grid service organization to PPL?
A. Yes, as a living document. It's my understanding that it's continually under revision.
Q. I think that's a fair statement. And you're also aware, therefore, that National Grid has a transition management office, and I think, was it Mr. Kelly who indicated or Mr. Dudkin --
MR. RAMOS: Mr. Willey.
Q. -- Mr. Willey has indicated that he is the captain of that transition management office, is that right?
A. That was his testimony.
Q. Okay. And similarly, I think you're aware of the material submitted to you that PPL has an integration management office.

Page 212

A. Yes.
Q. And these -- and in fact, these offices are fairly heavily staffed. Do you recall how many staff are in the transition management office for National Grid?
A. Not without trying to look it up.
Q. Would it refresh your recollection if I said it was 300 to 400 range of employees?
A. For some reason the number 368 sticks out in my mind, but again, I have to double check.
Q. I think that sounds like an accurate number. Thank you for that. In addition, or maybe as part of the transition efforts certainly and maybe part of the transition plan there are also knowledge transfer menus that National Grid and PPL have established to make sure that the knowledge acquired by National Grid over its years of operation of Narragansett are also transferred to PPL. Did you see that in the materials you reviewed?
A. That's correct, yes, I did.
Q. And again, the knowledge transfer plan also

Page 213

identifies multiple areas, again, keying with the transition plan to ensure that that knowledge is transferred during the transition period from National Grid to PPL. Do I have that right?
A. That's the way the plan is laid out at this point.
Q. And for example, the knowledge transfer teams deal with things like energy transactions, training facilities, training, talent and performance management, health services, safety policy and programs, consultancy services for dispatch supervision and energy planning and operations. Do those topics sound accurate to you?
A. They do.
Q. Okay. Now as part of the transition or the preparation, I should say, Mr. Booth, for the transition, as you mentioned, the transition plan is a living document, and in fact, as I think you've seen in the testimony and heard during the course of this week, PPL has already made offers to

Page 214

the Narragansett employees and has retained I think 731. Almost all of the direct employees at Narragansett will continue with PPL if this transaction is approved. You're aware of that, right?
A. I'm aware that the frontline employees of Narragansett, most of them are coming over to PPL.
Q. Okay. And I won't talk so much about the management employees because I think the National Grid employees covered that the other day, National Grid witnesses I should say. So let's talk a little bit more on a granular level of shared services. Is it fair to say, Mr. Booth, that most of the shared services provided by National Grid to Narragansett are not impacted by the location at which those shared services are provided?
A. I would not agree with that.
Q. Okay. Well, let's -- most of the shared services, do they come from Massachusetts for National Grid sharing services to Narragansett?

Page 215

A. Well, I wouldn't -- I mean, I don't have the exact percentage, but I've worked with numerous groups out of New York for part of the services, numerous parties out of Massachusetts for the services, so they do come from multiple states of the National Grid Service Company.
Q. Thank you. That's exactly where I was going. So they provide services from Massachusetts, and Waltham is one of the locations, right?
A. Correct.
Q. And is it Northborough is another location in Massachusetts?
A. Yes, it is, that's correct. In fact, I think that's where their control center is at this point.
Q. That is correct. That's where it is. They also provide services from Syracuse.
A. Yes, I think that's right.
Q. And they provide services from Brooklyn.
A. I haven't been there, but I've certainly talked to their New York folks, so I can't absolutely say that was Brooklyn.

Page 216

Q. You know they provide services from Long Island as well, right?
A. Yes.
Q. Okay. And so my point is many of the shared services are provided at different locations in Massachusetts and New York, correct?
A. That is correct, yes.
Q. Let's talk about a few of those shared services like accounting. Where is the accounting provided for Narragansett? Where is the center of accounting services?
A. I think it's in Massachusetts, but I don't know the precise location.
Q. No. I think it is in Mass. I think it might be located in Waltham. Do you know how many people in Waltham provide accounting services to Narragansett?
A. I do not.
Q. Okay. And it wouldn't matter, wouldn't you agree, Mr. Booth, whether those -- whether it's 100 people or 500 people or 5,100 people providing accounting services for Narragansett from National Grid Services, it wouldn't matter whether they were in Waltham

Page 217

or Northborough or Brooklyn or Syracuse or Long Island, right?
A. It would not.
Q. That was just my -- the point I was trying to make with my opening question. I was probably inartful about it. My point is for many of these shared receives it really doesn't matter whether they're being provided from Waltham or Northborough or Brooklyn or Long Island or Syracuse, -- if I say that again, Jo Anne is going to hit me -- but the nature of those services is that the location isn't important, it's the quality of the services that's important.
A. That is correct relative to most of the services that we talked about, but there are many services and functions that location does matter.
Q. Okay. And there are many where location does not matter.
A. That's correct.
Q. Okay. Fair enough. Let's talk about a few of the locations where -- I'm sorry. Let's talk about a few of the services where

Page 218

location does matter or where it might matter. Okay?
A. Okay.
Q. So let's talk about -- why don't you identify -- let's go to an even more general question. There are some services provided that should be local in your book.
A. Yes.
Q. Okay. Do you want to identify some of those?
A. Well, certainly. The basic line construction activity, the customer service extension activity, the governmental service activity such as streetlights or Department of Transportation re-locates, make-ready for communication companies, those all need to be local folks doing local work, both the engineering, design and the construction both for changing facilities and constructing new facilities.
Q. Right. So in addition, customer meter services would be a local function, right?
A. Correct. Meter reading, meter services, meter replacement, that would be a local

Page 219

function.
Q. Leak survey and damage prevention would be a local function?
A. That's correct. Even though that's gas and I'm not dealing with gas, that absolutely needs to be a local function.
Q. Okay. All right. So the opinions that you gave when Ms. Hetherington was questioning you, those were opinions that related only to the electric system and not the gas system.
A. That's correct. My opinions are directly with the electric system. I have not really given opinions on the gas system at all.
Q. Okay. Let's talk a little bit about the -- let's leave that because that is a longer topic.
MR. PETROS: May I just ask the Hearing Officer how long he intends to go tonight so I can time my next topic?
THE HEARING OFFICER: How much time do you expect?
MR. PETROS: We're not going to finish tonight.

Page 220

THE HEARING OFFICER: Are you suggesting that we break or do you want to go another --
MR. PETROS: Why don't we go until 4:30? I can do another ten minutes easily.
THE HEARING OFFICER: Okay. Let's do that.
MR. PETROS: That was my point. I just didn't want to start a long topic and be caught.
Q. Let's just talk about transition costs. We may not finish this topic in ten minutes either, Mr. Booth, so I apologize in advance, so let's at least get started on it. Let's use the time we have.
You made a couple of comments when you were chatting with Christy a few moments, and a few times you said that with respect to certain transition costs the ratepayers have no protection whatsoever. Do you recall that?
A. Yes.
Q. Okay. So I know you're not an attorney, but I know you have a lot of regulatory

Page 221

experience, and I have to say that we've had a lot of discussion about legal issues with non-lawyers here over the course of the last few days as you've listened and seen, I'm sure, so I'm going to try to not go over the line, but let me ask you a few questions about the regulatory process. So if at some point -- I mean, you understand that at this point in time PPL has not said it's going to pursue any recovery of transition costs. It's reserved the right to recover transition costs in certain categories above certain amounts. We're together on that, right?

A. Well, not totally. That is what PPL said, but the problem with what PPL said is the statutory requirement of the ISR plan and its process. There are transition costs that will be capital and other items that will be put into the annual ISR plan budgets and they'll be recovered through the ISR plan process and added to the rates. So although there's all this base rate discussion and things we won't recover,

Page 222

there are certain transition costs that will include capital items that will flow through the ISR plan and I just don't see how that is avoidable.

Q. Let's talk about both aspects of that. Let's start with the base rate then we'll talk about the ISR. So in terms of the next base rate case, to the extent that PPL seeks to recover any transition costs, it would need to get approval from the Public Utilities Commission, correct?

A. That's correct. Any rate change, once the retail rate case has been filed, that has to be approved by the Rhode Island Public Utilities Commission.

Q. And in terms of that Commission, which you know even far better than I, the Chair of that Commission has extraordinary deep utility knowledge based on his work at Narraganset, his work in Massachusetts in the regulatory area, his work at the Division and now his work at the Commission. Can we agree on that?

A. I would agree as chairmen go he has

Page 223

extraordinary experience that you rarely see.

Q. Right. And you could even say he has extraordinary energy and he's very protective of the ratepayers. Can we agree on that, too?

A. I would certainly agree with that.

Q. Okay. And there are other advocates for ratepayers on the Commission as well. Am I going too far there or would you agree with that as well?

A. I think it's a well-informed, very educated, excellent Commission that tries to protect the ratepayers while being just and fair to the utility.

Q. And I'm not going to do which has been done a lot this week which is ask you what the standard is, but there are legal standards and regulations and statutes and decisions that set the standards that govern requests for recovery before the Public Utility Commission, correct?

A. That's correct. There's a whole series of standards to be met and considered.

Page 224

Q. And rather than state them all here, no one those standards better than the Commission themselves right?

A. Correct.

Q. So let's talk about ISR now. So I don't think you meant to suggest that if this transaction is approved and PPL has the privilege of acquiring Narragansett, that it could just spend money on whatever it wanted to spend money on and flow it through the ISR plan and get recovery for it. You weren't saying that, were you?

A. No, I wasn't. I was couching it in the exact way the ISR works. So the capital budget, certain O&M items, asset condition and the like are put into a proposed ISR plan and that goes through a rigorous assessment by the Division, there's either agreement or disagreement, and it ultimately goes to the Commission for approval. But what I was saying, if there are components that have to be duplicated that absent the transition wouldn't have to be and they go to safety and reliability, it would be very

Page 225

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

Page 226

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

Page 227

not been a prudency push back from the Division or the Commission to date.
MR. PETROS: This might be a good time to break.
THE HEARING OFFICER: Approximately how much more time do you have with this witness?
MR. PETROS: It's going to be --
THE HEARING OFFICER: Approximately.
MR. PETROS: At least an hour I think, Mr. Hearing Officer.
THE HEARING OFFICER: Okay. Then we'll break at this point.
MR. HUMM: Mr. Hearing Officer, before we break, can I take care of one administrative matter? On Monday you asked for the parties to submit a list of filed motions for protective treatment, and I just wanted to represent that National Grid USA and Narragansett filed that this afternoon and distributed it to the parties.
THE HEARING OFFICER: Thank you, Mr. Humm. I have a copy. Much appreciated.

Page 228

MR. HUMM: Thank you.
THE HEARING OFFICER: Is there anything else we need to discuss before we go off the record?
MS. HETHERINGTON: No, but perhaps we can approach the Bench after.
MR. PETROS: And we should thank Mr. Booth and we'll see you at 10:00 tomorrow morning, Mr. Booth.
THE WITNESS: See you at 10:00 in the morning. Thank you very much. Have a good evening.
(ADJOURNED AT 4:31 P.M.)

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

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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).[1] *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.[2]

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.[3] 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."[4]

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 wigging 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.[5] 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.[6]

***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.[7]

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[.]"[8] 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.[9] 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.[10] 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.[11] *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.[12]

[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.[13] 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."[14] ***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.[15] 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.[16] 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.[1] 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,[2] 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."[3] (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.

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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

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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[1] 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.[2] 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.[3] *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[4] 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.[5]

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.[6]

[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.[7]

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* ***1178** *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.[8]

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,[9] 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.[10] 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]henever 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.

[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).

1 Cases that cite this headnote

[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).[1] 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.[2] 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).[3] 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.[4]

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.[5] 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.' "[6] *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.[7] 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.[8]

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.[9]

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.[10]

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)[1]

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.[2] 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.[3]

***908** The majority opinion, with laudable candor, acknowledges its awareness of "the draconian nature" of the effects of its own holding.[4] 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

127 A.3d 897

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[-]priority 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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