

**STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

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

**POST-HEARING BRIEF OF
GREEN ENERGY CONSUMERS ALLIANCE**

I. Introduction

On May 4, 2021, Petitioners filed with the Division of Public Utilities and Carriers (“Division”) a petition seeking approval to transfer the entirety of Narragansett Electric (“Narragansett”), the entity responsible for the provision of electricity and gas transmission and distribution services for the overwhelming majority of Rhode Island residents, from National Grid USA (“National Grid”) to PPL Corporation (“PPL”) (collectively, “the Petitioners”). The transaction has been valued by the Petitioners at \$5.3 billion.¹

On June 25, 2021, Green Energy Consumers Alliance (“GECA”) filed a Motion to Intervene in the proceedings before the Division. The motion was granted by the Division on August 19, 2021.

In response to the Petitioners' pre-filed direct testimony and discovery, GECA provided expert testimony from Kai Salem on November 8, 2021.

¹ Petition, Exhibit 1 – Testimony of Vincent Sorgi, at page 11, line 16.

GECA and its expert participated in the hearings before the Division from December 13-16, 2021. GECA offers this post-hearing brief to present its argument as to whether this transaction satisfies the requirements for approval by the Division.

II. Green Energy Consumers Alliance interest in the transaction

In its Motion to Intervene, GECA described its organization and mission.² In addition to the specific programs that GECA operates that require the cooperation and partnership of whichever company owns Narragansett, GECA has a history and mission connected to advocating for the establishment and implementation of meaningful climate action by Rhode Island, which necessarily includes Rhode Island's regulation of its electricity and gas utilities.³

GECA's participation has focused on evaluating the one of the criterion for approval: whether this transaction is in the public interest. Current Rhode Island law states "that the state shall reduce its statewide greenhouse gas emissions...and that achieving those targets shall be mandatory..." R.I. Gen. Laws § 42-6.2-9. This a mandate for action. This is a declaration of an emergency. The next target for emissions reductions is 45% below 1990 levels by 2030, less than eight years away. Id. The Division is tasked with finding whether this transaction, which will determine who will own and profit from the very infrastructure that results in those regulated emissions, is in the public interest.

III. Applicable Standard

A. Standard of Review

The standard for approval for this transaction is found in Rhode Island General Laws § 39-3-25, which provides that a transaction between two utilities should be approved if the Division is satisfied "that the facilities for furnishing service to the public will not thereby be

² GECA Mot. to Intervene ¶¶ 3-11.

³ Id. at ¶ 17.

diminished, and that the purchase, sale, or lease and the terms thereof are consistent with the public interest, it shall make such order in the premise as it may deem proper and the circumstances may require.”

The last time that a transaction was reviewed by the Division in 2006 when it approved Narragansett Electric’s acquisition of the gas distribution system then owned by the Southern Union Company. In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company, D-06-13, Report and Order No. 18676 (July 25, 2006). In that order it determined that to meet this standard the Petitioners must satisfy two criteria, (1) that “there will be no degradation of utility services after the transaction is consummated,” and (2) that “the proposed transaction will not unfavorably impact the general public (including [customers]).” Id. at 52.

B. Further defining the public interest

The limited precedent for defining the public interest in a utility transaction is whether “the proposed transaction will not unfavorably impact the general public (including [customers]).” The Division further determined that being in the public interest does not require “...a prerequisite demonstration that the transaction produces a “net benefit” to ratepayers and the general public.” Id.

The inquiry does not end with the state of the world during the last transaction. Our knowledge of the threat of climate change has grown, including that Rhode Island has experienced more warming than any other of the lower forty-eight states.⁴ In 2006 we were sadly still debating whether Rhode Island was going to take any action at all. Though it took 15 more years, we have reached a conclusion. Witnesses from the Petitioners referenced the need to

⁴ Testimony of Kai Salem, GECA ex. 1, 7:20 - 8:5.

decarbonize our energy systems and even that taking action on climate is in the public interest. Dec. 13, 2021 Transcript, p. 124, lines 7-15; Dec. 15, 2021 Transcript, p. 30, line 10 through p.31, line 10.

Now the Division is presented with an issue of first impression. It must answer: to what extent, and in what manner, is the Division obligated to consider the goals of Act on Climate in its review of a utility transaction?

GECA believes that the Division is an appropriate venue to take Act on Climate into account as part of the public's interest in the transaction. Since the enactment of Act on Climate, agencies have begun to consider the new law. For example, the Energy Facility Siting Board ("EFSB") recently discussed its obligations under the Act on Climate when evaluating siting of a Liquefied Natural Gas facility in Portsmouth, Rhode Island. See In re: The Narragansett Electric Company d/b/a National Grid Petition for Waiver Extension, SB-2021-04, Order 150 granting Motion for Waiver Extension subject to conditions, August 26, 2021 at 16-17. The EFSB did not enact a moratorium on new gas hookups on Aquidneck Island since there was insufficient evidence that doing so for "one winter will have any impact on the state being able to meet its greenhouse gas emissions targets mandated by the Act on Climate." Id. at 17. This is just one example of what is expected to be a growing record of agency applications of the new statute.

To aid the Division in this endeavor, we present the following as a potential path to determine whether the transaction is consistent with the public interest. First, Petitioners should provide an inventory of the services that the utility provides or programs that it offers due to the operation of statute or regulation that contribute to the emissions that are under a mandatory reduction order. Second, the selling party shall provide a baseline analysis of the current trajectory of those programs to meet the obligations of the Act on Climate. Third, the purchasing

party shall detail the actions it either has or will take in order to, at a minimum, maintain that trajectory. Finally, should the Division find that there is a reasonable risk that the purchasing party will be unable to maintain the current trajectory towards meeting the requirements under the Act on Climate, the Division should independently consider conditions on the purchasing party in order to maintain progress towards the Act on Climate mandates or deny the transaction in its entirety.

IV. Impact if transaction as presented is not found to be in the public interest

Following the four-day hearing, the Hearing Officer presented the parties with the following request, “So I would ask the parties to brief the legal issue of what authority the state of Rhode Island has to compel National Grid to continue to own and operate Narragansett Electric, and if so, for how long can we compel them for.” Dec. 16, 2021 Transcript, p. 341, lines 7-12.

A. Authority of the Division to condition the sale and/or deny it.

The legislature has determined that many of the services provided by Narragansett Electric are both in the public interest and are a public necessity. The legislature granted to the Public Utilities Commission and the Division of Public Utilities and Carriers the “exclusive power and authority” to regulate the activities of a public utility in order to, *inter alia*, “...protect and promote the welfare of the people...” R.I. Gen Laws § 39-1-1.

The legislature in creating the Division declared that:

Preservation of the state’s resources, commerce, and industry requires the assurance of... an abundance of energy...supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources... Id.

and that:

It is hereby declared to be the policy of the state to provide for fair regulation of public utilities...in the interest of the public, to promote availability of adequate, efficient, and economical energy...to the inhabitants of the state, to provide just and reasonable rates and charges for such services and supplies, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, and to cooperate with other states and agencies of the federal government in promoting and coordinating efforts to achieve realization of this policy. Id.

Since the creation of the Division, the legislature has provided further guidance that:

Addressing the impacts on climate change shall be deemed to be within the powers, duties, and obligations of all state departments, agencies, commissions, councils, and instrumentalities, including quasi-public agencies, and each shall exercise among its purposes in the exercise of its existing authority, the purposes set forth in [Act on Climate] pertaining to climate change mitigation, adaptation, and resilience in so far as climate change affects its mission, duties, responsibilities, projects, or programs. R.I. Gen. Laws § 42-6.2-8.

This directive provides for no exceptions. Each agency, including the Division, now operates under the mandate to consider the Act's emissions reduction targets when exercising its existing authority. The question then moves to whether in this case the Division is exercising its existing authority such that it must consider the Act's emissions reduction targets.

The 2006 precedent indicates that the Division believes it has the authority to impose conditions upon a utility sale. In its order approving the Southern Union transaction, the Division spent considerable time reviewing and discussing the potential to independently establish an escrow account in order to cover the potential liability for cleanup of a contaminated site subject to a remediation action by RI Department of Environmental Managements against the selling party prior to the proposed sale. See Southern Union at 64-81. Though the Division decided not to establish such an escrow account, that decision rested on finding that (a) RIDEM had already engaged in enforcement activities, (b) Southern Union had sufficient assets to meet the proposed liability absent an escrow account, and (c) Southern Union had already stipulated that it would

not use a company reorganization to evade liability for the environmental contamination in question. Id. at 69-81. The determination not to set an additional condition upon the transaction was made on the grounds that it was unnecessary in order to protect the public interest; however, the contemplation thereof indicates that the Division considered the setting of a condition upon the transaction to be within its authority. This interpretation is further supported by appended comments from the Administrator that indicated that he “...did consider modifying the decision to establish an ‘escrow’ condition on the proposed asset sale...” Id. at 86.

The Petitioners have asserted that in the absence of additional action by a government entity or the publication of an Executive Climate Change Coordinating Council (EC4) plan, there are no utility obligations. GECA Exhibit 2, Petitioners Joint Response to AG Data Request 1-30. However, the plain language of the statute indicates that it grants state agencies, including the Division, the authority to set an obligation should an agency find it necessary in order to meet the mandates of Act on Climate. The statute cites two methods to it can do so: (1) in the exercise of existing authority, or (2) the promulgation of rules and regulations. R.I. Gen. Laws § 42-6.2-8. Setting a condition on a utility transaction sits firmly in the first method, exercise of existing authority of the Division, since the Division determined that such authority was inherent in its authority to review a transaction under R.I. General Laws § 39-3-25. In the absence of other guidance, such as may at some future point come from the EC4, the Division must act, not in feigned ignorance of the law but, instead, in good faith administration of its duty.

B. Implications for Petitioners

While Petitioners may not have known exactly what conditions the State may set in reviewing the proposed transaction, they are fully aware that they are participating in a highly regulated business. Almost every aspect of public utility operation is subject to government

oversight. After all, the utility is responsible for the safe and reliable provision of basic necessities. In return, companies that operate a public utility are guaranteed a rate of return on their investment in addition to guaranteed revenue to cover operational expenses. Both Petitioners are fully aware of the nature of this business, including the inherent obligation to continue operating the business until another entity is willing and able to take over operations, and the Division, on behalf of all Rhode Islanders, should have no issue enforcing this obligation on National Grid in exchange for the financial benefit that has been enjoyed during their ownership.

In order to receive approval to transfer utility assets, Petitioners have a responsibility to provide sufficient evidence that it has met the applicable standard as has been described. These statutory conditions necessarily mean that the owner of any utility is limited in their ability to contract for the sale of these assets. The State has a significant interest in protecting these assets on behalf of its citizens' welfare and financial investment.

A denial of this transaction is not a mandate on National Grid to operate Narragansett Electric in perpetuity; it is an opportunity to provide clear guidance to National Grid and potential buyers as to the terms under which a transaction would be possible. If PPL does not accept those terms, National Grid, if it wants to depart Rhode Island, is free to find another utility operator who is willing to purchase Narragansett Electric under terms consistent with Rhode Island's interest in the transaction.

V. Discussion of programs whose purpose is consistent with Act on Climate

In light of the foregoing discussion of the legal standard for this review, GECA has endeavored throughout these proceedings to provide evidence that can help inform the evaluation of the programs that are part of the State's effort to meet its obligation under Act on Climate and

will be impacted by the proposed transaction. In order for the transaction to be deemed in the public interest, the Division must conclude that the purchasing party will be able to maintain or improve upon the services provided by National Grid at no additional cost to ratepayers.

(1) Least Cost Procurement. R.I. Gen Laws § 39-1-27.7.

Rhode Island's Least Cost Procurement statute requires the utility company to plan and implement programs to meet energy demand with cost-effective energy efficiency and conservation investments. Id. Since Least Cost Procurement passed in the mid-2000s, Rhode Island's energy efficiency programs have saved millions for ratepayers, and National Grid's Rhode Island programs have led the nation (alongside comparable programs in Massachusetts and California) in energy savings and services to customers. Advocacy Section, Exhibits 32 and 33, ACEE Scorecards from 2019 and 2020. PPL operates small efficiency programs in Pennsylvania and Kentucky. In both states, PPL achieves a fraction of the energy savings per customer compared to National Grid's programs in RI. PPL Response to GECA 1-2; PPL Response to DIV 2-14. Although PPL operates demand side management programs in Kentucky and Pennsylvania, it has failed to demonstrate that these smaller programs would provide the same level of synergistic benefits that Rhode Island customers receive from National Grid's substantial programs in Massachusetts and New York.

(2) Renewable Energy Standard. R.I. Gen Laws § 39-26-4.

PPL has indicated that it has been able to meet the renewable energy procurement requirements to the extent obligated by Pennsylvania law and that Kentucky does not have such a standard. PPL Response to GECA 1-11. While the track record of compliance is a positive indication, there has not been any discussion as to how the utility is prepared to meet Rhode Island's standard and the differences between them. Testimony of Kai Salem at p. 11, lines 1-14.

The lack of requirement in Kentucky indicates that its experience in that jurisdiction does not indicate any competence to meet Rhode Island's standard.

(3) Renewable Energy Long-Term Contracting. R.I. Gen Laws §§ 39-26.1-1–9.

Development of offshore wind Requests for Proposals (“RFP” or “RFPs”) and contract development is critical for Rhode Island’s utility.⁵ In Rhode Island, these contracts have been enabled by the Long-Term Contracting Standard. R.I. Gen Laws §§ 39-26.1-1–9. Although PPL does have some experience conducting renewable energy-specific RFPs and contracting with developers, it does not have experience conducting RFPs for offshore wind or entering into contracts with offshore wind developers. PPL Response to GECA 1-9. National Grid has experience conducting RFPs and entering into contracts with offshore wind developers in both Massachusetts and Rhode Island. National Grid response to Division 8-15, Attachment NG-DIV-8-15-2 at 44.

(4) Renewable Energy Growth program. R.I. Gen Laws §§ 39-26.2-1–14.

At this time there has been no evidence presented as to PPL’s ability to administer the Renewable Energy Growth program.

(5) Net Metering. R.I. Gen Laws §§ 39-26.4-1–5.

At this time there has been no evidence presented as to PPL’s ability to administer Rhode Island’s Net Metering program.

(6) Grid Modernization. Grid Modernization Plan, RI PUC Docket # 5114.

⁵ See Brattle Group, The Road to 100% Renewable Electricity by 2030 in Rhode Island (Dec. 2020) at 54-55. (summarizing, *inter alia*, the importance of offshore wind as part of how the state will meet its targets under Executive Order 20-01), available at <http://www.energy.ri.gov/documents/renewable/The%20Road%20to%20100%20Percent%20Renewable%20Electricity%20-%20Brattle%2004Feb2021.pdf>.

(7) Advanced Metering Functionality. Updated Advanced Metering Functionality Business Case, RI PUC Docket # 5113.

On Advanced Metering Functionality and Grid Modernization, Mr. Booth outlined the synergies that Rhode Island receives from comparable functionality and technology planned for Massachusetts and New York, as well as cost-sharing among the jurisdictions. Dec. 15, 2021 Transcript, pp. 173-175. PPL has asserted that it can deploy grid modernization in Rhode Island “at a fraction of the cost.” Dec. 15, 2021 Transcript pp. 65-66. At this time there are no assurances or further details as to how a remote deployment of grid modernization could be more cost-effective for Rhode Island ratepayers than National Grid’s planned synergistic deployment across Rhode Island, New York, and Massachusetts.

PPL plans to make up for its lack of experience and jurisdictional synergy in Rhode Island specific programs by: (a) hiring experienced National Grid staff; (b) continuing National Grid programs to the extent possible; and (c) making up for shared resources and experiences from Massachusetts and New York with newly-available shared resources and experience from Pennsylvania and Kentucky. GECA suggests that these commitments will mitigate the impact of the transition on Rhode Island ratepayers and clean energy programs but will not fully make up for the loss of synergy with Massachusetts and Rhode Island.

In totality, GECA believes that insufficient evidence has been provided to conclude that PPL will be able to maintain the services provided by National Grid at no additional cost to ratepayers. PPL and National Grid have provided evidence that PPL does not have comparable experience with clean energy programs, especially Least Cost Procurement and Renewable Energy Long-Term Contracting. GECA is further concerned with the loss of clean energy program synergies with Massachusetts and New York, two states that have exceptionally strong

climate goals and renewable energy targets. These synergies are clearest in the Advanced Metering Functionality docket and the Least Cost Procurement energy efficiency programs.

VI. Conclusion

Based upon Petitioners' commitments and the plan as described in their Petition and subsequent testimony, GECA believes that the sale of Narragansett Electric to PPL as currently structured poses an unnecessary risk to the State's ability to meet its mandatory carbon emissions reduction targets as set forth in Act on Climate.

Therefore, GECA respectfully requests that the Division withhold its approval of this transaction until such time that sufficient evidence is presented to determine that the transaction is in the public interest, specifically with respect to the impact the transaction will have on its ability to meet its obligation under the 2021 Act on Climate.

GREEN ENERGY CONSUMERS ALLIANCE

By Its Attorney,

/s/ James Rhodes
James G. Rhodes (#8983)
Rhodes Consulting LLC
160 Woonsocket Hill Rd.
North Smithfield, Rhode Island 02896
james@jrhodeslegal.com
Phone: 401-225-3441

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Certificate of Service

I certify that the original and four copies of this brief will be hand-delivered to the Division of Public Utilities and Carriers. In addition, a PDF version of this brief was served electronically on the service list of this Docket on January 18, 2022.

/s/ James Rhodes