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

RE: H5821 RELATING TO PUBLIC UTILITIES AND CARRIERS -- REGULATORY POWER OF ADMINISTRATION

Dear Members of the House Corporations Committee:

Our firm represents many clean energy interests in Rhode Island. We commonly advocate for the elimination of barriers to the new energy economy promised by Rhode Island's Act on Climate. Our firm writes in support of H5821.

$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 represented 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. NERI's members had developed and were developing solar and wind projects, or had leased, sold, or purchased real estate for the development of such, or had contracted for the purchase of renewable energy across Rhode Island, and had worked for or with state and local governments on the implementation of Rhode Island's energy policies.

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.

NERI was denied its right to participate as a party in the proceedings to determine whether the proposed sale of our energy services company was in the public interest. 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. We were not allowed to file briefs, arguing our position on Rhode Island's public interest. NERI was denied the capacity to appeal the decision that was so very inconsistent with Rhode Island's public interest.

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.

NERI had warned the Governor and the Attorney General of the risk of weak regulatory review of this sale. Narragansett Electric has long been allowed to underserve our state's strategy for lower cost, more secure, clean local energy resources in favor of its own profit from natural gas and infrastructure, leaving us paying unaffordable rates for an old, insecure and dirty energy system. Rhode Island's Power Sector Transformation report concludes that "the primary financial means through which the utility can grow its business and enhance earnings for shareholders is to invest in capital projects. This bias, created by the regulatory framework rather than by the utility itself, discourages the utility from seeking more efficient solutions that do not depend on large capital investments." NERI was denied its right to appeal and fully advocate for real change.

Meanwhile, National Grid's British CEO spoke to his investors of Narragansett's rate base climb from £1576 million in 2018 to £2119 million in 2020, half spent on the gas distribution system. National Grid's management claimed to have achieved "premium valuation" for Narragansett at $2.6 billion in rate base including $1.8 billion of investment in the distribution system and $788 million in the transmission system. How do such huge investments serve Rhode Islander's need for affordable electricity? National Grid reported a "two-times rate base multiple" in its sale to PPL. What does that say about what we can expect of Rhode Island Energy's intentions for infrastructure investment and rates? PPL's reports to its shareholders characterized Rhode Island as a "constructive regulatory jurisdiction" for its interests in recovering capital investments because, in part, our rules allow for recovery of natural gas and electric distribution system investment outside of its rate cases and that

FERC approves formula rates for transmission investments. How does that regulatory system ensure efficient and effective spending to achieve rate reduction?

H5821 is an important step toward accountability. It transfers authority over utility transactions to the PUC where they will no longer be heard by one adjudicator with little accountability for atrocious decision-making. The bill will 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. In response to the Division's critiques:

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.

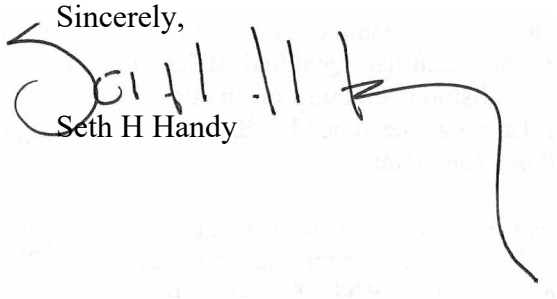
Intervention is typically very permissive, to ensure all interests are properly heard and considered in reaching a good decision. There is little harm in merely allowing participation. Permissive intervention should absolutely apply in this context of utility transactions that shape RI's future, so we 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 H5821. Thank you for your consideration of our comments.

Sincerely,



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