

**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 ) Docket No. D-21-09  
Narragansett Electric Company to PPL )  
Rhode Island Holding, LLC and Related )  
Approvals )

**THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF  
RHODE ISLAND’S REPLY BRIEF**

**NOW HERE COMES** Peter F. Neronha, Attorney General of the State of Rhode Island (“RIAG”), and hereby submits this reply in support of its Post-Hearing brief concerning the May 4, 2021 joint petition of the PPL Corporation (“PPL Corp”), PPL Rhode Island Holdings, LLC (“PPL Rhode Island”) (PPL and PPL RI shall be collectively referred to as “PPL”), National Grid USA (“National Grid”), and The Narragansett Electric Company (“Narragansett Electric”) (collectively, the “Petitioners”) now pending before the Division of Public Utilities and Carriers (“Division”).

**INTRODUCTION**

The Petitioners seek the Division’s approval of a “separate but related business deal” to one through which National Grid acquired “the United Kingdom’s largest electricity distribution business” from a subsidiary of PPL Corp, *National Grid Post-Hearing Brief* (“*National Grid Br.*”) at 5 n.7, urging a swift blessing because PPL “is a large and experienced utility holding company.” *PPL Post-Hearing Brief* (“*PPL Br.*”) at 1; *see also National Grid Br.* at 3. But a general finding that an acquiring entity is large, or that it has experience operating utilities elsewhere, is not the finding the Division must make under its statute. The Division must find that “the facilities for furnishing service to the public will not . . . be diminished” by the acquisition, that the transaction and its terms are “consistent with the public interest,” App. Ex. A, R.I. Gen. Laws § 39-3-25, and must further ensure that its transaction approval considers the transaction’s impact on Rhode

Island's goals for "climate change mitigation, adaptation, and resilience." App. Ex. B, R.I. Gen. Laws § 42-6.2-8. Despite Petitioners' continued incremental improvements on their offered Commitments, *PPL Br.*, Appendix A ("Amended Commitments"), a continued lack of transparency regarding basic elements of the transaction, routinely available in review of transactions such as this one, means that the Petitioners have failed to demonstrate that the public's interest will not be harmed if the transaction is permitted to go forward.

Nothing in the Petitioners' post-hearing briefing or Amended Commitments will allow the Division to conduct the type of meaningful review required by R.I. Gen. Laws § 39-3-25 and ensure that Petitioners have met their statutory burden. Still missing is complete information regarding the specifics of the transaction, including future plans of the companies involved, and a complete view of operations post-closing. The Petitioners have not provided sufficient information to evidence how they propose to remove Narragansett Electric from the carefully integrated regional system of synergies without degradation of services or rate increases. That is not to contend that such an extraction is not possible, or even that it may not be desirable, *contrast* *PPL Br.* at 10-14; it well may be, but such an outcome is far from logical certainty. From the information Petitioners made available during this review proceeding there is no way for the participants, let alone the public, to make a determination one way or the other. Petitioners continue to rely on their own unsubstantiated "expectations" and "beliefs" of potential future efficiency in place of evidence. PPL has not met its burden, as it must to be allowed to control the functional monopoly over Rhode Island's electric and natural gas distribution systems. Accordingly, the Division must deny the petition.

**I. PETITIONERS HAVE AN AFFIRMATIVE BURDEN TO SHOW THAT THE TRANSACTION WILL NOT DIMINISH SERVICES AND WILL BE CONSISTENT WITH THE PUBLIC INTEREST.**

The Petitioners are charged with the burden of meeting the standard set forth in R.I. Gen. Laws § 39-3-25, which requires a showing that “the facilities for furnishing service to the public will not . . . be diminished” by the acquisition, and that the transaction and its terms are “consistent with the public interest.” App. Ex. A. Accordingly, the Division must consider a broad array of factors to ensure that the transaction does not impede the public’s interest in affordable, effective, modernized, efficient and carbon-neutral utility service. *RIAG Post-Hearing Brief (“RIAG Br.”)* at 11.

Bizarrely, PPL appears to claim that considerations of the “future” are inappropriate in this type of transaction review. *PPL Br.* at 4, 5, 8, 9, 13, 22, 40. This contention would come as a great surprise to anyone reading the statutory standard, which is phrased in future tense. R.I. Gen. Laws § 39-3-25 (requiring evaluation that service “will not” be diminished). App. Ex. A. The Division therefore may not only consider “known and knowable factors,” *PPL Br.* at 3, no matter how desirable the Division or potential utility-acquirers might find such a standard—it is not the one the legislature set. The statute does not mention “the buyer’s operational experience, overall size, and financial strength,” *id.*, as criteria for approval, let alone as the sole criteria. *See* App. Ex. A R.I. Gen. Laws § 39-3-25. PPL further contends that, the legal standard for this transaction has been met and the petition must be approved because “PPL easily checks all three boxes.” By this logic, any established utility large enough and with the financial ability to purchase Rhode Island’s utilities can do so, regardless of their plans on how to operate, their reasons for pursuing the transaction, or how those plans may impact Rhode Islanders. The legislature has stated, in each prong of R.I. Gen. Laws § 39-3-25, that the *public* must be protected in this type of

transaction, and it is not the acquiring company's interests and attributes that are the focus of the proceeding (of course, the transaction must be beneficial for the Petitioners or they would not be requesting approval), but the transaction's effects on the public interest. App. Ex. A. PPL has purposefully avoided any demonstration of or contention that their ownership will be consistent with the public interest and has therefore failed to meet the statutory standard.

National Grid apparently disagrees with PPL's interpretation and acknowledges that the Petitioners' must show that the change in ownership will not degrade services or negatively impact the public. *National Grid Br.* at 35. National Grid's post-hearing brief takes the position that this transaction should be reviewed under a "no net harm standard." *Grid Brief* at 3; *see also id.* at 19, 26, and 35. "No net harm" is evaluated in much the same way as "net benefit"—by an examination of the post-transaction world and a comparison to the status quo as it would continue without the transaction. In fact, they are essentially different sides of the same coin, the near impossible hypothetical situation of complete equity sitting between them. Each of these standards requires consideration of *net* consequences resulting from a change in ownership, weighing both detrimental and beneficial impacts of the proposed future operations.

In refusing to provide evidence about future operations, Petitioners have ceded this ground and doomed their own petition. Throughout these proceedings, rather than providing evidence, Petitioners have focused on explaining why they "think what [they've] provided is sufficient." App. Ex. C, Tr. 2 at 212:3-4<sup>1</sup> (PPL witness, Mr. Henninger, responding to RIAG's inquiry as to whether PPL could provide a balance sheet or other pro forma post-transaction financials for Narragansett Electric). Of particular concern, Petitioners contend that the Division's consideration

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<sup>1</sup> The Transcript from the first day of hearings, December 13, 2021 will be referred to as Tr, 1 in citation throughout this document. Transcript for December 14, 2021 will be referred to as Tr. 2. Transcript for December 15, 2021 will be referred to as Tr. 3. Transcript for December 16, 2021 will be referred to as Tr. 4.

of how this transaction “might impact future rates and policies” is unknowable, and that approval of the transaction being conditioned on “assurances related to these issues would be ‘tantamount to an attempted usurpation of a long-established [Public Utilities] Commission ratemaking function.’” *PPL Br.* at 8 (quoting Order No. 24109 at 34 (citing *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, at 52 (July 25, 2006) (the “Southern Union Order”) at 57). First, there is no statutory limit on the Division’s authority in this regard, and the Division and the Public Utilities Commission *share* responsibility for carrying out legislative policy related to utilities. Division authority is clear, and the Division may ensure the “terms” of the transaction are sufficient to meet statutory criteria. App. Ex. A, R.I. Gen. Laws § 39-3-25; *see also RIAG Br.* at 10-11. Second, it is very typical for utility transactions to use all of the economic modeling tools available to evaluate the probabilities of future outcomes if the transaction were to move forward. *Southern Union* itself recognized the need to evaluate future rates and policies, and the Division specifically found that the transaction then under consideration would “not jeopardize *the future* ability to provide safe, adequate, reliable, efficient, and *least cost* public utility service.” *Southern Union Order* at 63 (emphasis added).

While PPL has claimed that the Advocacy Section is “proffer[ing] speculation about comparative future performance,” *PPL Br.* at 4, Petitioners ask the Division to rely on PPL’s own “prognostications,” *id.* at 9, 33. *See e.g.* App. Ex. D, PPL-AG-RR-1 (noting that PPL expects to find synergies within its operations, although the company “has not performed any studies to quantify their value.”) ; *see also* App. Ex. C, Tr. 2 at 13:11 – 14:6 (noting synergies model and business plan remain under development); *id.* at 213:8-24 (PPL witness Mr. Bonenberger noting that PPL “expect[s] the creditworthiness [of Narragansett Electric] to be better under our

ownership”, and that by considering speculative credit ratings that considered “very preliminary” information, the parties “probably have enough to understand the post-financial condition.”). Somehow, PPL contends that vague statements of company executives with clear motives to see the transaction close, unaccompanied by supporting evidence, are more reliable than expert testimony open to cross examination. *See PPL Br.* at 33 n. 22.

The Advocacy Section and the intervenors have carefully laid out their concerns and identified specific and important issues they believe will result in negative impacts on the public. This process has continued since the filing of written expert direct testimony in early November 2021. Even by National Grid’s own admission, there must be a showing – at the very least – that there will be no net harm to the public as a result of the transaction. The standard of review in this docket demands, at minimum, an evidentiary showing that the transaction will not result in a diminishment of the services provided under National Grid ownership today, and that the transaction is consistent with the public interest. Sufficient information to meet this burden was not provided by Petitioners, and therefore the transaction cannot be approved.

## **II. REMAINING RISKS OF THE TRANSACTION PRECLUDE A FINDING THAT THE TRANSACTION IS CONSISTENT WITH THE PUBLIC’S INTEREST.**

As noted above, the statutory standard requires comparison of the “to-be” transaction to the “as-is” National Grid provided services and rates when determining whether the transaction would harm or benefit the public, including ratepayers. During the course of the proceedings, parties developed and expressed numerous concerns that have not been addressed by the Petitioners including, but not limited to: (1) the lack of post-transaction financials for both Narragansett Electric and PPL RI; (2) the loss of synergies and shared costs; (3) the PPL RI capital to debt ratio and potential debt financing of goodwill at the PPL RI level; (4) the potential for stranded assets; (5) the level of skill to be obtained through third party gas hedging and who will

bear the related costs; (6) the hazardous gas leak rates; (7) the lack of detailed consideration of the Act on Climate; and (8) the costs of duplicating completed planning, services, and/or facilities. While the Amended Commitments, *PPL Br. Appendix A*, again provide incremental improvements on some of these issues, there remain unanswered questions and unmitigated risks.

For example, it remains unclear the extent of what PPL includes in “Transition Costs” that it has now committed not to recover in rates. Nowhere has it explained whether advanced metering and grid modernization planning costs, or any stranded regulatory assets that may be created by the abandonment of National Grid’s current efforts in this area, are included in any of the broad categories listed in Exhibit “A” of the Amended Commitments. Tellingly, there has been no change to the totals listed in Exhibit “A” for the various cost estimate categories in response to concern that ratepayers might still be on the hook for duplicative costs related to these categories. *Compare* Amended Commitments at Exhibit “A” *with* Commitments at Exhibit “A”. PPL has also chosen to prevent parties from making cost comparisons through its continued refusal to provide even estimated post-transaction financials. This evidence is routinely provided in proceedings such as this and is of particular import here, where the disentangling of a utility from a regional shared service system stands to result in harms to ratepayers due to the loss of synergies and shared costs. The Southern Union Order notes that Mr. Oliver, the Advocacy Section’s witness in both that proceeding and this one, had found that the synergies and cost savings that would result from the transaction demonstrated that least cost public utility service, part of the public interest, would not be jeopardized. *See* Southern Union Order, 59-63. Those same synergies and cost sharing that resulted from the Southern Union transaction are now at risk, with no assurances that they will be continued, let alone improved on, in the “to-be” company structure. PPL witness Mr.

Bonenberger stated: “we haven’t quantified the exact dollars yet because we’re still working on that.” *See* App. Ex. C, Tr. 2 at 13:12-14.

Concern over loss of synergy efficiencies and cost savings does not automatically preclude approval of a transaction, it simply requires that petitioners show that losses will be de minimis, will be offset by other tangible benefits to the public, or will otherwise not harm the public. Any aspect of the transaction, including practical effects of a change in storm response strategy, are similarly not dispositive. But the burden does not belong to the Advocacy Section and intervenors to show that harm and unfavorable impacts will not result, it belongs solely to the Petitioners. The Petitioners have failed to satisfy their burden, as PPL readily admits in their briefing when they state the advantage of their own experience is merely “just as likely . . . to produce value, reduce costs, and more efficiently operate Narragansett” as the likelihood that Narragansett will continue to benefit from its current regional synergies. *PPL Br.* at 13. Even if PPL’s observation was supported by the record (it is not, and PPL makes no citation to evidence to back their claim, *id.*), the Legislature has not instructed the Division to gamble with the public’s interest on even odds—it has instead required that applicants demonstrate affirmatively that service will not be diminished and that the public’s interest will otherwise be served.

Petitioners continue to assert that no harm will come to the public even when their own testimony is that they have not completed modeling of the post-transaction companies on which they wish to rely. App. Ex. E, PPL-AG-RR-2 (“PPL is currently in the process of creating a budget, but that process is not yet complete.”). Nothing in Petitioners’ post-hearing briefs, including the newly amended commitments, addresses this deficiency. Moreover, there are no assurances that the to-be-built budget will not depart, in a direction harmful to the public, from the high-level summaries and projections (some of which PPL admits are inaccurate) that were provided.



Further, in its post-hearing brief, PPL claims it “will not add additional debt”—but at the hearing, their witnesses testified that they could not rule out future debt financing of the goodwill at the PPL RI level. *See PPL Br.* at 2 & 18, and App. Ex. C, Tr. 2 at 219. Contrary to PPL’s assertion that all ring-fencing concerns of RIAG’s experts were alleviated by the Commitments (*PPL Br.* at 20), Mr. Knecht made clear that they did not alleviate concerns with respect to the debt-capital ratio at the PPL RI level. *See App. Ex. F, Tr. 4* at 247:24 – 248:2. This issue remains unresolved by the Amended Commitments.

Additionally, waiting for a future rate case to examine the directional effect on rates is inconsistent with the public interest statutory standard because it places an unacceptable risk of harm on the ratepayers. This type of wait-and-see approach negates the requirements of R.I. Gen. Laws § 39-3-25 by holding off evaluation of the macro effects of the transaction until a time when the transaction cannot be unwound. The standard changes in ratemaking proceedings, which are aimed at evaluating the ongoing operations of a utility in its existing structure, to one of prudence, not no harm to the public. Notably, Messrs. Ewen and Knecht noted in surrebuttal testimony that:

if the Division approves the proposed transaction ... We would expect that PPL’s attorneys in future proceedings will cite to such approval as justification that PPL’s operating model is reasonable, and thus PPL need only demonstrate that its costs were prudently incurred within that operating model.

App. Ex. G, *Ewen and Knecht Surrebuttal Testimony* at 4:9-13. An expenditure could be prudent and still cause harm to the public, if it was caused by exogenous forces outside utility control (say, perhaps, increased costs made inevitable by its parent company holding structure). Reviewing the transaction for potential harm to ratepayers does not require the Division to delve into the complex minutiae of ratemaking. Considering, through reference to evidence produced in the approval hearings, the effect of the transaction on the rates, is a measurable way to evaluate the potential

for ratepayer harm. To make such an evaluation, Petitioners would need to provide complete cost comparisons that include the underlying data and formulas used so that parties can complete a meaningful review of such comparisons. They have provided no such comparison, and none could be fashioned from the evidence in the record. Further, PPL's assertion in its brief that a base rate stay out will assure that service quality will not suffer as a result of the acquisition is without foundation. *See PPL Br.* at 7. A rate stay out is separate and apart from the level of service provided, and the amount of protection it will provide ratepayers is unknowable given the evidence in this proceeding because there is no way to know that the new structure will not, three or four years from now, be significantly more costly for ratepayers to sustain.

Protecting the public from bearing the costs of a merger that only benefits the corporate interests involved is an essential component of transaction review. Contrary to PPL's assertion, no party in this proceeding has stated that National Grid cannot convey Narragansett Electric to whomever it wishes, parties have simply attempted throughout the proceedings to gather information that demonstrates the public will not be harmed. Petitioners have not provided such information.

### **III. PETITIONERS' UNVETTED COMMITMENTS DO NOT CURE THE DEFECTS IN THE PETITION.**

The Amended Commitments, even as PPL continues to tweak them, fail to mitigate the lack of information and risks of harm to the public that this transaction presents. PPL's own witnesses could not define or come to a consensus regarding the meaning of words they use in the Commitments. *See RIAG Br.* at 19-20. And this lack of clarity remains. For example, PPL has committed to not seek "any Transition Costs that are duplicative of existing costs, services, or assets for which Rhode Island customers already have paid through distribution rates" but "Transition Costs" is a defined term with limited scope, *PPL Br.* Exhibit A, inviting future

argument about what exact costs are encompassed in “Transition Costs” versus other categories of incurred cost. By contrast, a similar term contained in the *Southern Union* transaction approval required the company to commit to a broadly applicable standard that could be used to evaluate any type of integration cost. *Southern Union* Order at 63 (promise to “not seek recovery of integration costs unless the Company can demonstrate that savings attributable to the integration exceed such costs.”). PPL expressly states that it *will* seek some categories of transition costs, including certain types of IT and facilities costs, if “there is a direct benefit to customers.” *Id.* But that standard does not ensure no harm, to the contrary, it eliminates the comparator with the status quo and allows PPL to impose costs on ratepayers that a status-quo National Grid would have no need to ask for. Even with the expanded Amended Commitments, these problems remain.

PPL’s Amended Commitments also fail to address the repeatedly expressed need for pro forma financials for the post-transaction environment. *See e.g.* App. Ex. H, *Ewen and Knecht Direct Testimony* at 14:20-21, 15:4-7 App. Ex. G, *Ewen and Knecht Surrebuttal Testimony* at 2:16 – 3:5, and App. Ex. F, Tr. 4 at 229:9-12; *see also* App. Ex. I, *Booth Direct Testimony* at 8:5-9. In PPL-AG-1-10, PPL stated Attachment PPL-DIV 1-54-1 Supplement provides a current view of the reasonable expectation of PPL’s costs after the transition period but is not a budget and does not include any rate case timing assumptions. App. Ex. J. The information provided in the attachment is not, and does not purport to be, a complete view of the post-transaction company. It does not create a true comparison of current costs to the to-be company, mixing inputs from National Grid and PPL for a preliminary and high-level incomplete cost estimate. For instance, in the case of labor, the attachment uses PPL salaries from Pennsylvania and Kentucky for management and union salaries, and never updated the figures based on accepted employment offers and resolved union agreements. App. Ex. K, Attachment PPL-DIV-1-54-1 Supplement at

12; *see also* App. Ex. L, Tr. 3 at 126:8-127:5 (PPL witness, Mr. Jirovec, noting that PPL-DIV-1-54-1 Supplement relied on averages from Pennsylvania salaries for electric utility employees and averages from Kentucky salaries for gas utilities rather than incorporating known salary information available for Rhode Island operations). Without more detailed pro forma financial statements, which PPL will stand behind as a reasonable estimate of the to-be company structure, a meaningful review of the proposed transaction cannot be completed.

Moreover, the Amended Commitments still fall short of ensuring that the Petitioners will not miss important Act on Climate goals. PPL did not offer any improvements in this area post-hearing, even though it acknowledged in testimony, *e.g.*, App. Ex. C, Tr. 2 at 16:4-18:17, and briefing, *PPL Br.* at 37, that it would need to involve stakeholders and policymakers. Not only did PPL not update its commitment, but its briefing gives no indication that it understands who these stakeholders *are* or with what policies it expects to be obligated to comply. *PPL Br.* at 37. A plan to deliver a plan a year or more after the transaction closes, with no specific details of the subject matter or development of that plan, does nothing to mitigate the risk that the transaction may harm Narragansett’s progress to the 2030 Act on Climate goals. The legislature has not allowed *any* “state departments, agencies, commissions, councils, and instrumentalities, including quasi-public agencies” to avoid their “power[], dut[y], and obligation[]” to “[a]dress[] the impacts on climate change” in carrying out their business. App. Ex. B, R.I. Gen. Laws § 42-6.2-8. There is an increasingly narrow window to do so, and proposing the acquisition of a utility without presenting specific pathways forward is no longer acceptable under Rhode Island law. The Amended Commitments, which avoid any comment on the content of to-be drawn plans, do not mitigate this concern.

The people of Rhode Island cannot be expected to assume the risk of unsubstantiated estimates and speculative synergistic savings gained from geographically remote PPL subsidiaries. PPL continues to not offer any concrete benefits to ratepayers or the public that offset tangible and identified risks. Moreover, the Petitioners have continued to eschew any obligation to set forth concrete plans about how the transaction will further Rhode Island's climate goals—a statutory consideration the General Assembly has mandated be part of agency decision-making. Accordingly, the Division must deny the petition.

### CONCLUSION

For the reasons set forth herein, the Attorney General respectfully requests that the Petition as filed with the Division of Public Utilities and Carriers, as amended by the Commitments, be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A PDF version of this brief was served electronically on the service list of this Docket, as that list was provided by the Division on January 13, 2022. I certify that all of the foregoing was done on January 28, 2022. I certify that the original and four copies of this brief will be hand-delivered to the Division of Public Utilities and Carriers.

/s/ Ellen Golde