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RI House Corporations Committee
Rhode Island State House
82 Smith Street
Providence, RI 02903

RE: H7883 RELATING TO PUBLIC UTILITIES AND CARRIERS -- REGULATORY POWER OF ADMINISTRATION

Dear Members of the House Corporations Committee:

Our firm writes in support of H7883. We do not represent any clients in these comments.

$5.3 billion. In the spring of 2023, National Grid sold its charter right to exercise a monopoly over our electric and gas systems for the public interest (granted by the General Assembly), for $5.3 billion. It was reportedly the largest deal in RI history. A sole DPUC hearing officer adjudicated that transaction in such a manner that our Attorney General (who typically represents state agencies) resolved to appeal the decision. The appeal settled for $200 million. Here is Attorney General Neronha's summary of that case:

> This Office appealed the DPUC's decision to the Superior Court because that decision failed to adequately protect and advance the interests of Rhode Islanders. Up front, it applied the wrong legal standard in reviewing the proposed transaction, requiring a showing far less than what the law requires. In terms of substance, the DPUC would have allowed PPL to impose millions of dollars of transition and other costs on Rhode Islanders, who didn't seek this transaction and already pay plenty of money for the energy they use. It missed an opportunity to return money to Rhode Islanders by failing to require PPL to provide entirely justifiable rate credits, which this agreement now includes. It failed to ensure adequate storm response given that PPL has its main base of operations significantly farther away than National Grid does. And it completely ignored a generational opportunity to address the state's climate goals in the perhaps the most important context of all: how our energy is produced and delivered," said **Attorney General Neronha**. "Today's agreement remedies all this. The time to address Rhode Island's energy delivery system and climate future is now, in this context, not elsewhere and not later. Wherever and whenever necessary, this Office will continue to fight for Rhode Islanders. Because Rhode Islanders deserve no less.

See https://riag.ri.gov/press-releases/attorney-general-neronha-announces-agreement-securing-over-200-million-value-ri.

Our firm sought to represent New Energy Rhode Island ("NERI"), a coalition of energy professionals organized to advocate that Narragansett Electric overlooks opportunities to reduce rates, favoring their interests in infrastructure investment. The coalition was comprised of members that had worked for or with the State for many years on important energy policy matters offering much experience with Narragansett, the Public Utilities Commission, the Division. The coalition also included the former director of the RI Office of Energy Resources ("OER"), Ken Payne. The hearing officer wrongfully denied NERI's right to participate in the proceeding. Without any supporting basis, he concluded that NERI did not have "interests warranting recognition and protection in furtherance of the general welfare of the public." He concluded that NERI's members had no interests affected by the sale of Rhode Island's electric distribution company and could not otherwise claim to represent any public interest. He would not consider the public interest in ratepayer cost and anticompetitive impact, choosing instead

only to weigh whether the takeover would result in any loss in the quality of service. In fact, he posited that NERI's interests were "on a collision course with the interests of ratepayers," citing an absence of proof that NERI could "act in the public's interest by lowering utility bills," even while he was denying NERI's right to create such a record. We could not conduct factual discovery to substantiate our position. We were prevented from presenting testimony to support our position. We were precluded from cross examining utility witnesses on questions essential to the application of the regulatory standard to the proposed sale.

NERI was only allowed to file public comment. Despite such clear indication that its comments would be ignored by the hearing officer, NERI filed public comment to show the tragic loss suffered by RI's regulatory process when such qualified and uniquely affected members of the public are precluded from advocating on the public interest – see NERI's public comment at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/D_21_09_PC_NERI.pdf.

Paragraph 25 of PPL's petition to take over NEC stated:

> PPL also expects that it will have significant opportunities to invest in Narragansett's electric and gas infrastructure to enhance safety, reliability, and customer satisfaction for Rhode Island customers, a core tenet of PPL's strategy in all of the jurisdictions in which it provides utility service.

In PPL's power-point presentation on the economic benefits of the acquisition of NEC to its shareholders, produced in response to the Divisions data request 1-1,1 PPL noted that:

a. NEC had adjusted net income of $150 million in the fiscal year ending March 31, 2021;
b. There is significant geographic overlap between Narragansett's electric and gas operational territories
c. Rhode Island is a constructive regulatory jurisdiction (RRA – Avg/2) (recovery mechanisms reduce regulatory lag)
d. further opportunities to invest in electric and gas infrastructure (annual rate base growth greater than 9% over the past 5 years)
e. Historical rate base growth – 9.3% CAGR from 2015 through 2020
f. "Historical Capital" up from $271 million in 2017 to $321 million in 2020 (Infrastructure Safety and Reliability program allows for recovery of "natural gas and electricity distribution capital investments and expenses for *ISR* outside of rate proceedings and FERC allows formula rates for transmission investments)

PPL did not respond to the question of why Rhode Island is a "constructive regulatory jurisdiction" for NEC, as had been posed to it in that proceeding. PPL did not respond to the question of how all of those projected profits would meet its charter mandate to serve the public interest, as was also posed to it in that proceeding. The Division approved PPL's takeover of NEC.

H7883 is an important step toward accountability. The bill seeks to ensure that these proceedings are decided by application of the correct legal standard, without discretion, and it will ensure that all affected interests will be properly heard and considered in deciding the application of the public interest standard, with proper appeal rights.

This bill is a reintroduction of prior bills that did not pass. In response to the Division's critiques of those prior bills:

[1] Divisions data request 1-1 to PPL at Attachment PPL-DIV 1-12-5 Page 6 of 2. see https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/D_21_09_DR_NGrid_1_Part_1.pdf

1) The Division claimed that it has long held and earned this authority with its other delegated powers.

The record is clear that no matter how long it may have held this authority, the Division's grave misadministration of it demonstrates that RI needs a better structure to review these deals.

2) The Division testified that it has more staff and experts than the PUC.

The Division can still bring those resources to bear as the ratepayer advocate, as they usually do in matters deliberated/decided by the PUC, it is imprudent to appoint a single hearing officer to decide such monumental transactions.

3) The Division testified that appellate review at the Superior Court is inconsistent with 39-1-5 (direct appeal to Supreme Court) and inappropriate.

The Supreme Court is solely an appellate court. It does not engage the fact finding that is essential to proper resolution of these appeals. The Supreme Court gives the administrative entity too much deference on matters of fact, which creates an inappropriate standard of review, a virtually insurmountable burden for appealing intervenors. That should ultimately be changed for all appeals from the PUC, making those appeals consistent with all other administrative appeals brought under the administrative procedures act, but that reform should start with proper appellate review of these huge utility sale transactions.

4) The Division testified that it disagrees with the proposed, more permissive standard for intervention.

Intervention is typically very permissive, to ensure all interests are properly heard and considered in reaching a good decision. There is little harm in merely allowing participation. Permissive intervention should absolutely apply in this context of utility transactions that shape RI's future, so we can all be sure that the public interest is well represented. The public comment filed for New Energy RI in the PPL case demonstrates why precluding real parties in interest is so bad for RI.

5) The Division testified that it has made many of these decisions over the years and the courts have upheld them.

The last decision was appealed by the RI AG, and that appeal resulted in a settlement for $200 million. The fact that the utilities were willing and able to settle for $200M indicates both how flawed the DPUC process/decision was and just how much was at stake in the proceeding— much more than the settlement amount. Utilities stand to gain greatly from doing this business in RI. That should raise real red flags regarding under-regulated and unfinished business for the people and public interests of RI.

Please pass H7883. Thank you for your consideration of our comments.

Sincerely,

Seth H Handy