

Addressing Environmental Externalities: The Role of the Public Utilities Commission in Rhode Island's Transition to Renewable Energy

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Introduction

In 2015, citing the need for more reliable and clean energy, Rhode Island officials announced plans to build a natural gas power plant in Burrillville. The plant, Invenergy's Clear River Energy Center (hereafter CREC), would be able to produce up to 1000 megawatts to be distributed throughout New England. However, the plant has sparked significant controversy among local residents, environmental groups, and politicians (Kuffner 2015). Proponents of CREC, including Governor Gina Raimondo, argue that the power plant is essential to supplement supply lost when Vermont Yankee went off-line and to meet the electricity demands of Rhode Islanders and New Englanders while keeping energy prices affordable (Kuffner 2016). Opponents of the power plant say that the construction of this power plant will make the State's environmental goals impossible to meet (Roberts 2016).

This power plant also comes during a significant movement calling for the rapid transition of our electricity production away from fossil fuels. The Intergovernmental Panel on Climate Change (IPCC) published a report in 2014 categorically stating: "cumulative emissions of CO₂ largely determine global mean surface warming by the late 21st century and beyond [...] increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems" (Intergovernmental Panel on Climate Change 2014). Rhode Island and other states set statewide emissions goals well before former President Barack Obama signed the Paris Agreement. For instance, Rhode Island has set statewide emissions goals of 10% reduction in carbon emissions below 1990 levels by 2020 via the *Resilient Rhode Island Act* (Rhode Island General Law § 42-6.2-8).

In 2016, the Rhode Island Energy Facility Siting Board (hereafter EFSB) directed the Rhode Island Public Utilities Commission (hereafter Commission or PUC) to provide an advisory opinion as to whether the CREC proposal to build a gas-fired generator in Burrillville (i) is needed, (ii) is cost-justified to energy consumers, and (iii) is the best solution to our energy issues (DeSimone 2016, 1-2). The PUC is a quasi-judicial state-level regulatory body, established by R.I.G.L. § 39- 1-1 et seq. and comprised of three governor-appointed commissioners. In its organic charter, the PUC is tasked with "the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy," as well as other utilities, with the primary purposes of increasing the efficiency of utility companies and protecting the public against "improper and unreasonable rates" (R.I.G.L. § 39-1-1). According to these guidelines, the PUC commissioners concluded in their September 2016 advisory opinion that the CREC meets the three relevant criteria and "is needed in order to meet the electric generation reliability needs" of the region (DeSimone 2016, 22).

In our report, we evaluate the ways in which the PUC is currently able to consider positive or negative environmental externalities in its decision-making process and how it could better address these factors to facilitate Rhode Island's statutory requirement to transition to a low-carbon economy. We will begin by outlining our community-based research methods and will proceed by using the CREC as a case study of the PUC's ability to influence energy decisions. After discussing the current state of energy supply and demand in New England and analyzing the governance structures and processes of energy siting decisions, we will conclude with recommendations for future PUC decisions

within its current statutory obligations and provide suggestions for broader changes to the PUC legislative charter.

Methods

As students in an Environmental Law and Policy class, we were tasked with researching the PUC's legal authority to consider environmental factors in setting energy rates. Due to the high profile, divisive nature of the proposed power plant in Burrillville, we capitalized on the opportunity presented to create a report targeted towards politicians in order to influence policy decisions to maximize societal and environmental justice. It is often presented and discussed in economic and political frameworks rather than in terms of environmental justice. Although this paper focuses on the role of RI agencies, specifically the PUC and EFSB, in determining the fate of the CREC, we felt it was critical to ground our research with a deeper understanding of the experiences and perspectives of those living in Burrillville. In order to glean this insight, we had informal conversations with several residents of Burrillville including Kathy Martley, the woman who started a grassroots activism organization focused on resisting the construction of additional fossil fuel infrastructure in Burrillville.

In addition to engaging with local residents, we also attended EFSB hearings as well as committee meetings at the State House for bills relating to the PUC and EFSB's respective authorities and had many meetings with leaders in state agencies and non-governmental organizations. For example, we met with lawyers in the Conservation Law Foundation, the New England-based environmental law firm leading the case relating to CREC, as well as a lawyer from Pace Law School who previously served on a PUC in Texas and is currently working on Docket 4600, an energy reform initiative in Rhode Island. In the public sector, we spoke with someone from the RI Office of Energy Resources who is leading the Power Sector Transformation Initiative to modernize RI's electricity grid as well as met with the Administrator of the RI Division of Public Utility Carriers.

Regional Energy Supply, Demand, and Projections

Specifics of New England Energy Supply and Demand

Energy supply issues in New England, and especially Rhode Island, are largely driven by recent and scheduled closings of regional power plants as well as the constrained state of natural gas infrastructure in New England and New York. According to the Independent Systems Operators (hereafter ISO) New England 2016 Regional Electricity Outlook, 30% of the region's generating capacity could go offline by 2020 (ISO New England 2016, 3). Notably, the 620 megawatt (MWe) Vermont Yankee Nuclear Power Plant in Vernon, VT went offline in late 2014 and the 1530 MWe Brayton Point Power Station in Somerset, MA will be shutting down in May 2017 (Herald News Staff 2017). Furthermore, the ISO indicated that availability of natural gas (which produces 95% of the state's electricity supply) is limited by inadequate pipeline infrastructure, leading instead to the burning of dirtier and more expensive fuels, including coal, to meet peak demand in July and August (ISO New England 2016, 11).

Adding to the energy mix, however, is the growing renewable energy supply in New England, both in generating facilities like the Block Island Wind Farm, and in distributed "behind-the-meter" wind and solar systems. These "behind-the-meter" systems—rooftop solar, for example—were estimated to contribute 908.8 MWe to the New England supply, only 18.21 MWe of which came from Rhode Island (ISO New England 2015, 11). Commercial renewable energy plants are also being added to the grid, including the recently built 30 MWe Block Island Wind Farm, the first offshore wind farm in the United States, and a proposed 63 MWe wind farm between New England and Long Island.

On the demand side, projected electricity consumption is driven by the rate of energy efficiency, conservation, and electrification (the conversion of natural gas and oil burning technology, like cars and heating, to grid powered efforts). Both efficiency and conservation measures act to reduce the required energy supply, while electrification will increase pressure demanded by the grid. In fact, the full electrification of the national transportation and heating sectors would increase national demand by 3,560 terawatts (for perspective, a terawatt is one million megawatts), equivalent to around 100% of the United States' 2016 energy use (Weiss, Hledik, Hagerty, and Gorman 2017, 6). This mass electrification, however, is not expected to happen at scale for many years.

The gross load and summer peak electricity demand are expected to grow by around 1% annually. Subtracting the expected increases in distributed solar and energy efficiency, these numbers drop to a 0.2% decrease in annual use and a 0.2% annual increase in peak load (ISO New England 2017c).

Meeting this peak load reliably and affordably is the primary goal of the New England energy grid. Peak load generally occurs during the hottest summer days, an occurrence that will only increase with climate change. On these peak days, the grid must use all forms of available power generation to meet demand, which can mean burning the dirtiest and most expensive fossil fuels (i.e. coal). This drastically increases the costs and emissions of getting power. If the normal forms of available power cannot keep the lights on and the air conditioning running, the ISO report says they will have to “consider more extreme measures,” such as convincing non-gas, high emissions power plants to postpone retirement, thus dramatically increasing costs and emissions.

Legislative Charter of the Rhode Island PUC

The Rhode Island PUC is directed by the State General Assembly to address these energy concerns through regulation of the energy market (R.I.G.L § 39.1.1). The Commission is broadly tasked with the “supervision and reasonable regulation” of the energy businesses operating within the state to “protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people” (R.I.G.L § 39-1-1.3C). According to Karl Rabago, a New York-based lawyer specializing in energy policy, this language gives the PUC broad discretion to take actions to reduce emissions in order to mitigate the harm caused to all citizens of Rhode Island by the effects of climate change (Rabago).

The PUC mandate explicitly states that “preservation of the state’s resources, commerce, and industry” requires “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*” (italics added for emphasis) (R.I.G.L. § 39-1-1.3). This duty to preserve and enhance the environment draws from the State’s status as trustee of the natural environment, as affirmed in Article 1 Section 17 of the Rhode Island Constitution.

Despite this duty to care for the environment, fair and affordable energy prices are generally prioritized throughout the statute. For example, there is a specific mandate that electric and gas distribution companies are required to file affordable energy plans with regards to low-income households specifically (R.I.G.L. § 39-1-27.10). With regards to companies’ restructuring plans, the mandate dismisses environmental concerns to prioritize attracting energy suppliers; Rhode Island power plants’ “low emissions relative to their [out of state] counterparts” make it “unnecessary” for the plans to address in-state air emission reductions (R.I.G.L. § 39-1-27). Furthermore, whereas emissions are rarely addressed specifically in the charter, affordability and reliability are repeatedly affirmed as priorities (R.I.G.L. § 39-1-1).

As a result, PUC commissioners have broad discretion to interpret their statute. Considering the politics of energy use though, the short term political consequences of energy spikes or shut offs in low income communities will likely drive more public concern than the long-term fear of climate

change. As a result, when the PUC was asked to consider these many concerns, it was unsurprising that in their advisory opinion, the Commission prioritized reliability and affordability over long term emissions with regards to the CREC.

The *Resilient Rhode Island Act of 2014*, which sets ambitious environmental goals to fight climate change, should similarly influence the PUC's operation. According to this act, all state departments, including the PUC, "shall be deemed to have and to exercise among its purposes [...] the purposes set forth in this chapter pertaining to climate change mitigation, adaptation and resilience" (R.I.G.L. § 42-6.2-8). As a result, the Commission clearly has the authority to address the State's emissions goals, but it is less clear to what extent the Commission's decisions are bound by these responsibilities.

Governance Structures and Guiding Statutes

The CREC project in Burrillville is a perfect example of the overlapping jurisdictions and governance regimes that jointly manage energy projects through a hodgepodge of dual sovereignty and dual, conjoint, and cooperative federalism. The bureaucracy is a maze of government regulators spread horizontally and vertically in all branches of government and at every level from the national down to regions and localities. Furthermore, these government actors interact in a complex web with private entities, corporations, citizens, and stakeholders that all have the ability to influence and be subsequently affected by legislation and corresponding decisions in different ways.

At the national level, the Federal Energy Regulatory Commission (hereafter FERC), an independent agency housed under the U.S. Department of Energy (DOE), is the body tasked with regulating interstate transfer of electricity, natural gas, and oil ("What FERC Does" 2016). The Commerce Clause grants the federal government wide leeway in regulating any transactions involving money flowing over state boundaries. Because FERC is in charge of granting permits for natural gas pipelines that span multiple state boundaries, it is the one principally charged with approving such controversial and newsworthy projects as the Keystone XL pipeline.

Below FERC are the main regional players, which in Rhode Island's case is a medley of actors operating on a New England-wide field. ISO New England is one of nine independent, quasi-governmental, not-for-profit organizations across North America authorized by FERC to operate the regional grid, run the wholesale electricity markets, and analyze the electricity needs of the region (ISO New England 2017a). Though ISO New England has since been named a Regional Transmission Organization (RTO), ISOs and RTOs are similar in their duties, namely to operate the regional grid and manage the wholesale energy market. Also operating on a regional level is the Regional Greenhouse Gas Initiative (hereafter RGGI). RGGI is the nation's first carbon cap-and-trade regime. Participating states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont) voluntarily agreed in 2012 to a mandatory market-based approach to limiting and reducing their emissions which has proven to be enormously effective ("Regional Greenhouse Gas Initiative" 2017).

Finally there is the New England Electricity Market Participants, also known as the New England Power Pool (hereafter NEPOOL). NEPOOL is a non-governmental association of regional market members that deals with the sale of wholesale electricity (ISO New England 2017b). From there, each of the New England states takes over with its own organizing, rule-making, and rate-setting.

One notable specific of Rhode Island law is its mixed rule. In a "Dillon's rule" system, municipal governments are creatures of the state, whereas in a "home rule" system, localities can govern themselves. Rhode Island has a mixed system that combines the two approaches, giving municipal governments a certain amount of leeway, but not free reign. This has important

ramifications for the possible siting of a natural gas power plant in Burrillville because despite the town's opposition, it is in fact the State in this case that holds the power to overrule the municipality and site the plant there.

Another such example of a power not enumerated to the federal government (Article 1 Section 8 of the U.S. Constitution) and thus reserved to the states (Tenth Amendment), is the power to uphold the Public Trust Doctrine. Article I, Sections 16 and 17 of the Rhode Island Constitution assigns the State General Assembly the authority and responsibility to protect common natural resources such as "fishery rights" and "shore privileges" (R.I. Constitution Article 1 Section 17). Considering that many of the Ocean State's prized natural resources, such as its coastlines, are severely threatened by climate change, the state has a fiduciary responsibility to reduce emissions under its role as trustee of the state's natural resources. As a creature of the General Assembly, the PUC carries this responsibility as well.

In Rhode Island, decisions regarding energy projects and their prices are primarily centered on the EFSB as well as the PUC and Division of Public Utilities and Carriers. The EFSB is endowed with its powers by R.I.G.L. §42-98-1. Three members sit on the EFSB: the Chairman of the PUC (who then also becomes the chairperson of the Siting Board), the Director of the Department of Environmental Management, and the Associate Director of Administration for Planning ("Energy Facility Siting Board" 2017). The EFSB is the agency responsible for giving permits and licenses for new or altered "major energy facilit[ies]," anywhere in the state ("Energy Facility Siting Board" 2017).

The EFSB works in partnership with the PUC, which includes both the three-person Commission itself and the separate but closely related Division, chiefly managed by the Administrator of the Division, Macky McCleary. The Division is a permanent party to all Commission proceedings, and is charged by its statutory documents to enforce all Commission directives. The two both have the authority to write orders that carry the force of law. The PUC is a third party federalist, quasi-governmental agency that can levy taxes or fees, and has some amount of legislative, executive, and judicial power.

The PUC must enforce Rhode Island General Law (§ 39-1-27.6) and hold investigations and public hearings concerning rates, tariffs, tolls, and charges. Though PUC hearings (which are more formal than meetings and occur prior to decisions) are open to the public to listen in, the public is not invited to comment during hearings.

Past Actions to Address Environmental Externalities

In this section, we will review the mechanisms of past actions taken by the State of Rhode Island to address the environmental externalities of energy production to better understand the current.

Although the enabling act of the RIPUC prioritizes affordability and reliability, the PUC appears to have authority to incorporate environmental externalities into its rate-making decisions. Given the jurisdiction outlined in Title 39 of the RI General Laws, the PUC, as a quasi-governmental agency created by the General Assembly, has the authority to implement programs to modify energy rates to meet renewable energy standards through mechanisms such as decoupling, net metering, and distributed generation. It is imperative that the PUC exercises its power to meet these standards to protect public health, safety, and welfare as outlined in § 39-26-1. Pursuant to this section, the PUC must determine the adequacy of renewable energy projects to meet energy demands and shall file an annual report to the Governor, the Speaker of the House, and the President of the Senate on the status of the implementation of renewable energy standards in Rhode Island and other RGGI participating states (R.I.G.L. § 39-26-6). Additionally, the PUC must review and approve smart-metering and smart-grid demonstration projects proposed by electric and gas distribution companies in order to evaluate their effects on energy consumption and rates.

Decoupling

Decoupling is a policy by which a company's economic profits are detached from the number of watts sold by that company, thus reducing the incentive for utilities to encourage energy use. According to § 39-1-27.7.1, electricity and gas revenues obtained by an electric or gas distribution company included as a public utility that serves over 100,000 customers shall be entirely decoupled from sales in order to reduce societal, meteorological, and economic risks for its customers, increase investment in end-use energy efficiency, and incentivize energy efficiency programs (§ 39-1-27.7.1). Moreover, the PUC can implement performance-based incentives to encourage utility companies to provide a shared-savings mechanism in which the company receives a percentage of savings and the remainder is redistributed to customers. This section also requires the PUC to review and approve performance-based, energy-savings targets established by the RI Energy Efficiency and Resources Management Council, a part of the State Energy Office, on a yearly basis (R.I.G.L. § 39-1-27.7.1).

The *Decoupling Act* was passed by the Rhode Island General Assembly and signed into law by former Governor Donald Carcieri in 2010. The Act requires that the revenues of Narragansett Electric Company, doing business as National Grid, are fully decoupled from sales in order to eliminate the disincentive for electric utilities to engage in energy efficiency. Additionally, the Act requires National Grid, as well as other gas and electric distribution companies, to file revenue and rate reports with the PUC.

Net Metering

In 2011, the General Assembly passed a Net Metering bill to facilitate the implementation of distributed renewable energy sources and reduce the state's carbon emissions (§ 39-26.4-1). Net metering allows utilities and small distributed generation producers to track their energy production and send excess energy back to the utility for use by the company. This undermines the traditional revenue model in which utility companies profit from maximizing sales of energy, as creating a two-way stream of energy and a tracking mechanism causes the utility to purchase and sell less commodity. Ultimately, net metering both benefits the ratepayer by allowing customers to save money at times of peak load while also reducing the necessity for the utilities to use the most expensive, and highest carbon-emitting, generators by lessening demand for new energy generation.

Distributed Generation Standards Contracts

In 2011, former Governor Lincoln Chafee signed into law the *Distributed Generation Standard Contracts Act* (R.I.G.L. § 39-26.2). Similar to net metering, distributed generation encourages the production of renewable energy from small-scale producers. In addition to establishing a standard, fair price for renewable energy, the Act created the Distributed Generation Standard Contract Board. This Board, which is tasked with making recommendations to the PUC regarding ceiling prices and annual contracting targets, providing publicly accountable statements by representatives of groups impacted by, involved in, and knowledgeable about the development of eligible distributed generation projects, and monitoring the effectiveness of the program regarding purchase of the renewable energy output of distributed generation projects, is composed of seven voting members appointed by the Governor with the consent of the Senate. Each of these members represents different interests and parties including energy regulation and law, large commercial/industrial users, small commercial/industrial users, residential users, low income users, environmental issues pertaining to energy, and construction of renewable generation. Additionally, there are three non-voting members comprised of representatives from an electric distribution company, the Office of Energy Resources (hereafter OER), and the Commerce Corporation (R.I.G.L. § 39-26-7).

Other Market Mechanisms

Section 39-26-7 of the Rhode Island Statutes defines the authority of the PUC to assess the cost of renewable energy certificates to obligated entities that benefit from the certificate, versus the renewable energy standard. Additionally, this statute explains the formation and management of the Renewable Energy Development Fund, a fund housed within the Rhode Island Commerce Corporation in coordination with the OER and the Rhode Island Infrastructure Bank for the purpose of increasing the supply of regional energy certificates for businesses that comply with the state renewable energy standard requirements (R.I.G.L. § 39-26-7).

Carbon pricing is another example of a proposed innovative, rate-setting mechanism that could be implemented through the General Assembly and overseen by the PUC, as proposed by the Energize Rhode Island Act. This policy would establish a fee for each generating unit according to an agreed upon per megawatt hour carbon price and would be added to the prices generators bid into the wholesale electricity market. Any carbon pricing schemes that crossed state lines, such as one implemented throughout the RGGI states, would be subject to review by FERC (Gundlach and Webb 2017).

Regional Cooperation

As stated above, RGGI, a cooperative effort among Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to cap and reduce carbon dioxide emissions from the power sector, is the first mandatory market-based program in the country implemented to reduce greenhouse gas emissions. According to the Rhode Island Energy Resources Act (R.I.G.L. § 42-140-9), the Commissioner of the OER has the authority to adopt, amend, and implement policies relating to the maintenance of RGGI (R.I.G.L. § 42-140-9). Currently, the PUC interacts with RGGI only in terms of assessing utility companies' compliance with the regional emissions and efficiency standards with regards to allocating certificates or credits and setting rates based on compliance.

On a broader scale, the RGGI states have committed to coordinate their energy infrastructure and procurement projects, in conjunction with ISO New England and NEPOOL, according to a 2014 letter signed by each respective governor (New England Governors 2013). In the letter, the governors affirm that "New England ratepayers can benefit if the states collaborate to advance our common goals." With regards to environmental goals, the governors also affirm that investing in local renewable energy sources will support local job growth and environmental gains. Furthermore, "The New England States further believe that these investments must be advanced in a coordinated approach in order to maximize ratepayer savings and system integrity." Going forward, this collaboration will be essential to the states' harmonization upward in terms of energy procurement, as opposed to interstate competition over local power plant siting.

Recommendations and Alternate Solutions

In this section, we discuss the practicality and effectiveness of *potential* ways to better address decarbonizing the New England economy before concluding with recommendations for future actions.

As evidenced by this report, there are many issues within the Rhode Island energy regulatory system, primarily finding the balance between internalizing negative effects of emissions and keeping costs low for residents of Rhode Island. In this section, we discuss ways in which the PUC could act within its current charter to better balance these issues. We also discuss possible legislative changes to the PUC enabling act, and more general solutions to governance issues that would address these

concerns on a larger level, using the CREC as an example for how these solutions can be applied to current events.

Role of the Legislature

R.I.G.L. § 39-1-1 states that “preservation of the state’s resources, commerce, and industry requires the assurance of [...] an abundance of energy, all supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment (and) the conservation of natural resources” (R.I.G.L. § 39-1-1). Under the Plain Meaning Rule and the Chevron Doctrine, these provisions illuminate the potential for the PUC to evaluate short-term and long-term environmental factors when setting rates and when making decisions about permitting new facilities. The PUC can interpret the responsibility it has been given to internalize environmental externalities as long as it is not done in a way that is “arbitrary or capricious.” During a phone interview, Karl Rabago insisted that the PUC employ “value-based rates,” rates that accurately reflect social and environmental costs, so that externalities be properly accounted for.

With regards to the PUC’s role in advising the EFSB whether or not to pursue permitting the CREC, the proceedings from the decision on Deepwater Wind can serve as a useful model. Initially, the PUC opposed the development of the offshore wind facility due to analyses that showed that the plant would not be commercially reasonable (i.e. it would provide electricity higher than standard market prices) nor provide direct economic benefits to Rhode Island. Dissatisfied with the PUC’s findings, in June 2010, both chambers of the General Assembly passed amendments to R.I.G.L § 39-26.1-7 and the amendment was signed into law by the governor. The newly adopted laws changed dates and deadlines for the assessments and negotiations, amended pricing terms, and modified the definition of “commercially reasonable” for purposes of the PUC’s review. Due to the clarifying nature of the 2010 amendments, the PUC decided to advance the project proposal and, ultimately, supported the development of the Block Island Wind Farm. As evidenced by this precedent, it is clear that the legislature has the authority to play a more active role in PUC decisions.

Energy Demand

In its advisory opinion regarding the CREC, reliable energy supply to meet increasing demand in Rhode Island was one of the main points made by the PUC. However, accounting for the PUC’s responsibility to protect public health, safety, and welfare, it seems relevant that the PUC should act to reduce energy demand. The urgent energy demand often discussed in reports arguing for the CREC frequently cites the peak demand during the summer, which can be high enough to require high emission fossil fuels to be burned. Thus, reducing energy demand is key in protecting possibly unnecessary investments in infrastructure such as the CREC. Strategies for reducing energy demand can take a few different forms. Market actions such as rebates or taxes are one option. These rebates or tax credits can be given to those who use the least amount of energy on peak days. Furthermore, there are other market based incentives which reduce demand such as free energy at non-peak hours. This model has proven to work well elsewhere in the country. Other non-market ways to reduce demand include such simple solutions as LED light bulb trade-ins. This type of program would specifically target and aid low-income populations, the very population the PUC makes a point of protecting when deciding energy rates and investments.

Public Participation

In accordance with the *Administrative Procedure Act*, the public shall play a critical role in the decision-making of agencies. For example, with regards to RGGI § 23-82-6 of the RI Statutes

mandates that the overseeing agency, the OER, convenes a public hearing and accept public comment on the annual report (R.I.G.L. § 23-82-6). With regards to the PUC specifically, there is great opportunity to strengthen public participation. One such special review commission with public influence is the aforementioned Distributed Generation Standards Contract Board, which advises the PUC on distributed generation and net metering. For interstate issues, these advisory committees, task forces, boards, and commissions are governed by the Federal Advisory Committee Act and therefore must hold open public meetings, announce all meetings in the Federal Register, and maintain all minutes, summaries, and committee documents for public inspection. Moreover, in terms of formal rulemaking, pursuant to the *Administrative Procedure Act*, “any person suffering legal wrong because of an agency action, or adversely affected or aggrieved by agency action” has the right of judicial review and may file a suit against the agency (“Summary of the Administrative Procedure Act” 2017). Finally, with regards to public participation via initiatives and referenda, Rhode Island law does not permit the direct initiative and referendum process; therefore, all ballot measures must be referred by the legislature.

With regards to rulemaking, public participation is key but often overlooked. The public is a major stakeholder in energy issues, as exemplified by the CREC case, but their concerns are not always heard or legally taken into account. For instance, the EFSB meetings for the CREC are not open to public testimony. Most recently, a secret meeting was held in which only lawyers were allowed to attend, which set the next dates for hearings. The public and reporters were banned from the room on the grounds of confidentiality (a potential violation of open meetings law), but it was later reported that nothing confidential was said in the room (Ahlquist 2017). Moreover, actions by town councils such as that of Burrillville adopting the Resolution Opposing the Siting of the Clear River Energy Center in Burrillville, RI on September 22, 2006, are mainly symbolic. While this is more of a Dillon Rule issue, it speaks to a larger issue of not incorporating all stakeholders, mainly those representing the public concerns. There are many ways the public can participate in rulemaking, such as informal rulemaking, including public hearings, negotiated rulemaking, initiatives and/or referenda, education and public opinion surveys, citizen review panels and/or special commissions, and formal rulemaking. It is important to empower the public with these strategies for engaging them in rulemaking so they can express their concerns and work with agencies such as the PUC.

Conclusion

As we have discussed in this report, Rhode Island, not to mention the entire region, country, and world, is at an energy crossroads. How do we effectively transition from aging fossil fuel infrastructure to new renewable technologies without sacrificing reliability and affordability? The PUC clearly has an important role to play in that process; however, this report makes clear that due to the complicated governance issues, the statutory obligations of the PUC, and the energy supply issues, the PUC cannot solve this issue alone.

The first action that the government of Rhode Island, both through the Governor’s Office and the General Assembly, must take is to maximize energy conservation and efficiency in the state. The state has not fully established programs to implore its citizens to conserve energy beyond simple awareness and tips. The state could implement low cost actions, such as improved mass communication, far more easily than other politically difficult legislative and regulatory solutions. The necessity of the CREC, among other infrastructure projects, is often predicated on the idea of meeting peak demand, which is often only necessary a few times per year. Strong energy reduction communications by relevant government agencies, supplemented by non-governmental organizations, on these select peak days should be explored further as a potential mechanism to limiting the number of days reaching peak demand, and reducing demand more broadly, prior to

immediately jumping to regulation and market-based solutions.

As examined above, the PUC's charter states that it must consider the environment as well as the provision of reliable and affordable energy in its actions ranging from energy rate decisions to advisory opinions. Although the PUC has a statutory obligation to consider environmental factors, its governing statute (R.I.G.L § 39-1) still tends to prioritize short term affordability and reliability concerns over sustainability. We suggest that the General Assembly amend past legislation and/or pass new legislation to clarify the authority of the PUC. The language in the legislation must be more explicit so that the PUC will adequately account for the effects of greenhouse gas emissions on the environment as well as on the public health, safety, and welfare of Rhode Island citizens. Under the Plain Meaning Rule and the Chevron Doctrine, the Commissioners have wide discretion to consider as many factors in the statute as they wish. As a result, legislative prescriptions to consider environmental factors will only be effective if they are clear and strong enough to ensure that the Attorney General's office, private firms, and non-governmental organizations such as the Conservation Law Foundation can pursue the PUC for noncompliance if necessary. For example, the legislature should amend the PUC's governing charter to prohibit the advisory approval of any infrastructure that threatens the State's ability to meet the statutory emissions goals in the *Resilient Rhode Island Act*. Governor Gina Raimondo should leverage her authority as Chief Executive of the State to encourage the legislature to enact such legislation.

In addition to clarifying the PUC's jurisdiction by amending its charter, the legislature should increase the ability and role of public participation in the PUC's decision and rulemaking processes. In its current form, the legislative charter guiding the PUC's rulemaking process does not recognize the public as a stakeholder, despite the severe impacts that Rhode Island citizens will suffer in a warming climate. In general PUC proceedings, citizens may attend public hearings and file comments before the PUC's rules and regulations are filed with the Rhode Island Secretary of State, but these objections are not incorporated as evidence in the proceeding nor does the submission of an objection allow for the filer to be a party to the proceedings. The General Assembly must find ways to amend Title 39 to require the Commission to consider public opinion through negotiated rulemaking and/or by establishing citizen review panels to capture stakeholder views.

Although the PUC plays an important role in directing the state's transition to renewable energy, and can continue to influence emissions reductions through implementing value-based rates, we cannot rely on the PUC, a commission governed by three appointees, alone. Rather, this transition requires a coordinated action among the public sector, private sector, and the public. For example, one such effort currently in negotiation is PUC Docket 4600, "Investigation Into the Changing Electric Distribution System," which aims to develop a report to influence the PUC's review of National Grid's rate structure to best comply with the rates outlined in the Renewable Energy Growth Program. This report also strives to strengthen collaboration and consistency among and across various state agencies, including the PUC, to better evaluate the economic, social, and environmental costs and benefits of existing and proposed energy projects.

As stated above, none of these solutions in isolation is a silver bullet. Given the complicated scope of climate change, an appropriate response will require the government, private sector, and perhaps most importantly, the public to work in unison. Negative environmental externalities can no longer be discounted and ignored in our policy making. Rhode Island has a long and storied history of progressive action on behalf of the environment. It is time for us to seriously consider environmental factors and work proactively to protect present and future generations.

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