



## STATE OF RHODE ISLAND

### DIVISION OF PUBLIC UTILITIES & CARRIERS

#### Administration

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March 21, 2024

The Honorable David A. Bennett  
Chairman – House Committee on Environment and Natural Resources  
State House  
Providence, R.I. 02903

### Re: **H 7617 – Building Decarbonization Act of 2024**

Dear Chairman Bennett:

The Division of Public Utilities and Carriers (Division) embraces and is engaged in the ongoing discussion of reaching our state's decarbonization goals. In that spirit, we appreciate the intent of the legislation but cannot support it in its present form.

With respect to the proposed § 23-27.3-130.6, the Division is quite concerned that the legislation appears aimed at imposing a percentage of income payment plan (PIPP) regardless of cost to the general body of rate payers or, indeed, to whether such a plan is even sustainable at all. To be clear, the Division is not opposed to discussion of establishment of a percentage of income payment plan for income-eligible customers. This legislation, however, would direct the establishment of a PIPP with the sole narrow goal of limiting the measure's impact on affordable housing. The Division believes that any discussion of rate discounts, design and pricing must be comprehensive to achieve equity and sustainability through a program developed in a regulatory proceeding. This proposed legislation would shift additional burdens to the remaining electric ratepayers who are already faced with the growing costs of current renewable energy deployment and the prospective costs of supporting expanded electrification.

The Division also highlights a potential conflict with federal law preemption. In a recent Federal 9th Circuit Court of Appeals decision, *California Restaurant Association vs. City of Berkeley*, No. 21-16278, slip op. (9th Cir. Apr. 17, 2023), involving a city ordinance very similar in nature to the proposed bill at issue here, the Court held that the Federal Energy Policy and Conservation Act (Act) preempted the ordinance. The Court found that the Act expressly preempts State and local regulations concerning the energy use of many natural gas appliances, including those used in household and restaurant

kitchens. Instead of directly banning those appliances in new buildings, Berkeley took a more circuitous route to the same result and enacted a building code that prohibited natural gas piping into those buildings (i.e., the buildings were to be all-electric), rendering the gas appliances useless. The Court held that, by its plain text and structure, the Act's preemption provision encompasses building codes that regulate natural gas use by covered products. By preventing such appliances from using natural gas, the Berkeley building code did exactly that. It seems to the Division that this bill is teeing Rhode Island up to be engaged in similar court proceedings for similar reasons, with a very similar result to that in Berkeley.

Sincerely,

A handwritten signature in blue ink that reads "Linda George". The signature is written in a cursive, flowing style.

Linda George, Esq.  
Administrator, RI Division of Public Utilities and Carriers

CC: The Honorable Representative Rebecca M. Kislak  
The Honorable Members of the House Committee Environment and Natural Resources  
Nicole McCarty, Esq., Chief Legal Counsel