

February 7, 2023

The Honorable Marvin L. Abney
Chairman, House Committee on Finance
Rhode Island State House
Providence, Rhode Island 02908

RE: H-5199, Article 2 & H-5312 – Relating to Public Service Corporation Tax

Dear Chairman Abney:

On behalf of Rhode Island Energy, I am writing to provide comments on the provisions of H-5199, Article 2 and H-5312, which seek to amend Rhode Island General Laws §44-13 with the addition of §44-13-37, entitled “Temporary Relief from the Gross Earnings Tax on Electricity and Gas.”

Rhode Island Energy is in strong support of providing Gross Earnings Tax relief to electric and natural gas utility customers, particularly during periods of increased energy supply costs. Collected pursuant to state law, the Gross Earnings Tax is a direct pass through to ratepayers, much like electricity and gas supply costs.

Our company is committed to working with the General Assembly and the Administration to ensure that such relief is delivered to our customers in an efficient and practical manner, while acknowledging that next winter may be equally challenging for local consumers. With this in mind, Rhode Island Energy has significant concerns with the bill as drafted. We offer an alternative solution for your consideration that could avoid administrative and legal deficiencies, while maximizing the beneficial impacts of this legislation on our community. To summarize:

- Like this past year, electric and natural gas customers will face significant energy supply costs *next* winter – without the benefit of one-time sources of rate relief and arrearage forgiveness. A **prospective suspension of the Gross Earnings Tax that coincides with all or part of the October 2023 through March 2024 rate period** would provide notable *customer relief when they will need it the most*.
- **Rates are anticipated to decline for electric customers beginning on April 1** due to reductions in electricity supply costs; these rates are now pending PUC review.
- As proposed, and even with expedited passage the legislation **would not result in rate relief to customers before March 2023** due to the time it would take to implement necessary changes to our billing systems.
- As written, the bill has **potential legal deficiencies** and could violate the separation of powers doctrine, as the Public Utilities Commission (PUC) has exclusive jurisdiction to set electric and gas rates. These concerns would be resolved if there were a prospective suspension of the Gross Earnings Tax.

As noted above, electric customers will likely receive some rate relief in April beyond the Gross Earnings Tax proposal being considered here. On January 19, 2023, Rhode Island Energy filed updated Last Resort Service (LRS) rates for the April 2023 through September 2023 period with its regulator, the PUC.¹ Much like the winter energy supply rates that have driven utility bills higher over the past several months, these newly-proposed rates represent the cost of securing electricity supplies for our customers in the coming months; Rhode Island Energy is not allowed to mark-up these rates in any way and it does not make any profit from them – LRS is a direct pass through to customers. As proposed, the LRS rate for residential customers would fall to 9.761 cents/kWh.² In isolation, a “typical” 500 kWh/month residential customer would see their bill fall by 24%, beginning in April, if rates are approved as filed. While this and other rate components are still pending PUC review,³ Rhode Island Energy is confident that electric customers will see bill relief this spring and summer absent the proposed legislation.

However, the opposite is true for next winter, beginning October 1, 2023 through March 31, 2024. Many of the same market pressures that drove energy supply rates higher for the 2023-2024 winter remain in place, and initial indications are that Rhode Islanders will face similar – possibly higher – energy rates later this year. The impact on local families and businesses may be more acute than today because bill credits and other rate relief measures recently provided to our customers will not be there to temper bill impacts. For instance, this winter, Rhode Island Energy was able to provide \$50 million in bill credits to its electric and gas customers. This resulted in each customer receiving a one-time bill credit of approximately \$64 in November; a customer with both electric and gas received a bill credit for each service. Also, the utility provided \$43.5 million in arrearage forgiveness to some of our most vulnerable customers.⁴ Income-eligible customers have also benefited from one-time credits stemming from state RGGI funds.⁵ As we look toward higher rates beginning in October 2023, the utility-provided relief will not be available next winter and there is no guarantee that state RGGI funds will be committed for income-eligible customers. With these timelines in mind – rates falling in April but rising in October – electric and gas customers will benefit greatly from a suspension of the Gross Earnings Tax *next* winter.

In the event this legislation was to move forward as drafted, the process envisioned would necessitate months of work to establish the proper billing system adjustments. Even in a best-case scenario, the proposed tax relief would not find its way to customers until *after* the current winter rate period is over, when customers should already be realizing some relief through summer electric supply rate reductions. The Governor’s proposal is different from how the utility implemented recent bill credits and arrearage forgiveness. To track the amount of the

¹ The PUC has docketed this matter as 23-01-EL. Docket materials, including RIE’s filing, can be found at ripuc.ri.gov/Docket-23-01-EL.

² The LRS residential rate in effect through March 31, 2023 is 17.785 cents/kWh.

³ The LRS rate provided here is just one component of the April-September rate period. The PUC will rule on other factors, including deferral of charges incurred during the winter period, in the coming weeks. These rulings will ultimately determine the full magnitude of relief customers will see beginning in April.

⁴ The bill credits and arrearage forgiveness were applied pursuant to a settlement agreement entered into as part of Rhode Island Energy’s acquisition of Narragansett Electric from National Grid. The arrearage forgiveness amount represented 100% of arrearages over ninety days as of March 31, 2022.

⁵ To date, the Governor has committed \$6.85 million in state RGGI auction proceeds to provide bill relief for income-eligible customers.

proposed Gross Earnings Tax rebate, Rhode Island Energy is being asked to have the tax appear on utility bills as a charge and then, have it credited back to the customer on the same bill. This would require that a new line item be created to ensure that any cancelling and rebilling of the tax and the rebate would also cancel and rebill. From prior exploration of how much time it would take to create this type of billing component, we estimate a three-to-four-month effort to implement.⁶ The new component would require modelling in the billing system on all impacted service classifications and rate codes, which would include many table updates and code changes depending on the requirements. The modeler would then unit test the new billing component before the new modeling is turned over for user acceptance testing (UAT). UAT will include executing a test bill scenario verifying the bill calculation and appearance on the bill image for every service classification and rate code impacted along with other test conditions for billing. In comparison, a straight-forward “suspension” of the Gross Earnings Tax is implementable within approximately thirty to forty-five days.

Beyond administrative challenges, the proposed legislation may contain certain legal deficiencies. As structured, the bill may implicate the Fifth Amendment of the U.S. Constitution and impose obligations on Rhode Island Energy without providing for judicial review, which may render this bill an unconstitutional “bill of attainder” under U.S. Constitution Art. I, sec. 9. It may also violate the separation of powers doctrine, as the PUC has exclusive jurisdiction to set rates. *These concerns would be moot with passage of a bill that prospectively suspends collection of the Gross Earnings Tax for part or all of the October 2023 through March 2024 rate period.*

In closing, Rhode Island Energy applauds the General Assembly and the Governor for considering the impact that the Gross Earnings Tax has on electric and natural gas customers – particularly during this period of volatile wholesale energy supply prices and general economic inflation. Our company is prepared to support delivery of this tax relief to our customers in a manner that is administratively workable and efficient. We urge state leadership to consider prospective action through suspension of the tax, beginning on or after October 1st. With process modifications and an eye toward next winter, this legislation will provide significant relief for local families and businesses when they most need it.

Respectfully,

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CC: The Honorable Members of the House Committee on Finance

⁶ A similar explanation was provided to the PUC concerning the application of bill credits for electric and gas customers in response to PUC 3-1, Docket 22-07-GE. Docket materials can be accessed at: ripuc.ri.gov/Docket-22-07-GE.