STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

In Re: Petition of PPL Corporation, PPL Rhode Island Holdings, LLC, National Grid USA, and The Narragansett Electric Company for Authority to Transfer Ownership of The Narragansett Electric Company to PPL Rhode Island Holding, LLC and Related Approvals	)	Docket No. D-21-09

THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND'S POST-HEARING BRIEF

NOW HERE COMES Peter F. Neronha, Attorney General of the State of Rhode Island ("RIAG"), and hereby submits this Post-Hearing Brief following four days of public hearings held in the above-captioned docket on December 13-16, 2021 before the Division of Public Utilities and Carriers ("Division") considering the May 4, 2021 joint petition of the PPL Corporation ("PPL Corp"), PPL Rhode Island Holdings, LLC ("PPL Rhode Island") (PPL and PPL RI shall be collectively referred to as "PPL"), National Grid USA ("National Grid"), and The Narragansett Electric Company ("Narragansett Electric") (collectively, the "Petitioners").

INTRODUCTION

The Petitioners in this matter have filed a petition under R.I. Gen. Laws §§ 39-3-24 and 39-3-25 and 815-RICR-00-00-1.13,[1] seeking to transfer 100 percent of the outstanding shares of common stock in Narragansett Electric from National Grid to PPL RI, a subsidiary of PPL Corp created solely for the purposes of this transaction.[2] PPL Corp is an energy company headquartered in Allentown, Pennsylvania.

[1] All cited material is included in the attached Appendix. *See* Appendix Exhibit A, R.I. Gen. Laws § 39-3-24; App. Ex. B, R.I. Gen. Laws § 39-3-25; and App. Ex. C, 815-RICR-00-00-1.13

[2] As noted by RIAG experts in their Direct Testimony, this transaction takes place in "the context of an overall larger transaction arrangement in which PPL sells its UK Western Power Distribution ('WPD') utility to [National Grid], and purchases [Narragansett Electric]….PPL has generally indicated that the proceeds from the WPD sale will be used (a) for the purchase of [Narragansett Electric] equity, (b) to draw down PPL debt, and (c) be available for 'incremental

Under R.I. Gen. Laws § 39-3-25, the Division must find that "the facilities for furnishing service to the public will not . . . be diminished" by the transaction and that the transaction and its terms are "consistent with the public interest." For the Division to conduct a meaningful review and find that this standard has been met, it must consider complete information regarding the specifics of the transaction, including future plans of the companies involved, and a complete view of operations post-closing. Without this information, the Division cannot develop a thorough understanding of the effects the transfer of Narragansett Electric will have on the public, in the public's role as ratepayers and as citizens of Rhode Island.

Petitioners have not met their statutory burden, even after attempts by all parties to elicit the required information. The Petitioners have not provided sufficient information to evidence how they propose to remove Narragansett Electric from the carefully integrated regional system of synergies developed by National Grid over decades without either degradation of services or significant rate increases. In place of evidence, Petitioners rely on their own unsubstantiated "expectations" and "beliefs" that there will be gained efficiency as a result of their ownership of Narragansett Electric. These speculative assertions are simply not enough to hand over the keys to a functional monopoly over Rhode Island's electric and natural gas distribution systems.

The petition, even with all supplemental conditions taken into account, falls well short of the standard for approval. The people of Rhode Island cannot be expected to assume the risk of unsubstantiated estimates and speculative synergistic savings gained from geographically remote PPL subsidiaries. PPL has not offered any concrete benefit to ratepayers or the public that might

organic and strategic growth opportunities.'" *See* App. Ex. D, *Direct Testimony of Ewen and Knecht* ("*IEc Direct Testimony*") at 4:1-7 (internal citations omitted). As stated by Mssrs. Ewen and Knecht "The discovery evidence indicates that [National Grid] was not interested in selling [Narragansett Electric], except in exchange for its ability to purchase WPD. Since both entities have a strategic interest in the ownership of [Narragansett Electric], there is no obvious advantage to PPL ownership." *Id.* at 6:1-3.

offset such risk, and it has eschewed any obligation to set forth concrete plans about how the transaction will further Rhode Island's climate goals—a statutory consideration the General Assembly has mandated be part of agency decision-making. Accordingly, the Division must deny the petition.

BACKGROUND AND PROCEDURAL HISTORY

The Division's seven-month review has occurred largely without the full participation of intervenors. More than three months elapsed after the petition filing before RIAG and other intervenors were permitted full participation. On June 11, 2021, the Division issued a Notice of Filing and Deadline to Intervene, setting a June 25, 2021 deadline for motions to intervene, and requiring a hearing on the motions, set on July 15, 2021. *See* App. Ex. E, *Notice of Deadline to Intervene*. The notice did not request briefing on the appropriate standard to be applied during subsequent proceedings, and when RIAG raised the issue no opportunity to address the applicable standard was afforded. *See Id.*; *see also* App. Ex. F, Transcript of Motion to Intervene Hearing at 117:13-118:4. Nevertheless, the Petitioners opposed grants of intervention based on the grounds that intervenors' stated interests would exceed the scope of the statute as previously interpreted by the Division.

About a month later, the Hearing Officer issued Order No. 24109, granting intervention of the RIAG and the other intervenors in this case. In the order, the Division detailed the bounds within which it expected the Attorney General to participate in the proceedings, stating the intervention was "not without guardrails" and warning that "[t]he Division places [RIAG] on notice that [it] will not be permitted to venture beyond the statutory scope of this regulatory review or to seek 'net benefit' commitments from PPL." App. Ex. H, Order No. 24109 at 71. Other groups' petitions for intervention were denied outright, on the grounds of the "narrow scope" of

review. *Id.* at 23, 78, 89. The order also informed the parties that certain topics would not be permitted at all, including "interconnection costs, infrastructure costs, competition, climate change policy and natural gas sales." *Id.* at 84-85.

On August 19, 2021, after the Division finally ruled on the motions for intervention, and intervenors were able to actively participate in the proceedings, engage experts, issue discovery, and begin their attempt (detailed below) to gain access to the non-public discovery issued by the Advocacy Section and the responses received from the Petitioners prior to their intervention. Despite concern voiced by RIAG at the procedural conference, an aggressive discovery schedule was adopted with verbal assurances that appropriate extensions would be available and that Petitioners would provide discovery responses on a rolling basis. *See* App. Ex. I, *Procedural Schedule* issued on September 9, 2021. However, after discovery response extensions were granted by courtesy to Petitioners,[3] several intervenors collectively requested a short, two-week extension to file direct testimony, which was opposed by Petitioners. *See* App. Ex. K, *Joint Motion for Extension of Time* dated November 2, 2021. The Division granted an extension of just five days, citing "insufficient justification to approve a two-week extension" in light of the "compressed procedural schedule that was adopted in this docket." *See* App. Ex. M, *Email from Hearing Officer to Service List* dated November 3, 2021.

Many of Petitioners' responses and documents were marked confidential and were produced to RIAG and other intervenors only with significant (and sometimes complete) redactions, leaving much of the information contained therein completely shielded from public view, as well as from the other parties to the proceedings. Petitioners delayed execution of the required nondisclosure agreements, and it was therefore only four days before the October 1

[3] *See* App. Ex. J, *Email Memorializing Extension* dated October 22, 2021.

discovery deadline that RIAG was provided access to some 2,283 pages of Petitioners' confidential responses.[4]

Petitioners' strategic delay toward intervenors continued. On the evening of December 11, 2021, without any indication of their intentions prior to that day, the Petitioners filed their "Statement of Existing and Additional Commitments" outlining sixteen "commitments" the companies have now made on the record. The next day, on the literal eve of the hearings, the Petitioners supplemented the Statement of Existing and Additional Commitments with an additional commitment (together, the "Commitments"). *See* App. Ex. L, *Commitments*. Petitioners relied heavily on the Commitments throughout the hearings to explain why the petition meets the statutory standard. In fact, at the onset of the hearings, counsel for PPL claimed that the Commitments "effectively implement most, certainly many of the recommendations that came out of the review of this petition by the Advocacy Section witnesses and by the Attorney General's witnesses." *See* App. Ex. G, Tr. 1 at 27:5-9.[5] Counsel for PPL further stated: "We believe those commitments should substantially reduce the number of issues we have to wade through in this hearing . . . ." *See Id.* at 27:11-14. These last-minute additions, on which PPL placed so much importance, came more than a month after it was alerted to the RIAG's and Advocacy Section's expert witness's concerns as expressed in their Direct Testimony.

This delay impeded RIAG's efforts to meaningfully participate in this statutory review. After being granted intervention, the RIAG engaged expert witnesses to assist in its analysis of the

[4] The initial request for access to confidential documents was sent on August 30, 2021. *See* App. Ex. K, *Joint Motion for Extension of Time* at 4-5 for discussion of NDA timing. It was not until September 7, 2021, that Petitioners noted the need for nondisclosure agreements, which were requested by RIAG that same day. *Id.* After follow-up requests from RIAG on September 9, 15 and 17 drafts of the NDAs were finally sent by the Petitioners some three weeks after the initial request for documents on September 17 and 21, 2021. *Id*

[5] Hereinafter, the Transcript from the first day of hearings, December 13, 2021 will be referred to as Tr. 1 in citation. Transcript for December 14, 2021 will be referred to as Tr. 2. Transcript for December 15, 2021 will be referred to as Tr. 3. Transcript for December 16, 2021 will be referred to as Tr. 4.

proposed transaction. The Office retained Industrial Economics, Inc. Following review of the record, Principals Robert Knecht and Mark Ewen prepared Direct and Surrebuttal Testimony expressing their concerns.[6] This testimony was necessarily prepared without benefit of the Commitments, and while Mssrs. Knecht and Ewen appeared at the hearings on December 16, 2021 and discussed their outstanding concerns, as well as additional concerns with respect to the Commitments, they did so without the benefit of discovery on the meaning of the Commitments or the data behind them.

RIAG's experts noted that as the application stands, inclusive of the Commitments, they would not recommend approval of the transaction.[7] *See* App. Ex. N, Tr. 4 at 235:2-5; 256:9-15. Three Advocacy Section experts also expressed continued concerns regarding the proposed transaction.

Further, the Advocacy Section witnesses with remaining concerns noted that they had reviewed and considered the entire record of discovery provided in this docket. *See e.g.* App. Ex. O, Tr. 3 at 160:21-23 (Mr. Booth testifying for the Advocacy Section and stating he "looked at the entire petition, all of the data requests, responses, materials filed, [and] all the testimony filed."); App. Ex. N, Tr. 4 at 132:24 – 133:1 (Mr. Oliver testifying for the Advocacy Section and stating he "reviewed the entire filing and literally all of the data request responses."); *Id.* At 24:9 (Mr. Ballaban testifying for the Advocacy Section and noting a review of the totality of the filings in this docket, including the Commitments). Based on this representation, to ensure an accurate

[6] Mr. Knecht and Mr. Ewen noted during the hearing that they were unable to review the entirety of the record and focused on relevant portions thereof due to the time constraints of the proceedings. *See* App. Ex. N, Tr. 4 at 224:17 – 225:2; *see also* Ap.. Ex. D, *IEc Direct Testimony* at 3:3-12. The documents reviewed included, but were not limited to, the petition and data requests and responses referenced in and incorporated into their direct testimony via Exhibit IEc-2.

[7] Were the Division to approve the transaction (it should not), the Commitments should nevertheless be formally incorporated into any order issued by the Division, along with any other terms the Division finds necessary, to ensure PPL RI complies with its publicly stated changes in the terms of this transaction and on which parties and the Division have relied in evaluating the petition.

evidentiary and administrative record, the RIAG moved to have all data requests and discovery marked for identification and entered as exhibits in full in this matter. The motion was denied in its entirety over objection. App. Ex. N, Tr. 4 at 266:6-24.

ARGUMENT

Petitioners have presented a transaction for the transfer of ownership of a regulated Rhode Island utility without any apparent attempt to explain why the transfer is consistent with the public interest or how the public's investment in and reliance on their current electric and gas utility services will not be harmed by the proposed transaction. Petitioners have cut short meaningful opportunity for the public to review or participate in these proceedings by propounding a cramped interpretation of the statutory standard which ignores the 2021 Act on Climate, refusing to provide pro forma financials reflecting the post-close corporate structure, refusing to provide information related to reasonableness of the purchase price, and providing Commitments changing the terms on which it seeks approval of the transaction on the eve of hearings, long past the point where meaningful expert review could take place. Throughout, Petitioners have not seriously addressed unique considerations related to Narragansett Electric, including Rhode Island's multiple procedures to build the final distribution rates customers pay, the Act on Climate decarbonization goals, and Narragansett Electric's decades long investment in shared services with its regional affiliated utilities owned by National Grid. Instead, Petitioners have asserted, without adequate evidentiary support, that extracting Narragansett Electric from its current regional system and plopping it into a new corporate structure with distant utilities in Kentucky and Pennsylvania will somehow be without risk to the public. Petitioners make this assertion despite needing to create shared storm response across a vast geographic distance for the first time, an admittedly necessary overhaul and replacement of information technology systems, demonstrable lack of familiarity

with ongoing and necessary capital projects for advanced metering and other investments, need to create a gas commodity hedging operation out of whole cloth, and the need to stand up physical facilities in Rhode Island (the costs of which PPL has reserved the right to pass to ratepayers in future rate making but which Petitioners nevertheless attempt to cast as a benefit).

I. THE DIVISION MUST FIND THE TRANSACTION AND ITS TERMS SERVES THE INTERESTS OF THE PUBLIC AS RATEPAYERS AND CITIZENS TO APPROVE THE TRANSACTION.

To approve the petition and the underlying transaction, the Division must determine that "the facilities for furnishing service to the public will not . . . be diminished" by the acquisition, and that the transaction and its terms are "consistent with the public interest." App. Ex. B, R.I. Gen. Laws § 39-3-25.

The "ultimate goal" of statutory interpretation "'is to give effect to the purpose of the act as intended by the Legislature.'" App. Ex. P, *Blais v. Rhode Island Airport Corp.*, 212 A.3d 604, 611 (R.I. 2019) (quoting App. Ex. Q, *Providence Journal Company v. Rhode Island Department of Public Safety ex rel. Kilmartin*, 136 A.3d 1168, 1173 (R.I. 2016)). "[I]t is well settled that the plain statutory language is the best indicator of the General Assembly's intent." App. Ex. R, *Twenty Eleven, LLC v. Botelho*, 127 A.3d 897, 900 (R.I. 2015) (internal quotation omitted). Moreover, "statutes should not be construed to achieve meaningless or absurd results." *Id.* (internal quotation omitted). And no individual section should be examined in isolation, each "must be considered in the context of the entire statutory scheme. . . ." *Id.* (internal quotation omitted).

The Division has previously construed this statute, finding as a matter of law that its "approval is limited to two factors/criteria, one that specifically addresses the present and future needs of ratepayers, and one that ensures no harm to the general public as a whole (including ratepayers)." App. Ex. S, *In re: Joint Petition for Purchase and Sale of Assets by The Narragansett*

Electric Company and the Southern Union Company, D-06-13, Report and Order No. 18676, at 52 (July 25, 2006). The Division elaborated, stating the required findings include that (1) "there will be no degradation of utility services after the transaction is consummated;" and (2) "the proposed transaction will not unfavorably impact the general public (including [customers])." *Id.* The Division considered these two criteria essentially the same (a no-harm standard), but addressed to two different groups: (1) "the present and future needs of ratepayers"; and (2) "the general public as a whole (including ratepayers)." From these two criteria, the Division further concluded that there was no need for an applicant to make ". . . a prerequisite demonstration that the transaction produces a 'net benefit' to ratepayers and the general public." *Id.* Nevertheless, the Division *did* make such a finding with respect to ratepayers, citing to evidence from the Advocacy Section of the Division that net savings of $4.9 million per year for Rhode Island ratepayers would be realized through future ratemaking. *Id.*

The Division's 2006 conclusion that applicants have no obligation to demonstrate a net benefit of the transaction in order to both (1) ensure "service to the public will not . . . be diminished" and (2) the transaction and its terms are "consistent with the public interest" is erroneous as a matter of law and the Division should reconsider its interpretation. As a threshold matter of logic, eschewing the net benefit standard[8] is nonsensical when a change of this magnitude makes disruption inevitable and the statute (even under the Division's articulation) requires a demonstration of no harm. Making such a statement serves only the limited purpose of resolving

[8] Many states interpret their statutes requiring a transaction to be "consistent with the public interest" as requiring a net benefits consideration. *See e.g.* App. Ex. T, *Md. Office of People's Counsel v. Md. Pub. Serv. Comm'n*, 192 A.3d 744 at 747 (Md. 2018) (quoting Md. Code Ann., Pub. Util. § 6-105(g)(3), (5)) (in an acquisition of an electric supply company including mergers the assessment must determine if the transaction is "consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers."). Massachusetts has also determined that to show a transaction is "consistent with the public interest" there must be a showing of a net benefit, demonstrating that benefits outweigh the costs both quantitatively and qualitatively. App. Ex. U, Interlocutory Order on Standard of Review, 2011 WL 933568 (Mass.D.P.U. March 10, 2011) at 11-14.

the imaginary case when the potential harms or risks of the transaction and the potential benefits of the transaction are in exact equipoise. But such a case is exceedingly unlikely, and it is equally unlikely that the legislature said, not once but twice, that the public's interests should be protected while meaning only to speak to the single case of an exact harm-benefit balance.

The Division's interpretation also departs from the plain language of the statute. The legislature spoke clearly of *one* group's interests, named in both criteria in the statute: "the public." The Division must consider the interests of the public twice. First, the Division must consider "the facilities for furnishing service to *the public*" pre- and post- transaction and conclude that they "will not thereby be diminished." App. Ex. B, R.I. Gen. Laws § 39-3-25 (emphasis added). Second, the Division must consider whether both "the purchase, sale, or lease *and* the terms thereof are consistent with the *public* interest." *Id.* (emphasis added). The Division is given the very specific task of holistically addressing the public's interest in utility service and in any other public good that could be impacted by the transaction.

The legislature did not leave the Division without guidance about what encompasses the public interest. In fact, in the same statute vesting the Division with its authority, R.I. Gen. Laws, § 39-1-1(c), the General Assembly has expounded at length about the ways in which "[t]he businesses of distributing electrical energy, [and] producing and transporting manufactured and natural gas, . . . are affected with a public interest." App. Ex. V, R.I. Gen. Laws, § 39-1-1(a)(1). Because of this interest, "[s]upervision and reasonable regulation by the state […] are necessary to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people, and are a proper exercise of the police power of the state[.]" App. Ex. V, R.I. Gen. Laws, § 39-1-1(a)(2). Moreover, "[p]reservation of the state's resources, commerce, and industry requires the assurance of … an abundance of energy, [ ] supplied to the people with reliability, at

economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreational assets, and the strengthening of long-range, land-use planning." App. Ex. V, R.I. Gen. Laws, § 39-1-1(a)(3).

The General Assembly has added detailed policy findings over the years, articulating that the State should use "all feasible means and measures" to encourage other states to reduce emissions from fossil-fuel electricity generating assets to ensure the goal of "cost-effective attainment of environmental standards within Rhode Island" and that utilities should continue to "extend the same protections afforded to low-income customers" despite a transition to a more competitive electric utility industry. App. Ex. V, R.I. Gen. Laws, § 39-1-1(d)(6), (7). In 2006, the General Assembly made further findings that "basic utility restructuring" "has not resulted in competitive markets for residential and small commercial-industrial customers, lower overall prices, or greater diversification of energy resources used for electrical generation" and it is therefore necessary to move "beyond" that goal toward "energy resource diversification, distributed generation, and load management." App. Ex. V, R.I. Gen. Laws, § 39-1-1(e).[9] These legislative articulations of the public interest, set forth in plain language by the General Assembly, must be considered in the decision-making process of the Division when reviewing transactions between utilities governed by General Laws § 39-3-24 and -25, the type of "basic utility restructuring" directly referenced in R.I. Gen. Laws, § 39-1-1(e). Broad considerations of the public's interest in affordable, effective, modernized, efficient and carbon-neutral utility service are mandated in the legislative grant of authority to the Division.

[9] The proposed transaction places Narragansett Electric firmly within the General Assembly's ambit of concern, where utilities exist as subsidiaries of vertically-integrated parent corporations. For example, PPL Corporation boasts 7,500 megawatt generation capacity to go with its (current) 2.5 million electric customers. PPL at a Glance, https://www.pplweb.com/. A utility sitting in such a structure is, in many ways, existing at the mercy of its parent, whose concerns and duties to shareholders can shape the future of the utility (whether by intent or neglect).

The Division is further bound to consider additional factors outside the framework it outlined in *Southern Union* by subsequent legislation. The Act on Climate mandates that Rhode Island must achieve greenhouse gas emission reductions of 45% from 1990 levels by 2030, 80% from 1990 levels by 2040, and net-zero emissions by 2050. *See* App. Ex. W, R.I. Gen. Laws § 42-6.2-9. This sweeping policy goal came with an equally sweeping mandate for state entities: "Addressing the impacts on climate change shall be deemed to be within the powers, duties, and obligations of *all* state departments, agencies, commissions, councils, and instrumentalities, including quasi-public agencies, and each shall exercise among its purposes in the exercise of its existing authority, the purposes set forth in this chapter pertaining to climate change mitigation, adaptation, and resilience." App. Ex. X, R.I. Gen. Laws § 42-6.2-8 (*emphasis added*). Were that language not broad enough to require the Division to consider climate impacts before approving this transaction (it is), the Act on Climate is to be "construed liberally as is necessary for the welfare of the state and its inhabitants." App. Ex. Y, R.I. Gen. Laws § 42-6.2-11.

The relevant plain language of the statute, when considered within the statutory scheme whereby the General Assembly granted authority to the Division and instructed all state entities to prioritize climate action, requires the Division to assess the transaction's impacts on Rhode Island's climate goals as part of its public interest analysis. Departure from the statutorily mandated standard may be grounds for reversal. The Rhode Island Supreme Court has found error where the public utility commission did not adequately ensure the inclusion of terms that "served the public interest[]" in the subject matter of its review (there, an ordinance impacting utility construction). App. Ex. Z, *In re Petition for Rev. Pursuant to Section 39-1-30 of Ordinance Adopted by City of Providence*, 745 A.2d 769, 777 (R.I. 2000).

When determining whether the proposed transaction is "consistent with the public interest" pursuant to RI Gen Laws § 39-3-25, the Division must determine that there is evidence sufficient to demonstrate that the transaction, with all of the multifaceted and broad effects it may have on the public, advances the interests of the public in the provision of any public good. Narragansett Electric's system of current services, together with the support received in meeting service, climate, distribution and other goals from its parent, National Grid, must serve as a baseline for the evaluation. Petitioners must then provide evidence that the transaction does not diminish the public's interest in receipt of reliable utility services, and that it is, on the whole, consistent with the interests of the Rhode Island public, including as set forth in the specific policy findings of the General Assembly, the public's interest in functioning electricity and natural gas markets, competitive rates, and reliable service achieved while reducing emissions, preserving Rhode Island's substantial natural resources, and continuing in the State's pursuit of all its long-term environmental and energy goals, including those mandated by the Act on Climate.

II. PETITIONERS' OWN FAILURE TO AFFIRMATIVELY DISCLOSE INFORMATION AND TRANSPARENTLY RESPOND TO DATA REQUESTS MEANS PETITIONERS CANNOT MEET THEIR BURDEN.

A. Without Post-closing Financials, the Division and the Parties Cannot Reach the Required Statutory Findings.

PPL did not provide any pro forma financials for the post-transaction environment. *See e.g.* App. Ex. D, *IEc Direct Testimony* at 14:20-21, 15:4-7 and App. Ex. AA, *Surrebuttal Testimony of Ewen and Knecht ("IEc Surrebuttal Testimony")* at 2:16 – 3:5; *see also* App. Ex. N, Tr. 4 at 229:9-12 and App. Ex. BB, PPL-AG-1-10. This complete lack of information was never cured, even by the late-breaking Commitments. The failure of PPL to produce necessary information prevents a meaningful and complete evaluation of the proposed transaction. RIAG's experts repeatedly expressed that, in a proceeding such as this, these requested pre- and post-transaction financials

should be provided in order to allow parties to evaluate the financial impacts of the transaction. *Id*. Additionally, Mr. Ewen noted that these financials should be provided for both PPL RI and Narragansett. *See* App. Ex. D, Tr. 4 at 234:1-4.

RIAG questioned PPL's witness, Mr. Henninger, who oversees the corporate financial planning function, about that issue. *See* App. Ex. CC, Tr. 2 at 209:11-13 and 211:20 – 212:1. In response to the questioning about whether this financial information could be produced, Mr. Henninger stated: "No. I think what we've provided is sufficient." *Id.* at 212:3-4; *see also* App. Ex. DD, *Henninger Rebuttal Testimony* at 5:3-5:14 ("bottoms up" approach to post-transaction financial statements). Upon follow-up questioning, Mr. Henninger explained: "Well, I just said in my testimony we're going to be working on a bottoms up budgeting process. That is in process. With respect to financial statements, I wouldn't say we could produce financial statements, but that is what is in process underway subject to all the moving parts that we talked about in this testimony." App. Ex. CC, Tr. 2 at 216:6-17.

The Petitioners, themselves in the midst of constructing what a post-closing financial structure for PPL RI and Narragansett will be according to their own witness, cannot know whether Narragansett will be harmed as a result of the transaction. PPL has requested the Division's blessing of this transaction midstream, as evidenced by its response to discovery. After RIAG requested financial documentation that was provided to Moody's that resulted in a favorable report on which PPL has heavily relied, PPL responded by noting that this information may no longer be accurate: "Attachment AG-RR2-1 reflects a high-level summary financial picture . . . [and] does not represent PPL's current view of the post-Transaction financials of Narragansett or PPL RI." *See* App. Ex. EE, AG-RR-2. Despite seeking approval of the petition based on PPL's financial speculation, the company further stated: "PPL is currently in the process of creating a budget, but

that process is not yet complete." *Id.* The combination of refusal to provide sufficient detail with outright statements that high-level projections are incomplete and could prove inadequate, renders it impossible for any party or intervenor to complete a meaningful analysis of the transaction and for Petitioners to meet their statutory burden. Moreover, there are no assurances that the to-be-built budget will not be more detrimental than the high-level summaries and projections (some of which PPL admits are inaccurate) that were provided.

B. Petitioners' Refusal to Produce Substantive Evidence Backing Their Claims Means They Have Failed to Demonstrate the Transaction Will Not Cause Harm to the Public.

The lack of transparency by Petitioners throughout these proceedings further prevents a finding that Petitioner has met its burden. Many party and intervenor data requests were met with objection or responses containing no supporting evidence. For example, in response to the RIAG's request for due diligence materials related to the reasonableness of the purchase price (AG-1-2), PPL objected and stated that the purchase price has no bearing on whether the transaction will unfavorably impact the general public. *See* App. Ex. D, *IEc Direct Testimony* at 19:3-8 discussing lack of specific information related to purchase information basis; *see also* App. Ex. FF, PPL-AG-1-2. PPL is wrong. PPL's decision on purchase price for Narragansett Electric bears *directly* on "PPL and PPL RI's experience and financial strength" (AG 1-2), not to mention whether the transaction will increase the riskiness of PPL or PPL RI's business overall and result in an adverse impact to credit. The parties and Rhode Islanders deserve to have this question addressed by experts and not preemptively precluded from review.

PPL also objected to AG 1-28, requesting information regarding what benefits it might provide ratepayers to incentivize the use of green/renewable energies stating that the request was outside the scope of the proceedings, despite the statutory mandated consideration of decarbonization. *See* App. Ex. X & Y, R.I. Gen. Laws § 42-6.2-8, 11, *see also* App. Ex. GG,

PPL-AG-1-28. Coupled with Petitioners' failure to provide any tangible commitment to pursue Act on Climate goals through this or any other mechanism, Petitioners' refusal to demonstrate adherence to statutory requirements precludes approval of the transaction.

Although transition cost estimates have been provided in written testimony and in the Commitments, no evidence has been provided to support the estimates including no provision of the underlying information. *See* App. Ex. HH, *Bonenberger Rebuttal Testimony* at 31:11-15 and Ex. B ("order of magnitude estimate" of transition costs). With respect to the Commitments, the timing of the Petitioners once again prevented meaningful review and the opportunity to gather necessary information. There was no opportunity for data requests to understand and interrogate the underlying information upon which the Commitments were based, and experts were not afforded adequate time to carefully project or analyze the effects of the Commitments.

One major issue caused by late-breaking Commitments and lack of candor in discovery responses is that both RIAG and Advocacy Section witnesses could not determine what the Commitments mean with regard to the recovery of transition costs from ratepayers. Protecting the public from bearing the costs of a merger that only benefits the corporate interests involved is an essential component of transaction review.

II. THE TRANSACTION, INCLUSIVE OF CURRENT COMMITMENTS, POSES UNMITIGATED RISKS TO THE PUBLIC AND, GIVEN CURRENT INFORMATION, IS MORE LIKELY THAN NOT TO RESULT IN HARM.

A. The Rate Stay-Out Commitment Does Not Effectively Shield the Public as Ratepayers From Bearing Transition Costs Generated by the Transaction.

As Mr. Ballaban, Advocacy Section's expert witness, noted, to ensure no financial harm to the public "you really have to look at the rates because that's what customers would experience from the financial impact of the transaction." App. Ex. N, Tr. 4 at 94:12-14. In examining the

Commitments and other terms of the transaction, Petitioners have fallen short of demonstrating that the transaction will not harm the public in their capacity as ratepayers.

Commitment 1 provides that Narragansett Electric "will not file a base rate case seeking an increase in base distribution rates" in either the gas or electric service "sooner than three (3) years from" transaction close. App. Ex. L, *Statement of Existing and Additional Commitments* at 2. This Commitment fails to address financial harm resulting to the public from the transaction in two ways.

First, Petitioners have not committed to foregoing recoupment of transition costs through mechanisms outside of a base rate case. In Rhode Island, certain categories of costs can be recovered through Infrastructure, Safety, and Reliability (ISR) proceedings and other rate mechanisms where the utility exerts controls over the costs being passed to the ratepayers. After full consideration of Rhode Island's processes, multiple experts agreed that any rate stay-out commitment must be coupled with "robust evaluation as to whether . . . expenditures that are being reviewed [as part of the ISR process] are simply replacing things that ratepayers have already paid for . . . ." App. Ex. N, Tr. 4 at 233:3-18. (Mr. Knecht's discussion of Mr. Booth's testimony regarding the ISR process).

Second, as Mr. Ballaban articulated, a three-year stay-out commitment that begins after transaction closing is inadequate to ensure ratepayers are protected from bearing the costs of the transaction. A base rate case brought three years after the closing runs the risk that a rate case could lock in transition costs and the higher costs of unrealized synergies unless the transition is fully completed within two years of transaction closing. *Id*. at 95:18 - 97:3.

Petitioners' choice to connect the filing of the rate case to a closing date versus the end of the transition period creates a risk that at the time of filing they will not have a historic test year

containing evidence of operations costs under PPL's leadership. Petitioners' further choice to not address the other means with which rates are determined, once again places the risks on the shoulders of ratepayers. These loopholes for Petitioners result in great risk to ratepayers of increased costs due solely to the transaction. Petitioners are likely to harm ratepayers without further protections and cannot meet their burden without showing or committing otherwise.

B. The Commitments Do Not Cap Transition Costs and Therefore Ensure that Petitioners Will Seek Recovery of Such Unbounded Costs in Future Rate Cases.

Commitment 2, rather than providing certainty around recovery of transition costs, only commits to excluding certain broad and undefined categories of cost (presumably at PPL's sole determination) and then only to a limited extent. Experts expressed concerns at the hearing that Commitment 2 was inadequate. As Mr. Knecht noted, in agreement with Advocacy Section witnesses, the lack of a cap on the potential recoverable transition costs creates further risk for ratepayers on whose shoulders the wide-ranging risks of this proposed transaction rest. App. Ex. N, Tr. 4 at 231:16 – 232:18. Mr. Ballaban also spoke to this concern, noting the fact that estimates at this early stage often lead to cost overages and noted that without a commitment to a hard cap, PPL could seek recovery of overages through future proceedings. *Id.* at 97:15 – 98:9. Further complicating this issue, Petitioners have never revealed their underlying bases for these estimates, relying on their own unsubstantiated numbers to support the asserted reasonableness of PPL's Commitments. Commitment 2 therefore cannot be relied upon to provide meaningful financial protection to the public.

Even more concerning, Commitment 2 signals that there are, at a minimum, $82 million in capital transition costs that PPL *already* appears to anticipate recovering from ratepayers without substantiation about the need for or advantage of these costs. *See* App. Ex. L, Commitment 2, *Statement of Existing and Additional Commitments* at 2. While Commitment 2 promises that $250

million in IT costs will be excluded from any future recovery, PPL's own current estimates as set forth in Commitment 2 state plainly that PPL anticipates seeking recovery of at least $65 million. *Id.* In addition, PPL anticipates that it will seek recovery for facilities to the tune of $17 million in currently estimated costs. *Id.* These costs would not be incurred but for the transaction and are duplicative of costs already borne by ratepayers.

The estimated $65 million, which could balloon to any larger amount depending on actual implementation costs, relates to the implementation of IT systems that will replace National Grid IT systems, already paid for by ratepayers, including expenses for cyber security currently listed as a regulatory asset on Narragansett's books. *See* App. Ex. II, Advocacy Section Exhibit 24. National Grid provides most, if not all, of the information technology and facilities used by Narragansett through its shared services, and this shared service will no longer be available after the transition. The large-scale need to replace the technology and build new facilities creates two categories of risk to be borne by the Rhode Island public alone: 1) new assets identified by PPL are duplicative of assets for which Narragansett's customers have already paid in a shared-cost model; and 2) there is remaining risk that there will be comparatively less opportunity to share costs with PPL's other regulated utility holdings. In other words, Rhode Islanders may be paying again and paying alone.

PPL's statement in Commitment 2 that recovery of transition costs will only be approved if there can be demonstrated a "direct benefit" to consumers in a future rate case runs roughshod over the standard of the current proceeding. *See* App. Ex. L, *Statement of Existing and Additional Commitments* at 3. That direct benefit analysis will be made in an entirely post-closing universe, meaning that it will not be measured against the current status quo where National Grid is providing *the same* services to Narragansett at approved cost sharing rates. That is, any increase

between the costs in shared services incurred in the switch between National Grid and PPL will be completely obscured by such a "wait and see" approach.

The language of Commitment 2 allows PPL significant and concerning leeway with regard to what transition costs it may seek to recover in the future. Mr. Knecht specifically expressed concern over the uncertainty in Commitment 2's language when it comes to determining when PPL might seek recovery for a benefit from a transition investment. App. Ex. N, Tr. 4 at 232:1-16. Mr. Knecht stated that he and Mr. Ewen believe the test for transition costs should be a net benefit test, and that the claimable transition costs should only be those that provide an incremental benefit such that PPL should only be allowed to claim costs where the benefits exceed the incremental costs. *Id.* at 232:8-14. He further noted that it remains unclear from the record whether this is the intention of the Petitioners. *Id.* at 232:14-16.

Mr. Ballaban, the Advocacy Section's witness, further echoed the concerns over the language and pointed to his suggested language in his surrebuttal. *Id.* at 98:11 – 99:11. He stated that Commitment 2 lacks language that benefits be "at least equal to the transitions costs that they might be seeking for recovery." *See Id.* at 98:19 – 99:2; *see also* App. Ex. JJ *Surrebuttal Testimony of Ballaban* at 3:15 – 4:20. Mr. Knecht, Mr. Ewen, and Mr. Ballaban all found the language of the Commitments insufficient to guarantee no harm and believe the test should reflect whether or not benefits actually exceed the costs incurred. The Commitment language does not mitigate the risk to ratepayers if this proposed transaction is approved.

The lack of clarity in the language of Commitment 2 was compounded by the contradicting testimony of PPL's own witnesses regarding terms used when seeking recovery. It is therefore unknowable at this point what exactly PPL is committing to in Commitment 2.

It is at this very juncture, the approval of the transaction, that pre- and post-closing costs are to be evaluated and measured, a goal stymied by PPL's continued failure to complete and deliver post-closing financial statements and refusal to include enforceable language in its commitments. A hard cap on overall transition costs is therefore one essential protection required to assure the public is not harmed by the transaction. The Division must assess whether Commitment 2 ensures that ratepayers will not suffer harm compared to a continuance of the status quo *now*; with PPL's admission that it will be incurring unbounded transition costs that will start at $82 million and go upward from there, the Division cannot make an evaluation of whether there are sufficient offsetting advantages in post-close shared cost savings or other areas to mitigate the prima facie financial harms to the public in their capacity as ratepayers.

C. Petitioners Have Failed to Demonstrate That Extracting Narragansett Electric From its Current Regional Shared Service Model and Placing it In a Corporate Structure Centered Elsewhere Will Not Harm the Public, and No Commitment Addresses These Risks.

The proposed transaction will remove Narragansett from a cost-efficient shared services model and prop it up as a standalone utility. This raises multiple concerns that have not been adequately addressed by the Petitioners. Petitioners have made no commitments to hold ratepayers harmless from the loss of synergies, nor have they shown in any detail how lost synergies will not negatively impact ratepayers or the public interest. Although PPL has listed numerous areas where it expects to potentially find synergies with its out-of-state operations, *see* App. Ex. KK, AG-RR-1, it "has not performed any studies to quantify their value." *Id.* at 9; *see also* App. Ex. CC, Tr. 2 at 13:11 – 14:6 (noting synergies model and business plan remain under development). Again, the Rhode Island public has been asked to take PPL at its word and assume the risk that PPL's operations may ultimately result in significantly higher costs to operate.

PPL has provided one model of shared savings advantage over Narragansett Electric's current cost structure wherein it estimates certain operational costs will decrease $12 million per year as a result of the transaction. App. Ex. LL, PPL-DIV-1-54-1 SUPP. But, even taking this estimate at face value (as is necessary, given the lack of information provided by Petitioners in this transaction), this slight operating cost margin does not begin to address the risks of duplicative capital investments generated by the transaction. The transaction, even with the Commitments, poses risks of duplicative capital expenditures. Duplicative capital projects, necessary solely as a result of disentangling Narragansett from National Grid's shared service model, not only expose the public as ratepayers to additional costs, but also to the risk of capital project failure, which could include timing impacts to service, cost overruns, or the creation of stranded assets. As explained above, some of these capital investment costs, necessary solely due to the transaction, are admitted outright by PPL in Commitment 2.

First, there is an increased risk that the public will pay twice for the portions of the advanced meter functionality (AMF) and grid modernization programs. These two projects are necessary current capital investments that are already well under way by National Grid. National Grid has already spent over $2.5 million in the planning process. *See* App. Ex. MM, NG-DIV-7-53 and NG-DIV-7-54. In addition, National Grid's current plans demonstrate an estimated $117 million in cost savings from deploying the AMF and grid modernization plans for Narragansett Electric at the same time as similar programs in New York. *See* App. Ex. NN, Advocacy Section's Exhibits 18, 19, and 22. Mr. Sorgi, the CEO of PPL Corp, confirmed that PPL had no plans to reimburse ratepayers for lost savings opportunities that would be foregone in pursuing the current National Grid plan and would not promise a budget match to Grid's proposal. App. Ex. G, Tr. 1 at 79:6-20. Mr. Bonenberger, the future president of Narragansett, echoed that PPL would not make

commitments to match or beat the budget National Grid has already made. *Id.* at 205:15-23 & 218:22 – 219:14. As the Advocacy Section noted, these unmitigated lost cost savings are likely to result in an incremental revenue requirement impact of about $15.4 million. *See* App. Ex. N, Tr. 4 at 305:23 – 306:9.

Second, and as discussed above in the context of Commitment 2, there are new and additional IT costs that PPL has already flagged it will incur as a result of this transaction. The Advocacy Section has estimated that the incremental revenue requirement to fund just the portion of the IT costs PPL intends to recover is $14.6 million. *Id*. at 303:4-18. Either new capital expenditure alone eclipses the operational savings demonstrated, and together there is a demonstration of harm to the public in their capacity as ratepayers.

Third, as if the known increased capital costs were not enough, the transaction poses a concrete risk of creating additional stranded assets. National Grid has already received approval for two multi-million dollar capital projects that are unlikely to provide value to the future PPL RI, shared investment in the gas business enablement program (a comprehensive program modernizing the technology underpinning National Grid's gas distribution service) with Massachusetts and New York and cybersecurity improvements to National Grid's IT systems. App. Ex. G, Tr. 1 at 73:13 – 77:11. National Grid's fiscal year 2022 expenditure is $271.3 million across its US operating companies under the cybersecurity and IT modernization. App. Ex. II, Advocacy Section Exhibit 24, p. 3. And National Grid has already spent - on a regional level - over $112 million on the gas business enablement program alone. App. Ex. OO, Advocacy Section Exhibit 30, p. 11. There are at least $15.257 million in regulatory assets related to these projects. *See* App. Ex. II, Advocacy Section Exhibit 24 ($657,000 for gas and $2 million for electric under the cybersecurity and IT programs); App. Ex. OO, Advocacy Section Exhibit 30

($10.7 million for gas and $1.9 million for electric under the gas business enablement program). Mr. Bonenberger, future CEO of Narragansett, when questioned about whether any of the existing IT system investment could be reused within the new company simply replied "I don't know." App. Ex. G, Tr. 1 at 30:7. Mr. Sorgi, the CEO of PPL, stated that he had no knowledge about whether stranded assets would be created as a result of the transaction, and flatly denied an opportunity to commit to hold the public harmless from costs related to potentially stranded assets. *Id.* at 75:10-18. Such uncertainty regarding the disposition of multimillion dollar ongoing efforts is disconcerting. Once again, the Petitioners have not met the bare minimum standard of a demonstration of no harm to the public from the transaction.

Fourth, Narragansett Electric currently benefits from shared storm response with the regional affiliates under National Grid's corporate umbrella allowing for shared costs of these services. While PPL has mentioned there will be mutual assistance programs at PPL, and that storms affecting Rhode Island are less likely to affect Pennsylvania and Kentucky, PPL has made no assurances regarding the costs for such assistance and whether there will be a resulting increase to ratepayers. *See, e.g.*, App. Ex. CC, Tr. 2 at 22:9-17 (Mr. Bonenberger noting that hurricanes hitting Rhode Island are unlikely to affect Pennsylvania and Kentucky); App. Ex. LL, PPL-DIV-1-54 SUPP (does not include storm costs in estimates). But there are some logical ways in which costs may increase, and PPL offered no evidence to demonstrate its model would deliver promised improvements. Mr. Booth, the Advocacy Section's witness, opined that PPL is "several states away as opposed to having a state like Massachusetts that's right up against Rhode Island" and that therefore "they're going to incur some additional costs." App. Ex. O, Tr. 3 at 198:13 – 199:3. Petitioners have not denied that adequate storm response under PPL ownership will come at increased cost. When asked whether relying on crews from Kentucky and Pennsylvania to travel

to Rhode Island rather than National Grid crews coming from New York and Massachusetts would cost ratepayers, PPL's Mr. Bonenberger stated that he "[hasn't] done the analysis to say what is cheaper." App. Ex. CC, Tr. 2 at 23:9-15. RIAG directly asked PPL if it knew the effect of the transaction on storm response costs; proposed future Narragansett Electric President Mr. Bonenberger confirmed that the company did not. Id. at 24:1-3. Despite thousands of pages of document responses and days of testimony, Petitioners have not demonstrated that similar storm response performance will be achieved at the same or lesser cost as the status quo, and Petitioners have not made the bare minimum demonstration of no harm to the public in their capacity as ratepayers.

Fifth, Petitioners' proposal to retain third-party consultants to replicate National Grid's gas trading and procurement expertise after the transition period is a further risk to the public and ratepayers. Financial hedging (a strategy used to protect utilities from swings in commodity prices) has played an important role in reducing the impact of escalating gas prices; National Grid's internal hedging program has eliminated the potential for performance failure by a third-party asset manager, avoided the potential capping of benefits due to having a third-party manager, and provided tens-of-millions of dollars of incremental value to Narragansett's gas customers. PPL suggested through testimony and discovery that it will be placing greater reliance on asset management agreements with third-party managers after the transition, failing to replicate the significant savings the internal management of the program has generated for Narragansett ratepayers. Mr. Sorgi stated in testimony that ratepayers would have to pay for these consultants referenced in the Commitments. App. Ex. G, Tr. 1 at 91:9-15. PPL's solution of third-party management adds to the cost and service risks being borne by ratepayers and the public.

Sixth, PPL's statement that the transaction will result in benefits to Rhode Island because it is moving Narragansett to more local control is without foundation in the record. As a result of the transaction, numerous shared functions will be at further geographic remove in Pennsylvania. One example is PPL's proposed use of a Pennsylvania warehouse as part of the solution to a need for a supply chain distribution center (needed only as a result of the transaction). App. Ex. CC, Tr. 2 at 132. There are no commitments ensuring costs will not be increased or services decreased due to the use of this geographically distant option. PPL also will be leveraging its existing meter facility in Pennsylvania instead of building local facilities for electric and gas meter shops as anticipated. *Id.* at 133. In addition, Mr. Bonenberger noted that PPL would also be leveraging the Pennsylvania security operations center. *Id.* Nor do PPL's actions in this docket demonstrate PPL's understanding of the Rhode Island regulatory environment. PPL's CEO had no knowledge of significant ongoing capital programs at Narragansett, Tr. 1 at 75:10-18, and PPL has made no demonstration it is able to meet Act on Climate goals. PPL's insistence on narrowing this proceeding, even in light of clear statutory commands to the contrary, does not demonstrate a commitment to transparency or cooperation. Knowledge, transparency and cooperation are of great value to both ratepayers and the public and are essential to ensure that future dockets and rate cases serve the public interest.

D. Additional Risks Remain.

PPL remains unwilling to commit to a debt to capital limit for the PPL RI entity exclusive of the $1B goodwill. Failure to commit to such a limit creates potential financial risk for Narragansett Electric. As expressed by Mr. Knecht at the hearing, there is potential for additional risk if the company chooses to debt finance the goodwill asset on the PPL RI books. App. Ex. N, Tr. 4 at 229:13-24. The company has not committed to avoiding debt-financing at the PPL RI

level. In fact, when directly asked whether the company had any intention to use debt financing at the PPL RI level to finance the goodwill, PPL's witness, Mr. Henninger, stated that they may do so. App. Ex. O, Tr. 3 at 219:13-21. Comments such as Mr. Henninger's caused Mr. Knecht to note in his hearing testimony that he is now less confident than he was at the time of writing his pre-filed testimony that PPL will not use debt to finance the goodwill. App. Ex. N, Tr. 4 at 240:17 - 241:2. There appears to be no reason to refuse to commit to a debt-to-equity ratio for PPL RI unless PPL intends to leave open the possibility of debt-financing the goodwill or to preserve the ability of PPL RI to debt-finance future transactions on the back of Narragansett Electric's goodwill. *Id.* at 240-242. Again, the public stands to bare the associated risks of potentially increased credit costs so that Petitioners can benefit from the transaction.

III. PETITIONERS HAVE NOT DEMONSTRATED THAT THE TRANSACTION IS CONSISTENT WITH THE PUBLIC'S INTEREST.

A. Petitioners Have Not Explained How the Transaction Is Consistent with the Act on Climate.

The Act on Climate mandates that all agencies consider whether petitions before them further Act on Climate goals. The Commitments newly added two studies, the only elements of the transaction that purport to address broader environmental and distribution concerns. While PPL must plan how it will meet decarbonization goals and distributed energy resource management, the Commitments are essentially devoid on content on these goals, first mentioned in Commitments 11 and 12. PPL has failed to at a minimum provide a plan for the development of these reports to ensure that they provide meaningful results addressing stakeholder concerns. The promise to produce the reports therefore does not significantly address the Act on Climate considerations.

As experts at the hearing noted, reporting could easily fail to serve any function at all if PPL does not provide a process for RIAG and other stakeholders' input regarding issues and scope as part of the study process. App. Ex. N, Tr. 4 at 230:22 - 231:15. Mr. Ewen specifically noted that PPL's witnesses made statements regarding stakeholder involvement, but that still missing was "the meat on the bone of what these studies are and the process for completing them in the context of these commitments." *Id.* at 234:13-16.

RIAG's experts have also expressed a concern regarding PPL's intentions with respect to spending on expansion of the gas distribution system. *See e.g.* App. Ex. D, *IEc Direct Testimony* at 25:1-7 (noting that PPL should evaluate gas policies and economic impacts). They also discussed this outstanding concern at the hearing, stating that PPL should refrain from natural gas system expansion investments (except for those already approved and underway and those related to public safety), until such time as it has a clear vision for the future of natural gas distribution in RI under the Act on Climate. App. Ex. N, Tr. 4 at 230:1-21.

Mr. Bonenberger stated that PPL will continue to invest in gas infrastructure not only for safety related reasons but also to serve customer requests for increased capacity. App. Ex. CC, Tr. 2 at 15:23 – 16:3. This plan adds to concerns regarding continuing spending on infrastructure that will lead to stranded costs as the State moves to meet the requirements of the Act on Climate. In fact, Mr. Knecht noted that the study itself creates more reason to be cautious about spending large sums to protect ratepayers from stranded costs incurred while PPL is coming up to speed and developing an understanding of Rhode Island's specific needs and the impact on future energy needs and goals in light of Rhode Island's specific regulatory environment, including the Act on Climate. App. Ex. N, Tr. 4 at 230:1-21. Further, Mr. Knecht noted that he has observed instances when gas distribution systems are in such a state of disrepair that abandonment and electrification

would, for safety reasons, be a preferred alternative. *Id.* at 248:20 – 249:19. He stated that if the State is serious about meeting its climate goals, abandonments, while difficult to undertake, need to be carefully considered. *Id*. PPL has given no information about how it will guide the Rhode Island public through its transition to a reduced carbon future.

B. Petitioners Have Not Mitigated Risks of the Transaction, Let Alone Pointed to Offsetting Benefits.

As discussed above, all the evidence in these proceedings has only demonstrated that risks continue to accrue to the public. In taking the position that Gen. Laws § 39-3-25 did not require "net benefits," PPL also seemingly took the (mistaken) position that it was not required to mitigate concrete risks of harm to the public. PPL has offered no external ongoing monitoring of the transition, only undefined reporting on the transition, and no escrow related to transition costs or other measure that could reduce the risk of unrealized synergies or ballooning future transition costs or service impairment during the transition. *E.g.* App. Ex. PP, *Transfer of Ownership of Granite State Electric Company and EnergyNorth Natural Gas, Inc. to Liberty Energy NH*, 2012 WL 2254207 (May 30, 2012, N.H.P.U.C.) (New Hampshire Public Utilities Commission ("NHPUC") approved transaction only with conditions addressing cap placed on recoverable prudently incurred IT expenses ($8.1 million less depreciation); guarantee to not seek recovery for transaction or transition costs; limit rate case expenses; conduct customer service surveys; and escrow account funded by the seller with funds to be released back to seller upon certification that certain metrics were met).

Such protective measures would perhaps inch Petitioners closer to a no-harm standard, but even with such measures, Petitioners would fall short given the certainty of increased capital expense, stranded regulatory assets, and failure to offer substantive commitment to the Act on Climate goals or even a concrete framework to arrive at such a commitment.

Uncertainty regarding the relative advantage of storm response has gone unaddressed, with no evidence of or commitment to maintaining storm response time or costs. Nor have there been any commitments to retain service levels of any kind through the transition period. And, even if Petitioners were to, at five minutes to midnight, offer additional commitments, the time is passed for thorough considered review of any such measures' impact on this transaction. The transaction cannot be found to be in the public interest when the interests of the public were not effectively able to be voiced throughout the proceeding because discussion of major, statutory, public policy priorities was curtailed and analysis of the very premise of the transaction (pro forma financials) was withheld.

IV. NATIONAL GRID MUST OWN AND OPERATE NARRAGANSETT ELECTRIC UNTIL SUCH TIME AS THEY PRESENT A PETITION FOR APPROVAL OF A PROPOSED TRANSACTION MEETING THE STATUTORY STANDARD.

At the close of hearings, the hearing officer asked: "[W]hat authority the State of Rhode Island has to compel National Grid to continue to own and operate Narragansett Electric, and if so, for how long can we compel them for." In response, the RIAG provides the following:

The State of Rhode Island may decline to approve National Grid's sale or other disposition of Narragansett Electric for as long as National Grid and any co-petitioner fail to meet the standard for approval of the particular transaction. Insofar as National Grid wishes to pursue a sale to another public utility, as it does here, that standard is clear: "With the consent and approval of the division, *but not otherwise*: . . . [a]ny public utility may . . . sell or lease all or any part of its property, assets, plant, and business to any other public utility[.]" App. Ex. A, R.I. Gen. Laws § 39-3-24(3). Only where "the facilities for furnishing service to the public will not thereby be diminished; and that the purchase, sale, or lease and the terms thereof are consistent with the public interest" should the Division grant its consent and approval for such a sale. App. Ex. B, R.I. Gen.

Laws § 39-3-25. Absent proof that the proposed sale meets the statutory standard set forth in R.I. Gen. Laws § 39-3-25, National Grid must continue to own and operate Narragansett Electric.

Narragansett Electric enjoys – and has enjoyed – a functional monopoly over Rhode Island's electric and natural gas distribution, which it receives in exchange for its consent to be regulated. Any owner of Narragansett Electric similarly consents to public utility regulation through the acquisition process. Regulated public utilities enjoy numerous advantages as a result of their position, including decreased (or a complete lack of) competition. As a result, every public utility is "*required* to furnish safe, reasonable, and adequate services and facilities." App. Ex. QQ, R.I. Gen. Laws § 39-2-1(a) (emphasis added); *see also e.g.* App. Ex. RR, R.I. Gen. Laws § 39-1-27.3 (requiring electric distribution companies to provide retail access, standard offer and last-resort services). Therefore, Narragansett Electric, which is currently under National Grid ownership, must furnish the people of Rhode Island with those services and facilities, which, in the case of Narragansett Electric, consists mainly of distribution of gas and electric service to the majority of people in Rhode Island until such time as a transfer of this duty is approved according to statute. In kind, Narragansett Electric is entitled to collect reasonable and just charges as determined by the legislature, the Division, and the Public Utilities Commission. Failure to furnish such services can result in fines levied pursuant to R.I. Gen. Laws § 39-2-8 (App. Ex. SS). Additionally, "[i]f any public utility [ ] shall omit to do any act, matter, or thing to be done by it, the public utility shall be liable to the person, firm, or corporation injured thereby, in a civil action . . ." App. Ex. TT, R.I. Gen. Laws § 39-2-7. Further, R.I. Gen. Laws § 39-1-32(a) (App. Ex. UU) provides the Public Utilities Commission with the power to issue emergency orders and implement immediate temporary actions to address situations where: (1) "public safety so requires;" (2) "failure to act immediately will result in irreparable injury to the public interest;" or (3) "an

emergency exists in the financial affairs of a public utility which, if not met immediately, will interfere with the accommodations, convenience, and welfare of the people." The Division could commence a proceeding before the Commission requesting it take such action if it were ever faced with a refusal of a public utility to provide service.

RIAG has no reason to believe that a denial of the pending petition would result in any disruption of service for Rhode Islanders, and no such evidence has been entered into these proceedings. The petition appears to reflect that the sale of Narragansett Electric is simply the result of negotiations with respect to a significantly larger sale of a utility company in the United Kingdom formerly owned by PPL and now owned by National Grid. *See e.g.* App. Ex. VV, *Direct Testimony of Vincent Sorgi* at 14: 3-7 (noting that the sale of Narragansett Electric was contingent on the sale of PPL's electric utility in the United Kingdom, Western Power Distribution, to National Grid). If this transaction is not approved, National Grid has the option of changing the terms of the transaction with PPL until it is consistent with the public interest, finding another buyer who is willing to enter a transaction consistent with the public interest, or continuing to operate and profit from its ownership of Narragansett Electric.

In short, the State of Rhode Island and the Division can require National Grid to continue to operate Narragansett Electric and need not approve any proposed transaction until such time as a sufficient petition is submitted for new ownership.

CONCLUSION

For the reasons set forth herein, the Attorney General respectfully requests that the Petition as filed with the Division of Public Utilities and Carriers, as amended by the Commitments, be denied.

Respectfully submitted,

PETER F. NERONHA
ATTORNEY GENERAL OF THE
STATE OF RHODE ISLAND

By his attorneys,

/s/ Nicholas M. Vaz
Nicholas M. Vaz (#9501)
/s/ Tiffany A. Parenteau
Tiffany A. Parenteau (#8436)
Special Assistants Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903
nvaz@riag.ri.gov
tparenteau@riag.ri.gov
(401) 274-4400 x 2297

Dated: January 18, 2022

CERTIFICATE OF SERVICE

A PDF version of this brief was served electronically on the service list of this Docket, as that list was provided by the Division on January 13, 2022. I certify that all of the foregoing was done on January 18, 2022. I certify that the original and four copies of this brief will be hand-delivered to the Division of Public Utilities and Carriers.

/s/ Tiffany Parenteau