

June 12, 2023

The Honorable Joseph J. Solomon, Jr.  
Chairman, House Corporations Committee  
Rhode Island State House  
Providence, Rhode Island 02908

**RE: H-6494 – Relating to Public Utilities & Carriers – Rhode Island Utility Fair Share Roadway Repair Act**

Dear Chairman Solomon:

On behalf of Rhode Island Energy, I write in strong opposition to H-6494, which proposes amendments to the “Rhode Island Utility Fair Share Roadway Repair Act.” **This bill would have significant consequences for the safe and reliable maintenance of utility infrastructure serving local homes and businesses and increase costs for ratepayers. It would subject utility infrastructure planning and project implementation to planning horizons and state agency decision making processes that run counter to well-established practices, regulatory jurisdiction and precedent, and state law.** We urge this Committee not to advance this deeply concerning bill.

Respectfully, if there are concerns regarding the planning of public utility work and/or alteration of state roadways – by the Department of Transportation (DOT) or any other party – those should be defined and subject to collaborative discussions with the state’s utility companies. In that regard, Rhode Island Energy will be first at the table and a constructive partner in trying to resolve such issues. And, to the extent there is a well-defined impasse on any given issue, our state’s public utilities should be given a reasonable opportunity to work with the General Assembly in finding a constructive path forward – *one that balances public safety, appropriately weighs ratepayer cost impacts, recognizes well-established regulatory practices and principles, and facilitates the mandate to serve Rhode Island utility customers safely and reliably.* Advancement of this bill, particularly so late in the legislative calendar when there has been no stakeholder discussion, would result in an alarming overreach that jeopardizes these very important principles.

Rhode Island Energy strives to communicate and coordinate with state and municipal agencies (and our customers) on utility infrastructure projects that may necessitate roadwork, with a goal of mitigating costs and other burdens placed on local populations. Indeed, Rhode Island Energy’s annual Infrastructure, Safety and Reliability (ISR) Plans<sup>1</sup> specifically include capital investments to address work that it executes in coordination with state and municipal roadway projects to avoid, where feasible, future excavation in newly repaired roads.

As detailed below, Rhode Island Energy has numerous touchpoints with DOT on roadway projects – often daily – and we coordinate with that agency in advance of planned utility work. In fact, DOT already has significant permitting and decision-making authority that applies to public utility work, and we comply with those requirements. However, **H-6494 goes well beyond**

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<sup>1</sup> See R.I. Gen. Laws § 39-1-27.7.1.

**this and raises several critical concerns that could have a profound impact on the safe and reliable operation of public utilities and on ratepayer costs:**

- The bill places DOT in the position of “gatekeeper” for utility infrastructure projects that may be vital to the safe and reliable delivery of energy services and/or are necessary to meet our obligations to serve energy customers when called upon, including recovery of the costs associated with those projects. For instance, DOT would be empowered to determine what constitutes an “emergency situation” for utility customers – *without any further definition in statute or clear avenue for timely review*<sup>2</sup> – and issue violations and assess penalties should a utility proceed with roadwork necessary to meet its statutory and regulatory obligations. **These (and other) provisions would permit DOT to usurp the planning and decision-making roles that have traditionally been left to the utility to manage the safety and reliability of its electric and natural gas distribution systems.**
- As written, the following would apply to all projects covered by the legislation – “The utility shall not pass the expense of a road repair on to the consumer nor shall they recoup funds through rate payer increases.” This is an untenable provision of the bill. For instance, this clause **could compel the Public Utilities Commission (PUC) to deny recovery of prudently incurred costs** because DOT determined that a public utility undertook non-emergency work that it did not approve – which is particularly problematic considering the concerns noted above. The financial risk presented here is substantial.
- The proposed legislation **conflicts with state law and regulatory precedent** that grants exclusive authority to the PUC to decide when, how and to what extent a regulated utility should recover the costs of its infrastructure investments.<sup>3</sup>
- The bill would **increase costs to all ratepayers** by requiring that the costs for utility projects serving certain residential customers and requiring state roadway repairs are not appropriately shared. Such a provision, which is notably vague, violates important

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<sup>2</sup> On the point that the concept of “emergency” is too vague, Rhode Island Energy might discover conditions that present reliability risks, but the use of the word “emergency” seems to indicate that a *perceived* risk to reliability might not meet the required threshold for Rhode Island Energy to undertake, and expect cost recovery for, underground work in a state roadway. We note that our utility often undertakes “non-emergency” work that is nearby an area where emergency response was required because it is more economical and less disruptive to address issues proactively once a road is opened for emergency underground work. For example, if Rhode Island Energy opens a road to address a grade 1 leak, it would not be efficient to close the road if the Company learned of deteriorating pipe near the leak through its excavation. It is not clear whether this additional work would be considered an “emergency” in the eyes of DOT or if cost recovery for that important work would be granted.

<sup>3</sup> See R.I. Gen. Laws §39-1-1 (“[T]here is hereby vested in the public utilities commission and the division of public utilities and carriers **the exclusive power and authority** to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy, communication, and transportation services and water supplies for the purpose of increasing and maintaining the efficiency of the companies, . . . and protecting them and the public against improper and unreasonable rates, tolls, and charges . . .”) (Emphasis added.); See also R.I. Gen. Laws §39-1-3 (“The commission shall serve as a quasi-judicial tribunal with jurisdiction, powers, and duties . . . to hold investigations and hearings involving the rates, tariffs, tolls, and charges, and the sufficiency and reasonableness of facilities and accommodations of railroad, gas, electric distribution, water, telephone, telegraph, and pipeline public utilities.”).

ratemaking principles of cost causation whereby costs should be borne by those customers who cause the utility to incur the expense. It may also conflict with the Contribution in Aid of Construction (CIAC) provisions of the utility's Electric and Gas Tariffs that permit the Company to charge a specific customer for the cost of certain infrastructure upgrades requested by the customer in connection with its electric or gas distribution service.

- The bill would require utilities to submit to the state DOT a “comprehensive project schedule for utility projects with an immediate need and those occurring within five (5) and ten (10) years.” While there is some utility infrastructure planning that occurs over such timelines, **Rhode Island Energy’s electric and gas ISR plans are ultimately subject to annual regulatory review and approval by the Public Utilities Commission (PUC) through the statutorily mandated ISR planning process.** Even if that were not the case, the very nature of underground utilities can necessitate near-term (and unplanned) work, e.g., to address emergencies and other critical maintenance conditions or a request for new service from an existing local business, a business looking to relocate to Rhode Island, newly developed housing, etc. In these circumstances, **Rhode Island Energy already complies with all existing permit requirements and has an obligation to pave “curb-to-curb”** in accordance with state or municipal utility permit requirements.<sup>4</sup>

Specific to state roadways, **Rhode Island Energy today complies with established DOT permit requirements and has many regular touchpoints with DOT staff – often daily.** For example:

- Rhode Island Energy holds annual in-person gas construction meetings with DOT’s Maintenance Division to coordinate Rhode Island Energy’s planned work for the construction season. We cover topics such as permits, paving, gas leak emergencies, patching, third party inspectors, traffic management plans, etc.
- The utility’s gas construction and engineering supervisors and managers talk to DOT daily regarding coordination of permit conditions, work hours, police details, etc., and our gas permitting office communicates with the agency daily during construction season and weekly in the off-season.
- Rhode Island Energy has a dedicated external affairs manager assigned to DOT to support coordination and communication between Rhode Island Energy’s gas and electric divisions and DOT relative to the State’s Transportation and Improvement Program (STIP).
- Bridge and other DOT work, as listed in the state’s STIP schedule, are reviewed monthly at a “Utility Coordination Meeting” hosted by DOT’s Project Division. Rhode Island Energy’s electric and gas businesses each have a dedicated engineer assigned to these projects which typically involve utility relocations to accommodate state work, and these engineers attend those monthly meetings.

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<sup>4</sup> See R.I. Gen. Laws §39-2.2-2.

- Rhode Island Energy reviews DOT’s paving plans two (2) years ahead and reports back to DOT whether we have utility infrastructure in those planned locations and of what type. We also advise DOT of what gas mains we need to replace ahead of paving.
- When addressing utility service requests, Rhode Island Energy is required to seek a “road opening” permit with DOT’s maintenance division. We check DOT (and municipal) road paving lists (updated bi-weekly) to confirm that the road where a service is being installed has not been paved in the last five (5) years. If the state road has been paved within this period, DOT requires the customer to submit a “hardship letter” and DOT decides whether the new service request will be granted or not.
- Additionally, if there is ongoing or planned state work in a state roadway, DOT’s Maintenance Division will advise us, communicate “required by” dates, and make it a part of permit conditions.
- Rhode Island Energy is required to notify DOT’s third-party inspector before we start work. The third-party inspector is on site during our work to ensure we conform with all DOT permit conditions. Rhode Island Energy reimburses DOT for the charges incurred by the third-party inspector in accordance with the law.

The breadth of these efforts does not imply a public utility resistant to communication and sound planning. And, in that spirit, we would welcome further dialogue with DOT and other stakeholders to consider where we might facilitate improvement to existing (or establish new) planning processes to better coordinate and/or streamline utility and state roadway projects beyond current practices.

In closing, we respectfully urge this Committee to **oppose** H-6494.

Thank you for your consideration of these comments.

Respectfully,



Nicholas S. Ucci  
Director of Government Affairs

CC: The Honorable Members of the House Corporations Committee