

BEFORE THE
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
Ownership of The Narragansett Electric
Company to PPL Rhode Island Holdings,
LLC and Related Approvals

Docket No. D-21-09

**POST-HEARING REPLY BRIEF
OF THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES
AND CARRIERS' ADVOCACY SECTION**

JANUARY 28, 2022

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INTRODUCTION

Petitioners have not satisfied their burden of assuring the Division that the statutory requirements—no diminishment of facilities and no harm to the public interest—will be met if the Transaction is approved. PPL misreads the plain statutory text when it claims the Division’s role in this proceeding is circumscribed to evaluating PPL’s experience operating utilities and PPL’s financial strength. Showing that “PPL is a large and experienced utility holding company” and that it “has sufficient financial strength” to operate Narragansett is necessary, but hardly sufficient, to meet the legal standard for approving this Transaction.

The key question remains: what will approval of this Transaction mean for ratepayers? The Transaction cannot be approved absent showings that doing so will not result in a diminishment in the quality and reliability of utility services, and will not otherwise harm ratepayers. As applied to the circumstances of this Transaction, the “No Diminishment” and “No Harm” tests require Petitioners to offer compelling evidence responsive to three questions:

1. **Will PPL’s locally-focused business model harm ratepayers?** On this record, the most likely answer is yes. The only evidence Petitioners proffered on this point is a contested study comparing PPL’s and National Grid’s “managed costs.”
2. **Will ratepayers be held harmless from all transition costs?** On this record, the answer is no. Despite adding new commitments both prior to and a month after the close of the hearing, Petitioners are unwilling to hold ratepayers harmless from all categories of transition costs and fail to protect ratepayers from stranded asset costs.
3. **Will PPL be able to maintain at least the same quality of service as National Grid at no greater cost?** There are good reasons to doubt PPL’s plan to operate Narragansett’s gas system and PPL’s plan to change

direction on AMF and Grid Modernization. Petitioners offer nothing more than “trust us,” refusing to make any commitments to justify such trust.

Contrary to Petitioners’ claims, the Advocacy Section is not seeking to establish a standard that would prevent National Grid from ever selling Narragansett.¹ Nor is the Advocacy Section asserting that National Grid’s regional, tightly integrated, shared savings model is the *only* business model that could serve Rhode Island. The Advocacy Section is merely following the statute, which requires Petitioners to make an affirmative showing that the proposed Transaction, including PPL’s alternative business model for Narragansett, is no worse for ratepayers than continued ownership by National Grid. That showing requires consideration of “incumbency”—an examination of where ratepayers are now versus where they will be if the Transaction moves ahead—but does not give a preference to the incumbent.

Similarly, the Advocacy Section is not urging the Division to exceed its jurisdiction or usurp the Commission’s ratemaking authority. Petitioners themselves acknowledge Rhode Island precedent dictating that the Division’s evaluation of the public interest necessarily includes impact to ratepayers. Yet in response to the likely ratepayer harms raised by the Advocacy Section, Petitioners argue that the Commission’s ratemaking authority is a reason to escape scrutiny. Rhode Island’s carefully drawn jurisdictional lines do not leave any such regulatory gap. For the Division to approve the Transaction, Petitioners must demonstrate *in this proceeding* that ratepayers will not be harmed by the Transaction. Their commitments fail to fully do so.

¹ E.g., PPL Corporation and PPL Rhode Island Holdings, LLC, Post-Hearing Memorandum at 12 (Jan. 18, 2022) (“the inescapable conclusion flowing from the Advocacy Section’s premise is that the Division can never approve a change of ownership”) (“PPL Br.”).

Under PPL’s theory, any large utility holding company with sufficiently strong finances would be *entitled* to take over Rhode Island’s gas and electric systems. To the contrary: obtaining the exclusive franchise right to serve Rhode Island customers is a privilege. Rhode Island law not only permits but requires the Division to deny that privilege to a potential buyer—no matter how sterling that buyer’s credentials—if that buyer fails to produce evidence demonstrating that the transaction is consistent with the public interest. Because PPL has failed to do so, approval of the Transaction must be denied.

STANDARD OF REVIEW

A) PPL’s operational experience, overall size, and financial strength are not sufficient to satisfy the statutory requirements.

PPL claims that the Division must approve a transaction if the buyer demonstrates its “operational experience, overall size, and financial strength.”² While those factors are relevant, they are not sufficient to satisfy the statutory requirement for approval of a transaction. Restricting the Division’s analysis to those three, buyer-centric factors contradicts the plain text of the statute, Division precedent, and common sense. While PPL accuses (PPL Br. at 3) the Advocacy Section of “ignor[ing] the established standard and analytical framework[,]” it is PPL that misstates the law.

First, R.I. Gen Laws §§ 39-3-24 and 39-3-25 plainly require Petitioners to make two showings: (1) that “the facilities for furnishing service to the public will not . . . be diminished” by the Transaction; and (2) the Transaction’s terms “are consistent with the

² PPL Br. at 3.

public interest.”³ Both statutory factors are focused on what *will* happen in Rhode Island, not what *has* happened in other places.⁴ Thus, PPL’s repeated claims (e.g., PPL Br. at 39) that the Advocacy Section errs in its “reliance on incumbency to defeat the Petition” and that it is making an “incumbency argument” (*id.* at 40) are based on a fundamental misunderstanding of how the Rhode Island statute works. The statute requires a comparison between the status quo—i.e., National Grid’s continued ownership—and the Petitioners’ proposal.⁵ PPL’s standard—which is aimed exclusively at the buyer’s historical track record—contradicts the statute because that standard would remove the need to conduct any analysis of how the Transaction would impact Rhode Island.⁶

Second, PPL’s three-factor test misreads *Southern Union*. There, the Division explicitly and unambiguously interpreted the No Diminishment prong of the statute to require a forward-looking, Rhode Island-specific demonstration “that there will be no degradation of utility services *after the transaction is consummated.*”⁷ To be sure,

³ R.I. Gen Laws § 39-3-25.

⁴ Merriam Webster Dictionary defines “will” as an auxiliary verb “used to express futurity”, <https://www.merriam-webster.com/dictionary/will> (last visited Jan. 24, 2022).

⁵ The word “diminished” necessarily implies a comparison—diminished compared to what? The most natural—and only plausible—reading of “will not thereby be diminished” requires a comparison to the status quo.

⁶ For its part, National Grid argues (Post-Hearing Memorandum of National Grid USA and The Narragansett Electric Company at 34 (Jan. 18, 2022) (“National Grid Br.”)) both that the “legal review” to be conducted in this case “is not based on a comparison of whether the company can come into Rhode Island and perform better than the existing utility” and that “the undisputed, and only, standard for approval” involves a determination as to whether “the facilities for furnishing service to the public will not thereby be diminished” *id.* at 35 (citations omitted), and whether the Transaction is consistent with the public interest. *Id.* But that description makes clear that a comparison is required, as there is no other reasonable way to determine if a PPL takeover of Narragansett will involve a diminution in “facilities” or is in the public interest.

⁷ *In re: Joint Petition for Purchase & Sale of Assets by the Narragansett Elec. Co. & the S. Union Co.*, Order No. 18,676, at 52, Docket No. D-06-13 (July 25, 2006) (emphasis added) (“*Southern Union*”).

Advocacy Section witness Bruce Oliver did consider National Grid’s “overall size and financial strength” as factors in his conclusion that the Southern Union transaction would not degrade service, but his analysis was not limited to those factors.⁸ And he too advocated for a forward-looking evidentiary standard, insisting “that the focus should instead be on whether ‘high service reliability’ would be preserved after the merger has been consummated.”⁹ The Division confirmed that standard in its ultimate holding, finding that the Southern Union transaction “will not jeopardize the *future ability* to provide safe, adequate, reliable, efficient, and least cost public utility service.”¹⁰

In *Southern Union*, all of the witnesses agreed that National Grid would be able to maintain the “high service reliability” of Southern Union’s gas system. The Division was compelled to make the requisite No Diminishment finding, because there was no evidence to the contrary.¹¹ The situation here is markedly different. The record in this proceeding provides ample evidence that service will be degraded if the Transaction is approved, notwithstanding PPL’s size and financial strength.¹² The Advocacy Section has shown, for example, that PPL lacks sufficient operational experience and expertise with gas systems—particularly LNG facilities—so the Transaction will likely result in either degradation of

⁸ *See id.* at 50 (summarizing some of the factors Mr. Oliver considered). One of Mr. Oliver’s considerations was the Division’s ability to “assess and address service quality protection issues . . . when Narragansett files its rate plan with the Commission.” *Id.*; *Cf.* Post-Hearing Brief of the Rhode Island Division of Public Utilities and Carriers Advocacy Section at 47-48 (Jan. 18, 2022) (describing the need here for an escrow to ensure service quality standards during the TSA) (“Advocacy Section Br.”).

⁹ *Southern Union* at 60.

¹⁰ *Id.* at 63 (emphasis added).

¹¹ *Id.* at 51 (“As the record reflects no contrary conclusions with respect to this issue, the Division is compelled to find that the proposed transaction, if approved, will not diminish the facilities for furnishing service to the public.”).

¹² *See* Advocacy Section Br. at 42-63.

service or significant increase in cost.¹³ Thus nothing in *Southern Union* supports PPL’s claim that the Division must approve the Transaction based on PPL’s experience, size, and financial strength.

Third, PPL’s three-factor test contradicts common sense. If section 39-3-25 required approval of any transaction as long as the buyer could demonstrate its operational experience, overall size, and financial strength, then the Division would be powerless to reject virtually all future transactions. There are dozens of large utility holding companies with U.S. operations; under PPL’s test, every one of them would be entitled to own Narragansett regardless of what plans they had presented for post-acquisition operations. That would render the statute—and Division review—useless for the purpose of protecting the public.

Fourth, if adopted, PPL’s proposed statutory standard would allow the Division to approve a transaction regardless of whether it could have adverse impacts on utility rates. As we explain below, that cannot possibly be the law.

The Advocacy Section reiterates that it is not opposed to National Grid selling Narragansett. National Grid is entitled to sell its Rhode Island assets, but only if the sale can be demonstrated to satisfy the statutory No Diminishment and No Harm tests. Those tests require the Petitioners to present sufficient evidence to show Rhode Islanders will be no worse off if the Transaction is approved than if the Transaction is denied, including with

¹³ *Id.* at 55-56 (citing Direct Testimony of Bruce Oliver at 10:12-19 (“Oliver Direct Test”); Tr. at 92:6-10 (Dec. 14, 2021)) (demonstrating PPL’s poor track record on safety); *Id.* at 56-57 (citing Oliver Direct Test. at 6:18-21, 37:1-5; Tr. 152:10 – 153:1 (Dec. 16, 2021)) (demonstrating PPL’s lack of operating experience with LNG facilities).

respect to rate impacts. But Petitioners refuse to provide such evidence. In fact, as addressed *infra*, PPL argues that it is “impossible” to know if approval of this Transaction will result in rate hikes.¹⁴ Thus the Advocacy Section opposes this Transaction, because Petitioners have not shown it meets the statutory standard.

B) The Division must consider the rate impacts of the Transaction.

Petitioners acknowledge, as they must, that the statutory No Harm standard requires a finding that the proposed transaction will not “unfavorably impact the general public (including ratepayers).”¹⁵ This test necessarily requires evaluation of future rate impacts should the Transaction be approved. The Advocacy Section conducted that statutorily required analysis with respect to the rate impacts of:

- 1. Transaction Costs:** The costs of consummating the transaction, such as any acquisition premium, obtaining an appraisal and fairness opinions, internal employee costs to negotiate the transaction, and the cost of obtaining approval for the transaction.
- 2. Transition Costs:** All transaction-related costs—both expenses and capital expenditures—incurred post-closing. These include costs associated with the TSA, costs to acquire employees and outside services, the costs of extracting Narragansett from National Grid’s system, the costs of establishing new facilities and systems and necessary integration costs to operate Narragansett under PPL’s model, among other things.
- 3. Post-Transition Costs:** Whether PPL can provide safe, adequate, reliable efficient service at a cost that is no greater than if the Transaction were rejected. This analysis included financial assessments of matters such as PPL’s common equity ratio, short-term and long-term financing plans, goodwill, and treatment of accumulated deferred income taxes. The analysis also included operational assessments of whether PPL’s locally focused operating model would cost more than National Grid’s integrated, regional model.

¹⁴ PPL Br. at 8.

¹⁵ PPL Br. at 7 (quoting *Southern Union* at 52); National Grid Br. at 3 (quoting *Southern Union*).

Contrary to Petitioners' accusation, the Advocacy Section has not done "violence to the established legal standard" by inventing a "new standard" that requires "a crystal ball";¹⁶ instead, the Advocacy Section's straightforward analysis focuses squarely on the rate impacts of the Transaction. Nor does the Advocacy Section ask the Division to adopt a "net benefits" test;¹⁷ the question is solely whether ratepayers will be harmed by the Transaction.

Petitioners' arguments regarding rate impacts are self-contradictory. On one hand, PPL urges the Division to ignore rate impacts of the Transaction because it "is impossible to know today how the Transaction might impact future rates."¹⁸ On the other hand, PPL claims that the Transaction "will not cause rate increases."¹⁹ Both things cannot be true.

Similarly, PPL contradicts itself about the scope of the Division's rate review. PPL asserts that future rate impacts "are not part of the Division's statutory review" because those impacts will be decided by the Commission in a future rate proceeding.²⁰ Yet PPL offers a series of commitments in this proceeding that will directly impact that future rate proceeding. Those commitments include agreeing to a moratorium on seeking base distribution rate increases, maintaining a common equity ratio, excluding goodwill from capital structure, ensuring restatement of pension obligations will not increase rates, and

¹⁶ PPL Br. at 3-4.

¹⁷ *Id.* at 7 (arguing against a net benefits test that no one has advocated for).

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 8.

holding ratepayers harmless from changes to accumulated deferred income taxes.²¹ PPL cannot simultaneously claim the Transaction meets the statutory requirements *because of* those commitments while claiming that rate impacts have no role in this proceeding.

PPL relies heavily on out-of-context quotes from the *Southern Union* proceeding and the Division’s intervention order in this proceeding to support its claim that the Division should not consider future rate impacts.²² In *Southern Union*, the Division granted discovery on the issue of Southern Union’s potential ability to evade liability for contamination, but—quite correctly—warned parties that they must still demonstrate such evasion would run afoul of the statutory standard.²³ In the Division’s intervention order here, it reminded parties—in the context of renewable energy policy—that “concerns of a speculative and remote nature, particularly involving issues properly before other agencies and/or the Courts, cannot be permitted to unnecessarily hinder and complicate the adjudication of the matter at hand.”²⁴ Neither of those citations are relevant to the Division’s review of how the Transaction will affect future ratepayers, because it is well established that adverse ratepayer impacts are within the Division’s jurisdiction to review and permitting such impacts would run afoul of the statutory standard.

²¹ PPL Br., app. A (“January 18 Commitment”).

²² See PPL Br. at 9 (citing *In re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and the Southern Union Company*, Order No. 18641, 2006 WL 2134637 (June 16, 2006) (“Southern Union Discovery Order”); *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*, Order No. 24109, 2021 WL 4244236 (Aug. 19 2021) (“PPL/Narragansett Intervention Order”).

²³ Southern Union Discovery Order at 2.

²⁴ PPL/Narragansett Intervention Order at 53.

Ultimately, R.I.G.L. § 39-3-25 places the burden on Petitioners to demonstrate, to the Division's satisfaction, that ratepayers will not be harmed by the Transaction. Petitioners cannot avoid that statutory burden by claiming that rate impacts are speculative or outside of the Division's jurisdiction. Nor can Petitioners pick and choose only a subset of rate impacts to present for Division evaluation. Here, Petitioners have failed to present evidence demonstrating that the public interest will not be harmed by adverse rate impacts. There should be no question that the "public" certainly believes that the potential for ratepayer harms should play a central role in the Division's consideration of whether to approve this Transaction. State Representative David Morales appeared at the hearings to offer his views on the Transaction, stating: "I really want to focus on the potential impact that this transfer will have on our utility rates and ultimately the working people of Rhode Island who are ratepayers." Tr. 95:19-23 (Dec. 13, 2021). He notes that "there have been several unanswered questions which indicate that Rhode Islanders will experience higher gas and electricity rates." *Id.* 96:3-6. Representative Morales goes on to state:

given that PPL has also not presented a mitigation plan to protect ratepayers during this transition period or throughout the height of higher operating costs, I'm extremely concerned that our communities, especially within the urban core, again, the working people of Rhode Island, will experience higher utility costs at no fault of their own, instead, it will be due to a lack of planning and consideration from a corporation that potentially may be ill-prepared to expand into the state of Rhode Island. And while I understand that, again, PPL has shared broad statements claiming that ratepayers will not be hurt by increasing costs, that is not the same as presenting, again, a plan or concrete commitment that will hold legal weight.

Id. 97:6-24.²⁵ Members of the public expressed similar concerns.²⁶

ARGUMENT

A) PPL’s operating model for Narragansett will likely harm ratepayers.

A consequential, long-term result of approving the Transaction will be the change in Narragansett’s operating model, from National Grid’s tightly integrated, geographically-contiguous, regional model to PPL’s less integrated, locally focused model. As explained in the Advocacy Section’s opening brief, National Grid’s model provides sufficient dedicated, locally-focused services to Rhode Island customers while leveraging substantial savings from the shared provision of other services with National Grid’s larger affiliates in Massachusetts and New York.²⁷ PPL’s version of a locally-focused model will require significant infrastructure and personnel investments to enable the provision of more services exclusively in Rhode Island and additional (albeit fewer) services that will be provided by PPL on a shared basis, but with its affiliates in Pennsylvania and Kentucky.²⁸

The Division may not approve the Transaction unless it is convinced that Rhode Island consumers will be no worse off under PPL’s operating model. Although future rates cannot be predicted with absolute certainty, the Division cannot ignore likely rate impacts.

²⁵ Rep. Morales noted that his comments did not take into account the commitments offered by PPL during the weekend before the hearing. Tr. 96:24 – 97:5 (Dec. 13, 2021). But, as we have explained, even with those commitments ratepayers may still find themselves on the hook for \$82 million in transition costs—none of which would have been incurred absent the Transaction. Other members of the public raised concerns about rates, as well as PPL’s commitment to meeting Rhode Island’s climate objectives.

²⁶ E.g., Public Comments of Jessie Kingston at 1 (Jan. 12, 2022) (“Apparently no financial statements of any kind have been provided by PPL as it intends to divulge more cost information *after* the transaction at which time ratepayers will have no recourse. The inevitable but as yet unspecified estimated increased rates caused by this proposed transaction are not even my main concern, although they are certainly one of them.”).

²⁷ Advocacy Section Br. at 22.

²⁸ *Id.*

If the Division accepts PPL's operating model in this proceeding, Rhode Island ratepayers will have no recourse when PPL files with the Commission to recover the full costs of that model. Thus the Division must determine, with some reasonable degree of certainty, that ratepayers will not be harmed by PPL's operating model. PPL has not offered sufficient evidence to support such a determination.

PPL's brief invents controversy where there is none.²⁹ There is no dispute that (a) utility holding companies each have their own version of hybrid operating models using a mix of shared and local services; (b) under PPL's model, Narragansett will share some services with PPL's other utilities; and (c) PPL's model provides more services locally than National Grid's model. And contrary to PPL's claims, the Advocacy Section agrees that other operating models *could*, in theory, offer benefits that are as good or better for Rhode Island customers than those afforded under National Grid's operating model for Narragansett. But, on the record in this proceeding, the Advocacy Section disputes whether PPL has shown that its operating model *will be* as good or better than the status quo.

And that is the central question in this case—has PPL demonstrated that its locally focused model can be expected to provide equally high quality service to Rhode Island ratepayers at costs that do not exceed National Grid's tightly integrated model? PPL has failed to make that showing, and, for that reason, the Transaction must be rejected.

Indeed, Petitioners direct case does not even attempt to answer the central question. And PPL now admits that it only prepared a cost comparison because the Advocacy Section

²⁹ PPL Brief. at 31-33.

requested such an analysis through discovery.³⁰ PPL believes that a cost comparison between its proposed operating model and National Grid’s operating model is irrelevant to the statutory question of whether the Transaction is in the public interest. Not only is that incorrect as a matter of law,³¹ it is illogical. If PPL were correct, the Division would have to approve the Transaction even if PPL admitted in discovery that its operating model will cost more than National Grid’s.

The Advocacy Section has demonstrated that PPL’s cost comparison fails to satisfy the statutory No Harm standard, because PPL’s presentation (a) excludes 79% of Narragansett’s operating costs,³² (b) ignores important cost categories such as costs of material purchasing and stocking, spare equipment for major components, construction standardization,³³ (c) fails to account for known synergies that would be lost or to quantify the synergies PPL expects to gain,³⁴ and (d) was conducted “without involvement from National Grid USA.”³⁵ Moreover, PPL’s cost comparison is based on unrealistic assumptions, such as salary estimates based on out-of-state employees.³⁶

³⁰ PPL Br. at 33 n.22 (oddly characterizing the Advocacy Section’s data request as a “demand”).

³¹ See discussion, *supra* Standard of Review, Part B, at 7-10.

³² Advocacy Section Br. at 24; Advocacy Section Ex. 12, PPL Supplemental Response to Advocacy Section Data Request 1-54 at 26 (App. 1).

³³ Advocacy Section Br. at 25; Direct Testimony of Gregory L. Booth at 45:10-19 (Nov. 3, 2021) (“Booth Direct Test.”).

³⁴ See Advocacy Section Br. at 25-26, 40-42 (detailing millions in lost synergies); *Cf.* PPL Response to Attorney General’s Record Request 1 (describing expected synergies generally, and then, at 9, conceding that “PPL has not performed any studies to quantify their value.”).

³⁵ Advocacy Section Br. at 24 (citing Rebuttal Testimony of Todd J. Jirovec at 9 n.2 (“Jirovec Rebuttal Test”)).

³⁶ *Id.* at 25 n.52 (citing Tr. 126:24-127:5 (Dec. 15, 2021)).

Instead of responding substantively to the cost comparison’s undisputed omissions and errors, PPL tries to brush off the Advocacy Section’s legitimate concerns as “curious” and an unwarranted “attack.”³⁷ At no point did the Advocacy Section “complain[]” that the cost comparison is mistaken because “it is only a projection.”³⁸ The Advocacy Section has instead identified specific flaws in the study’s methodology and assumptions, and demonstrated that the cost comparison cannot be relied upon as substantial evidence.³⁹

The bottom line is that the Division’s statutory obligation is to assure itself that the Transaction—and the new operating model that comes with it—will not harm ratepayers; Petitioners have not given the Hearing Officer any—let alone sufficient--credible evidence that could support such a finding.

B) PPL’s hold harmless commitments remain inadequate.

PPL amended its petition yet again in its opening brief, modifying its December 12, 2021 Supplemental Commitments with a revised set of commitments dated January 18, 2022. While the Advocacy Section acknowledges that PPL intends the revised commitments to be responsive to concerns raised by the Advocacy Section during the hearing, the procedure is highly irregular and prevents meaningful assessment of the commitments through cross-examination.

Even setting aside those procedural concerns, the revised commitments remain insufficient to protect the public interest.

³⁷ PPL Brief at 33 n.22.

³⁸ *Id.*

³⁹ *See supra* notes 31-34.

1. PPL’s Transition Cost Commitment remains inadequate.

The Advocacy Section identified four deficiencies in PPL’s December 12 Transition Costs Commitment (Commitment No. 2):⁴⁰

1. The commitment is limited to the defined term, “Transition Costs,” which include only four, specific cost categories. It fails to protect ratepayers against any other transition costs that PPL will incur to integrate Narragansett into PPL’s new operating model.
2. The commitment lacked a cap on the Transition Costs that PPL could seek to recover.
3. The commitment allows PPL to recover costs from ratepayers if it can show some savings, but does not require that the savings meet or exceed the cost.
4. With regard to the estimated \$17 million PPL seeks to recover for its proposed Rhode Island Operational Facilities, PPL commits to demonstrating only a “direct benefit” instead of “quantifiable, verifiable, and demonstrable savings [that meet or exceed costs].”

PPL’s January 18 revised commitments *partly* address the second deficiency by adding a commitment that it will seek “no more than \$82 million, regardless of whether the Transition Costs exceed current estimates.”⁴¹ The new cost-cap commitment still fails to protect ratepayers, in part because it combines what should have been two individual cost caps: a \$65 million cap for Transition Costs related to IT system implementation *and* a \$17 million cap for Rhode Island Operations Facilities—both with recovery conditioned upon a showing that those costs are offset by savings that are quantifiable, verifiable, and demonstrable.⁴² Advocacy Section witness Ballaban testified that cost caps are necessary

⁴⁰ See Advocacy Section Br. at 28-33.

⁴¹ PPL Br., app. A at 3.

⁴² See Tr. at 30:5-13 (Dec. 16, 2021) (cross-examination of Mr. Booth) (agreeing that a \$65-million-cap on IT costs would resolve his concerns about runaway IT costs); *Id.* at 100:11-13 (Mr. Ballaban) (“[T]hey would also have the cost cap issue with that \$17 million [for Rhode Island Operation Facilities] as well.”).

“with respect to *both* the facilities *and* the IT investments.”⁴³ Combining the individual cost caps into a single, \$82 million cap leaves a loophole for PPL to shift costs between the two categories to maximize recovery.⁴⁴

Unfortunately, the revised commitment does not address the other three deficiencies, and thus the Transaction still fails to satisfy the No Harm prong of the statutory requirement. And while the cap limits the amount PPL can seek to recover in rates for the identified categories, this still leaves ratepayers potentially on the hook for \$82 million in charges incurred in connection with PPL’s establishment of a different operating model in Rhode Island.⁴⁵

Curiously, PPL modified its commitment on accounting for transition costs to remove the defined term, “Transition Costs.” Compare the December 12 and January 18 commitments:⁴⁶

December 12 Commitment

PPL further agrees to establish **Transition Cost** accounting, reporting and monitoring procedures...

⁴³ *Id.* at 104:20 – 105:1 (emphasis added).

⁴⁴ Such a scenario could arise if there were budget overruns in a single category. Another would be if costs classifications overlap the two categories: consider IT-related subcategories of the facilities’ buildout—absent an individual cap, IT costs that did not qualify for recovery under the “savings” standard could be preferentially shifted and recovered as “facilities,” to which PPL has attached much lower protections (i.e. “incremental benefits”). Here, the whole is not the same as its parts.

⁴⁵ PPL has asserted that it might not choose to recover these costs, or that they may turn out to be lower than the estimate indicates. While these are possible outcomes, they cannot be assumed for the purposes of the analysis here. For purposes of this case, the Advocacy Section asserts that it must be assumed that, post-transition, PPL will attempt to recover the entire \$82 million amount of Transition Costs identified in the commitments.

⁴⁶ PPL Corporation, PPL Rhode Island Holdings, LLLC, National Grid USA, and the Narragansett Electric Company, Statement of Existing and Additional Commitments at 3 (Dec. 12, 2021), Docket No. D-21-09 (“December 12 Commitment”); *compare with* PPL Br., App. A, Commitment No. 2.

January 18 Commitment

PPL further agrees to establish **transition cost** accounting, reporting and monitoring procedures...

PPL's brief does not identify—let alone explain—that change. But PPL's deliberate choice to remove the defined term from its accounting commitment, while retaining the defined term in its cost-recovery commitments, suggests that PPL believes that it will incur transition costs other than the four cost categories included in its definition of Transition Costs. To protect ratepayers, PPL should commit not to seek recovery of any transition costs (i.e. any Transaction-related costs incurred post-closing) unless sufficient offsetting savings can be shown.⁴⁷

2. PPL's Stay-Out Commitment remains inadequate.

The Advocacy Section identified two deficiencies in PPL's December 12 Stay-Out Commitment (Commitment No. 1):⁴⁸

1. The three-year stay-out period does not account for extensions in the TSA; and even for a two-year transition, it is too short to ensure the availability of a full twelve-month period of historical cost data during which Narragansett is under the exclusive operational control of PPL.
2. The stay-out applies only to base rates, creating risk that ratepayers may be harmed by paying for transition expenses that flow through other rate reconciliation mechanisms. In particular, the stay-out provision does not protect ratepayers from transition costs that are approved in the ISR process.

PPL does not address the problems noted with the duration of its stay-out period. PPL's January 18 revised commitments attempt to resolve the second deficiency by

⁴⁷ See *supra* at 7.

⁴⁸ See Advocacy Section Br. at 33-38.

modifying the Transition Costs Commitment (Commitment No. 2). A comparison of the December 12 and January 18 Commitments illustrates the change:⁴⁹

Narragansett will not seek to recovery in rates, including but not limited to base distribution rates and the ISR recovery mechanisms, any Transition Costs that are duplicative of existing costs, services, or assets ~~that for~~ which Rhode Island customers already ~~included in~~ have paid through distribution rates ~~set in Narragansett's most recent base rate proceeding.~~

While the revised commitment is an improvement over the original commitment, it remains deficient because it is limited to the four categories of Transition Costs, not all potential transition costs. Even if PPL correctly defined transition costs, this provision only precludes recovery of *duplicative* transition costs, and could potentially permit recovery of non-duplicative transition costs through any of the available reconciliation mechanisms.⁵⁰ This potential loophole, if not addressed, would limit the purported rate-stability benefit of the stay-out period.⁵¹

3. PPL still fails to protect against stranded costs.

During the hearing, the Advocacy Section identified around \$18 million in stranded costs that will be created by the Transaction—that is, costs that were prudently incurred but, as a result of the Transaction, will not provide any ratepayer benefits.⁵² None of PPL’s commitments protect the public interest from those harms. And neither Petitioner addresses

⁴⁹ December 12 Commitment at 2; *compare with* PPL Br., app. A, Commitment No. 2(d).

⁵⁰ See Advocacy Section Br. at 35-36 (noting nearly “two-dozen” such mechanisms) (citing e National Grid Responses to Record Requests 2 and 3, Response to Record Request 2, tbls. 1 & 2 (Dec.14, 2021).

⁵¹ See *e.g.*, PPL contends that “the stay-out provision . . . [will] provide rate stability throughout the transition period for customers.” Tr. at 21:7-9 (Dec. 15, 2021).

⁵² See Advocacy Section Br. at 39-40.

those harms in their briefs. Because these stranded costs will be adverse impacts to ratepayers that are a direct result of the Transaction, the Transaction must be rejected.

C) Petitioners are likely to be harmed by PPL’s AMF and Grid Modernization proposals.

As discussed above, in order to gain Transaction approval under Rhode Island law,⁵³ PPL must demonstrate—through a comparison between National Grid’s continued ownership (the status quo) and PPL’s ownership (the proposal)—that approval of the Transaction will not degrade service nor harm the public interest. Two of Narragansett’s most important initiatives for achieving Rhode Island’s policy objectives are Narragansett’s Advance Metering Facilities (“AMF”) and Grid Modernization Plan programs. These programs will cost Rhode Island ratepayers hundreds of millions of dollars and usher in the “grid of the future.” Under National Grid ownership, Narragansett developed—at great expense and with countless hours of stakeholder involvement—two proposals that are pending before the Commission but stayed while the Division considers this Transaction. If the Transaction is approved, PPL has explained that it will replace those proposals with its own. It is therefore necessary for Petitioners to demonstrate that PPL’s replacements programs will offer benefits and impose costs equivalent to those received and borne under National Grid’s proposal.

Requiring Petitioners to demonstrate the Transaction will not result in lower quality or more expensive AMF and Grid Modernization plans is not, as PPL claims, “an outrageously unfair comparison.”⁵⁴ PPL has chosen not to pursue the program advanced

⁵³ R.I. Gen. Laws § 39-3-25.

⁵⁴ PPL Br. at 39.

by National Grid and to move in a different direction.⁵⁵ Assuming the Transaction is approved, PPL will have the right and opportunity to do so. But customers are likewise entitled to some assurance that shifting direction will not result in the imposition of costs in excess of those imposed under the National Grid plan. Thus, PPL’s announced choice comes with the obligation to demonstrate that its replacement arrangement satisfies the statutory standard.

PPL seeks to meet its burden—as it has with most aspects of the Transaction—by pointing exclusively to its history in other places, instead of offering evidence of how the Transaction will impact Rhode Island.⁵⁶ But that is insufficient, especially in light of the evidence put forward by the Advocacy Section that, if the Transaction is approved, the benefits of AMF and Grid Modernization to Rhode Island consumers will be delayed, perhaps for a substantial amount of time. Worse, whatever PPL comes up with will not reflect the substantial economic synergies that arise as a result of National Grid’s planned co-deployment of these the programs with its affiliates in New York and Massachusetts.⁵⁷

PPL mistakes the burden of proof when it urges the Division to dismiss the Advocacy Section’s well-founded concerns for lack of evidence. Specifically, PPL criticizes the Advocacy Section for not presenting evidence comparing National Grid’s negotiated meter price and the price PPL paid for meters in Pennsylvania and Kentucky.⁵⁸

⁵⁵ See Booth Direct Test. at 31:13-19 (referencing PPL Response to Advocacy Section Data Request 9-33 explaining that PPL prefers to give these programs a “fresh look” instead of adopting the existing program).

⁵⁶ PPL Br. at 39.

⁵⁷ Advocacy Section Br. at 40-42 (demonstrating lost synergies, contrary to the public interest); *id.* at 51-53 (demonstrating delay, contrary to the No Diminishment standard).

⁵⁸ PPL Br. at 39-40.

But it is not the Advocacy Section’s duty to present such a comparison. If PPL believes that evidence is relevant to evaluating the Transaction, then PPL should have introduced it. In any event, and absent additional information, it is not apparent that the costs PPL may have incurred in different circumstances in other jurisdictions (both of which are located in another Regional Transmission Organization footprint) are relevant to what Rhode Island consumers can expect to experience once the Transaction is complete.

PPL and National Grid both admit that the Transaction will delay Narragansett’s roll out of AMF and Grid Modernization.⁵⁹ And, despite some dispute over the precise length of the expected delay,⁶⁰ PPL’s own testimony confirms that approving the Transaction will cause, at minimum, a one year delay.⁶¹ Moreover, National Grid readily admits that the “stay is the result of the Transaction itself.”⁶² And it is undisputed that the delay harms Rhode Island. Nevertheless, both Petitioners urge the Division to ignore the delay, because it was not the result of “malfeasance of PPL and National Grid.”⁶³ But both Petitioners mistake the statutory test. The purpose of this proceeding is not to assess blame,

⁵⁹ PPL Br. at 40; National Grid Br. at 30. There is some debate over how much delay there will be, since there is no guarantee that National Grid would meet its expected timeline, despite the fact that the expected timeline was subject to stakeholder and Commission scrutiny and is the best estimate available. But there is no debate that PPL will take an additional 12 months to develop its program, if the Transaction is approved.

⁶⁰ National Grid asserts that the delay might not be as long as the Advocacy Section has contended. Advocacy Section demonstrated, based on National Grid’s own plans vetted by the Division in a Commission proceeding, that Rhode Island would benefit from advanced meters starting in 2023, if not for the Transaction. Advocacy Section Br. at 52; *see also* Advocacy Section Ex. 15 (showing National Grid’s proposed timeline); Advocacy Section Ex. 17, Sch. KPK/SL-1 (RIPUC Docket no. 5113), at 104. Nevertheless, National Grid now says it might not achieve its expected timelines for implementation. National Grid Br. at 30. The expected timeline was subject to stakeholder and Commission scrutiny and is the best estimate available, and National Grid does not—and could not—dispute that approving the Transaction will cause some delay.

⁶¹ PPL Br., app. A, Commitment No. 13.

⁶² National Grid Br. at 30.

⁶³ *Id.*; *see also* PPL Br. at 40.

let alone to determine whether Petitioners have done anything “wrong.” The only purpose is to decide whether the proposed Transaction is harmful to the public interest. Here, the evidence shows that if the Transaction is approved, customers will wait longer for grid modernization initiatives to be developed and may pay more than would otherwise be the case.

The uncertainty present in this situation is not insurmountable. PPL has always had the ability to ensure that the Transaction is consistent with the public interest. Assuming PPL is correct that it is currently “impractical” to demonstrate that moving to the PPL AMF and Grid Modernization programs will not degrade service or harm ratepayers, then the company must offer other ways of addressing these concerns. The simplest solution would be for PPL to make a firm commitment that its replacement AMF and Grid Modernization proposals will provide at least the same quality of service at no higher cost than National Grid’s exiting proposals. PPL’s unwillingness to make such a commitment suggests that PPL expects costs for both programs to rise under PPL ownership.

D) PPL’s questionable track record of gas operations in Kentucky does not demonstrate that Rhode Island gas customers will be protected from harm.

Petitioners offer only two pieces of evidence that the Transaction will not harm gas customers: (1) PPL’s asserted “track record of delivering safe and reliable service,” and (2) PPL’s commitment to obtain expertise in New England gas procurement and LNG operations.⁶⁴ Those showings are insufficient evidence to meet Petitioners’ burden of proof and do not support the requisite No Diminishment and No Harm findings.

⁶⁴ PPL Br. at 16; *id.* at app. A, Commitment No. 5.

The Advocacy Section has already demonstrated that the most likely impacts of an approval of the Transaction are a reduction in the quality of service provided to, and an increase rates in the rates paid by, Rhode Island’s natural gas customers.⁶⁵ PPL’s incorrect criticisms of that analysis (and of the credentials of the Advocacy Section witness who presented it) are not a substitute for PPL’s obligation to make an affirmative case for approval. As concerns gas operations, PPL has failed to meet that obligation.

First, PPL’s track record and experience with natural gas operations do not support a finding that approval of the Transaction is consistent with the public interest. The single gas system that PPL operates (in Kentucky) has very different policies and operational requirements, and faces different market circumstances than Narragansett.⁶⁶ The size of its Kentucky gas operations notwithstanding, PPL lacks sufficient in-house expertise in the areas of New England gas procurement and LNG operations. And PPL witness Lonnie Bellar admits that “the leak rate on LG&E remains greater than the current leak rate on Narragansett.”⁶⁷ Witness Bellar also admitted that LG&E/KU was fined for its role in a gas leak that caused a residential customer’s home to explode.⁶⁸ PPL now tries to deflect blame by saying LG&E was only partially at fault for the explosion.⁶⁹ And, according to PPL, being partially at fault for a home explosion is “not evidence of any weaknesses in PPL’s

⁶⁵ Advocacy Section Br. at 53-62.

⁶⁶ See Oliver Direct Test. at 5:5-11 (describing differences between the Rhode Island gas market and the Kentucky gas market).

⁶⁷ Tr. at 92:6-10 (Dec. 14, 2021).

⁶⁸ *Id.* at 103:8 –104:18.

⁶⁹ PPL Br. at 17 n.10.

operating ability” but instead a “reflection[] of PPL’s operational excellence.”⁷⁰ For a company that presents *no other evidence* besides its track record, PPL’s definition of “operational excellence” does not inspire confidence.

Second, PPL’s commitment to acquire expertise in gas operations that it currently lacks fails to satisfy the statutory No Diminishment and No Harm standards. Although National Grid belatedly confirms that it will transfer senior members of its gas operations team to PPL,⁷¹ National Grid makes clear that it *will not* transfer its gas procurement and gas hedging teams to PPL.⁷² Those personnel will support PPL during the transition period, but will thereafter remain with National Grid. PPL promises to obtain that expertise over the course of the transition period, but readily admits that it may have to rely on third-party consultants once the TSA ends.⁷³

Relying on third parties to manage gas supply after the transition period—which will happen only because of the PPL acquisition—is a significant change in the status quo that will harm ratepayers. The record shows that National Grid moved away from third-party management of gas procurement and hedging because doing so “subjects customers to bankruptcy risk” of the third party entity.⁷⁴ And relying instead on in-house management

⁷⁰ *Id.*

⁷¹ This information was not made available in Petitioner’s direct case, nor in discovery, nor in the rebuttal testimony. Since National Grid did not make that information available until the hearing, Advocacy Section witness Oliver reasonably concluded that National Grid *might* use less experienced, lower level personnel. Oliver Surrebuttal Test. at 15:15-16. *But see* National Grid Br. at 32 (accusing Mr. Oliver of reaching his conclusion “without any evidentiary basis.”).

⁷² National Grid Br. at 32.

⁷³ PPL Br., app. A, Commitment No. 5.

⁷⁴ Tr. at 117:1-6 (Dec. 14, 2021); Advocacy Section Br. at 58 n.155.

can result in more than \$1 million in savings.⁷⁵ Petitioners have offered no evidence to the contrary. Worse, PPL has not even offered assurances that it will absorb any increased costs resulting from third-party management of gas procurement and hedging.

National Grid disputes Advocacy Section witness Oliver’s conclusion that Narragansett will have reduced purchasing power if the Transaction is approved,⁷⁶ but does not deny that PPL’s plan to rely on third-party gas procurement will harm ratepayers. Similarly, National Grid tries to avoid witness Oliver’s testimony on PPL’s capabilities by stating that National Grid will help “manage the NGPMP and GPIP during the transition period”;⁷⁷ but National Grid is conspicuously silent on how PPL will ensure that those programs will be managed at equal quality and no higher cost after the transition period.

Reflecting its own disinterest in the gas system, PPL barely rebuts Advocacy Section witness Oliver’s analysis of PPL’s gas capabilities. In a single footnote, PPL tries to brush off witness Oliver’s expert testimony because he is “an economist and not an engineer” and because he did not comment on PPL’s financial strength.⁷⁸ PPL’s criticisms are without merit. Witness Oliver is more than adequately credentialed to assess PPL’s

⁷⁵ Advocacy Section Ex. 29, *Narragansett Electric Co.*, Order No. 19,627, Docket No. 4038, at 8 (R.I. Pub. Utils. Comm’n Mar. 31, 2009) (“The Commission finds that NGrid’s proposal to assume the duties of the third party asset manager in house is in the best interest of ratepayers. The proposal will guarantee ratepayers more than the \$1 million they receive from the current arrangement. The transparency of the proposal and the 80% of proceeds realized by the Company to be given to ratepayers will certainly provide them with a better situation than currently exists with third party situation and no transparency.”). In fact, National Grid’s internal management of its Natural Gas Portfolio Management Plan (combined in smaller part with its Gas Procurement Incentive Plan) has saved Rhode Island gas customers \$41.5 million over five years. Oliver Direct Test. at 74-75.

⁷⁶ National Grid Br. at 33.

⁷⁷ *Id.*

⁷⁸ PPL Br. at 16 n. 9.

proposed Rhode Island gas operations.⁷⁹ And the Division has already recognized him to be “qualified as an expert in utility rates, energy, and regulatory policy matters.”⁸⁰ Even more to the point, PPL does not substantively rebut any of witness Oliver’s conclusions about the enormous difficulty and high cost to ratepayers of PPL attempting to create a standalone gas operation from the ground up in Rhode Island.⁸¹

E) Petitioners must assure the Division that service quality will not be degraded during the transition period.

Advocacy Section witness Booth analyzed National Grid and PPL’s transition plan in detail. His testimony offered specific reasons that several functions in the plan could not be transitioned within twenty-four months.⁸² Instead of responding to those specific concerns, PPL asks the Division to “discount – or even disregard” witness Booth’s views because, in a different proceeding involving a much smaller acquisition, witness Booth found that a transition could be completed within twenty-four months.⁸³ But witness Booth’s having offered a different view on a separate case involving dissimilar facts does not undermine the conclusion he reached here. It may be the case that the transition period for some utility transactions can be completed within twenty-four months—but that is not the issue here. The question in this proceeding is whether PPL and National Grid can, in

⁷⁹ “Since the early 1990s [he has] participated in more than 60 proceedings relating to Rhode Island’s gas utilities before the Rhode Island Public Utilities Commission.” Oliver Direct Test. at 2:1-2. And he has “presented testimony specifically focused on gas utility ratemaking, planning, safety, and regulatory policy issues in 16 jurisdictions.” *Id.* at 2:14-15.

⁸⁰ *Southern Union* at 50.

⁸¹ In place of substantive concerns, PPL offers name-calling, asking at one point whether Mr. Oliver “dissembled and did not want to confirm PPL’s outstanding safety record.” Br. at 16 & n.9. There is no basis for PPL making such inappropriate and preposterous claims.

⁸² Advocacy Section Br. at 44-45 (citing Booth Direct Test. at 23:3 – 27:12).

⁸³ PPL Br. at 26.

twenty-four months, create a standalone Rhode Island utility that will provide service to customers that is at least equal in quality—and at no greater cost—than they enjoy today. As concerns that question, Mr. Booth has testified that the answer is “no,” and explained the basis for his view.⁸⁴

Moreover, the relevant statutory question is not the duration of the transition period. Rather, the question is whether Petitioners have provided requisite assurances that service will not be degraded during or after the transition period. National Grid asserts that it is “committed to work with PPL” to maintain service quality during the transition period.⁸⁵ Yet National Grid offers no formal commitment as part of this Transaction to make those words enforceable. Thus, if approved, there is nothing preventing National Grid Services Company from prioritizing work for National Grid’s customers in New York and Massachusetts at the expense of PPL’s customers in Rhode Island, especially if the transition period extends beyond the initial two-year time period (as is likely to be the case).

Petitioners offer nothing to mitigate this problem, other than urging the Division to make the requisite No Diminishment finding based on National Grid’s unenforceable promise to maintain service quality. Petitioners have not offered any performance metrics to ensure service quality or any escrowed funds that would give National Grid a financial incentive to maintain service quality. Absent such commitments, Rhode Island customers

⁸⁴ Similarly, Mr. Booth’s opposition to this Transaction is not based on a belief that “nobody can do it better than National Grid.” PPL Br. at 26 n.17. Mr. Booth’s testimony is clear that he does not believe that *PPL* will be able to “do it” better than National Grid. In fact, and as more directly relevant here, the concern is that PPL will be unable to perform at a level equal to National Grid.

⁸⁵ National Grid Br. at 28.

bear significant risk that Narragansett's facilities will be diminished if the Transaction is approved.

CONCLUSION

This Transaction will impact the lives of virtually every person in Rhode Island. Given the magnitude of this decision, the Division cannot approve the proposed Transaction unless the Division is confident that the Transaction will leave Rhode Islanders no worse off than they would be if the Transaction were rejected. The Advocacy Section has raised substantial, well-supported concerns. Petitioners, who bear the burden of proof, have not provided sufficient evidence to justify that confidence.

Petitioners' new commitments improve the Transaction, but still fail to satisfy the statutory requirements. Even with the new commitments, Rhode Island ratepayers can expect to pay at least \$82 million for transition costs—and likely much more for AMF, Grid Modernization, third-party gas procurement, and PPL's locally-focused operating model—without any commitment that ratepayers will receive equal or greater savings from the Transaction.

For those reasons, the Advocacy Section urges the Division to reject the Transaction.

*On Behalf of
The Advocacy Section of the Division of
Public Utilities and Carriers*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list in this proceeding.

Dated on this 28th day of January, 2022.

/s/ Christy Hetherington
Christy Hetherington