

**RHODE ISLAND BAR ASSOCIATION**

**ANNUAL MEETING**

**RECENT DEVELOPMENTS IN  
ENVIRONMENTAL, LAND USE  
AND ENERGY LAW**

**JUNE 21, 2018**

## SPEAKERS

**Jennifer Cervenka** is a member of **Cervenka Green Ducharme Antonelli LLC**. Jenn's practice focuses on environmental compliance, evaluation of environmental liabilities and risk management, permitting and development, land use disputes, contested governmental enforcement actions, cleanup of contaminated properties, and private party litigation.

Since 2010, Jenn has been a speaker at the RI Bar Association's Annual Meeting on environmental and land use topics. She is the current chair of the Coastal Resources Management Council and a prior Chair of the RI Bar Association's Environmental and Energy Law Committee and a former member of the East Greenwich Planning Board.

**Christopher A. D'Ovidio** is the principal of **D'Ovidio Law**. His practice focuses on land use, zoning, environmental, municipal affairs, property law, general practice and civil litigation. He currently serves as legal counsel for the Pawtuxet River Authority and previously served as assistant solicitor for the Town of New Shoreham, attorney for the Conservation Law Foundation and as an environmental scientist and engineering technician for the Rhode Island Department of Environmental Management. Christopher teaches land use law at Roger Williams University School of Law.

Since 2010, Christopher has been a speaker at the RI Bar Association's Annual Meeting on environmental and land use topics. He is a prior Chair of the RI Bar Association's Environmental and Energy Law Committee.

**Marisa Desautel** is the principal of **Desautel Law**, which is a Rhode Island Women Owned Business. Her firm specializes in environmental and energy law, land use zoning and permitting, and litigation in these areas. Currently, Desautel Law is legal counsel to the Rhode Island Energy Efficiency Resource Management Council and has offices in Providence and Newport. Prior to opening her law practice, Marisa was an environmental scientist and consultant in Rhode Island and Massachusetts, and Senior Legal Counsel to the Rhode Island Department of Environmental Management.

Marisa has a JD from Roger Williams University School of Law and an MMA from the University of Rhode Island and has been a speaker at the RI Bar Association's Annual Meeting on environmental and land use topics since 2010.

**Seth Handy** is the principal of **Handy Law, LLC**, counseling clients on energy, real estate, business, environmental and dispute resolution matters. He is energy counsel to many developers of distributed energy resources (efficiency, demand response, renewables) and represents them on policy concerns, including Docket 4600 (better valuation of energy inputs), Docket 4568 (proposed access fee), the power sector transformation initiative, interconnection policy, the implementation of RI's energy programs, and its legislative agenda. He has worked with many municipalities on energy projects, implementation of performance contracting municipal streetlight reform, including the passage and implementation of RI's Municipal Streetlights Investment Act. Seth served by appointment as Commissioner of the Narragansett Bay Commission. He is a founding member of the Rhode Island Bar Association's Environmental and Energy Law Committee, past President of the Pawtucket Armory Association and The Gamm Theatre, Trustee of the Conservation Law Foundation, and board member of the Providence Preservation Society, Providence's Capital Center Commission and the Institute for the Study and Practice of Nonviolence.

# PRESENTATIONS

1. COASTAL RESOURCES MANAGEMENT COUNCIL:  
SHORELINE CHANGE SPECIAL AREA MANAGEMENT PLAN  
JENNIFER CERVENKA, ESQ.
  
2. ENVIRONMENTAL, LAND USE & ENERGY CASE LAW UPDATES  
CHRISTOPHER A. D'OIDIO, ESQ.
  
3. PFAS IN DRINKING WATER:  
NEW REGULATORY CONSIDERATIONS AND WHAT  
PRACTITIONERS SHOULD KNOW  
MARISA DESAUTEL, ESQ.
  
4. UPDATES ON ENERGY POLICY IN RHODE ISLAND  
SETH HANDY, ESQ.

# COASTAL RESOURCES MANAGEMENT COUNCIL: SHORELINE CHANGE SPECIAL AREA MANAGEMENT PLAN

Presented by Jennifer Cervenka, Esq.

The CRMC, with assistance from the University of Rhode Island's Coastal Resources Center and other stakeholders, has developed a guidance document known as the Shoreline Change Special Area Management Plan or "Beach SAMP". The objective of the Beach SAMP is to assist state and local decisionmakers and applicants to the agency analyze, plan for, and mitigate coastal hazards or risks associated with sea level rise, storm surge and erosion. The guidance document, consisting of seven chapters, will inform future amendments to the Coastal Resources Management Program (the "Red Book"). On February 20, 2018 and June 13, 2018, the Council adopted the Beach SAMP and, therefore, it is now in effect.

The following provides a brief outline of the new SAMP:

## Chapter 1 (Introduction)

This chapter presents the vision and purpose of the Beach SAMP, which is to guide: 1) state and local decisionmakers in preparing for and adapting to changing coastal storms, erosion, and sea level rise; and 2) applicants seeking coastal permits from CRMC.

The study area for this SAMP consists of Rhode Island's 21 coastal communities and the planning boundary is the extent and reach of 7 feet of sea level rise with a 100-year return period storm event.

## Chapter 2 (Trends and Status: Current and Future Impacts of Coastal Hazards in Rhode Island)

This chapter presents the scientific bases underlying the SAMP and the projections regarding storm surge, coastal erosion and sea level rise. Specifically, the SAMP looks at historic sea level rise in Rhode Island, which is slightly higher than the global average, as well as predicted future sea level rise. Based upon projections from National Oceanic and Atmospheric Administration ("NOAA"), Rhode Island could experience up to 9.6 feet of sea level rise by 2100. The Beach SAMP policy is based upon NOAA's high curve at the 83% confidence interval, and is considered a "worst-case" scenario to guide long-term risk and adaptation planning.

The chapter also discusses research on the increasing intensity and frequency of storms and precipitation.

As a result of these trends, the SAMP identifies increased coastal hazards from flooding, storm surge, coastal erosion, and rising groundwater.

## Chapter 3 (Assessing Coastal Hazard Risk)

This chapter organizes the assessment of coastal hazard risks into five stages. Stage 1 is to identify sources of risk and scenarios for planning purposes. The scenarios consist of present

day (100-year storm at 0 sea level rise), mid-century (100 year storm at 3 feet of sea level rise) and long-range coastal risk planning and management (100 year storm at 7 feet of sea level rise). Stage 2 is to then assess the risk for a particular location using various tools already existing and developed as part of the SAMP. Stage 3 is to choose the measures of adaptation in order to manage the identified risk for a particular location. Finally, Stage 4 and 5 are the implementation and monitoring and evaluation of the implemented adaptation measures.

The chapter goes on to describe tools available to the decisionmaker in assessing and understanding the risk. The main tool developed as part of the SAMP is STORMTOOLS, which is an online mapping tool that shows storm surge and sea level rise scenarios for the entire Rhode Island coastline. To assess the specific risks to structures, infrastructure, and public safety within particular municipalities, CRMC has developed the Coastal Environmental Risk Index (“CERI”). CERI can be used to predict storm surge and wave height, combined with shoreline change maps showing erosion, and damage functions to construct a risk index to structures. It has been tested on two pilot communities, Charlestown and Warwick. The next phase is focusing on the municipalities of Barrington, Bristol, and Warren.

#### Chapter 4 (Rhode Island’s Exposure to Coastal Hazards)

This chapter provides an overview of what is known to date about Rhode Island’s exposure to coastal hazards associated with climate change and the vulnerabilities to its people, property, infrastructure, and natural environment. For residential structures, South Kingstown and Westerly as the most exposed communities under sea level rise scenarios for 3, 5, and 7 feet. Warwick and Barrington are the top two most exposed communities to a present day 100-year storm surge, as well as 100-year storm surge when combined with the 3, 5, and 7-foot sea level rise scenarios. Almost 20% of the commercial structures in Rhode Island’s coastal communities are exposed to combined effects of sea level rise and storm surge under the long-range planning scenario.

#### Chapter 5 (CRMC Coastal Hazard Application Guidance)

This chapters provides a five-step process for applicants to address coastal hazards for particular projects in the design and permitting process for the CRMC. Those steps are: 1) selection of a project design life and associated projected sea level rise for the project site; 2) review of specific tools to assess the project’s exposure to coastal hazards; 3) analysis required for large projects and subdivisions; 4) identification of design techniques that would avoid or minimize risk of loss; and 5) submission of permit application, including the findings of the assessment from steps 1-4.

#### Chapter 6 (State and Municipal Considerations)

This chapter outlines how municipalities may use the five-step Hazard Application Guidance and STORMTOOLS as a model to evaluate and process applications at the local level. Suggested strategies include: 1) establishing thresholds for types of development that would be subject to the hazard application process; 2) the holding of advisory pre-application site plan meetings with property owners and developers to share CRMC’s risk assessment tools, to identify design life

for their projects, and consider future flood and erosion scenarios; and 3) incentivizing applicants who voluntarily follow the Hazard Application Guidance process, including decreased application fees or expedited permit review.

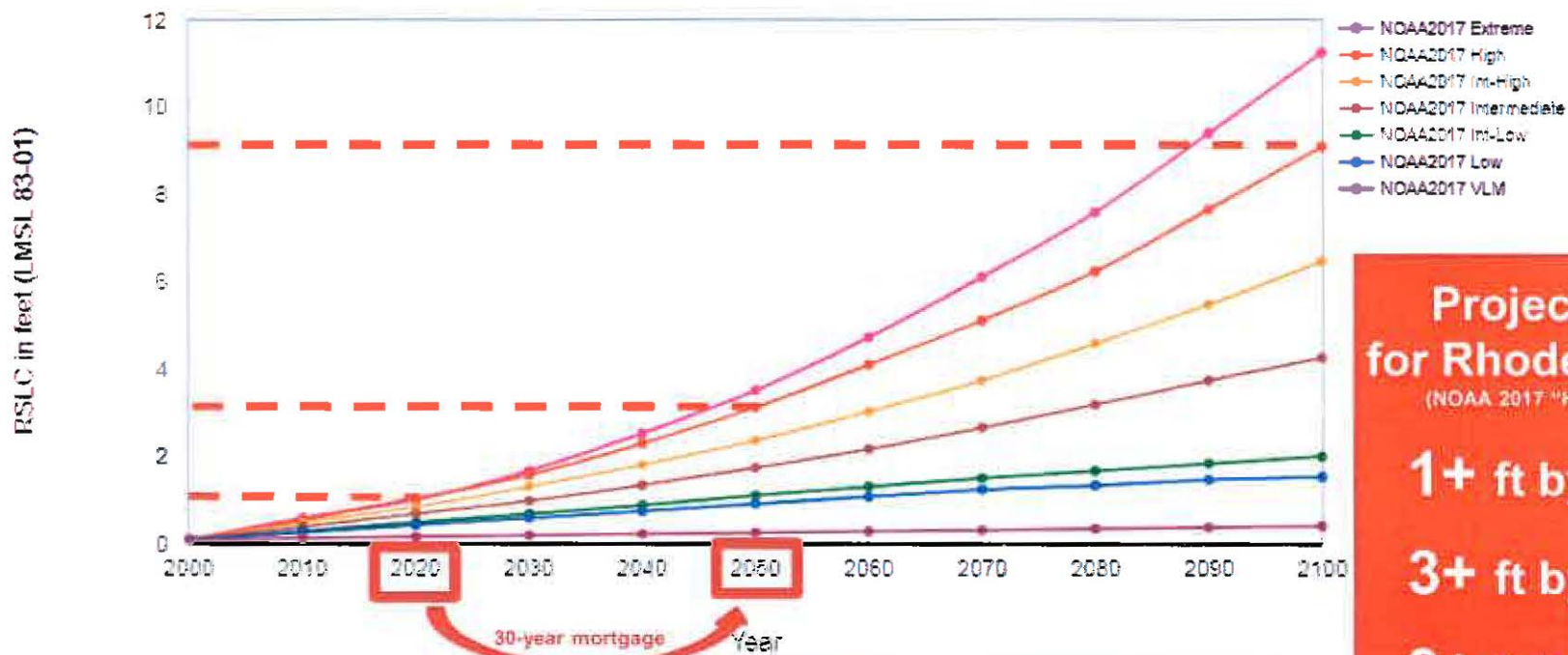
This chapter also encourages the use of the SAMP guidance and tools for state or regional projects.

#### Chapter 7 (Adaptation Strategies and Techniques for Coastal Properties)

This chapter provides an overview of adaptation techniques and strategies that Rhode Island coastal property owners may be able to use to prepare their properties for the effects of storm surge, coastal erosion and sea level rise. Adaptation is categorized as “protection”, “accommodation”, and “retreat”. Coastal protection strategies are divided into “hard” and “soft” measures (a seawall v. a dune). Accommodation strategies involve the modification of a development or infrastructure. And, retreat strategies, as the name suggests, consist of moving or removing development or infrastructure. The chapter provides a comprehensive list and description of adaptation tools and techniques that can be applied to both existing structures or new construction.

# Sea Level Rise is Accelerating

NOAA et al. 2017 Relative Sea Level Change Scenarios for : NEWPORT



**Projections  
for Rhode Island:**  
(NOAA 2017 "High" Curve)

**1+ ft by 2025**

**3+ ft by 2050**

**9+ ft by 2100**

PREP-RI



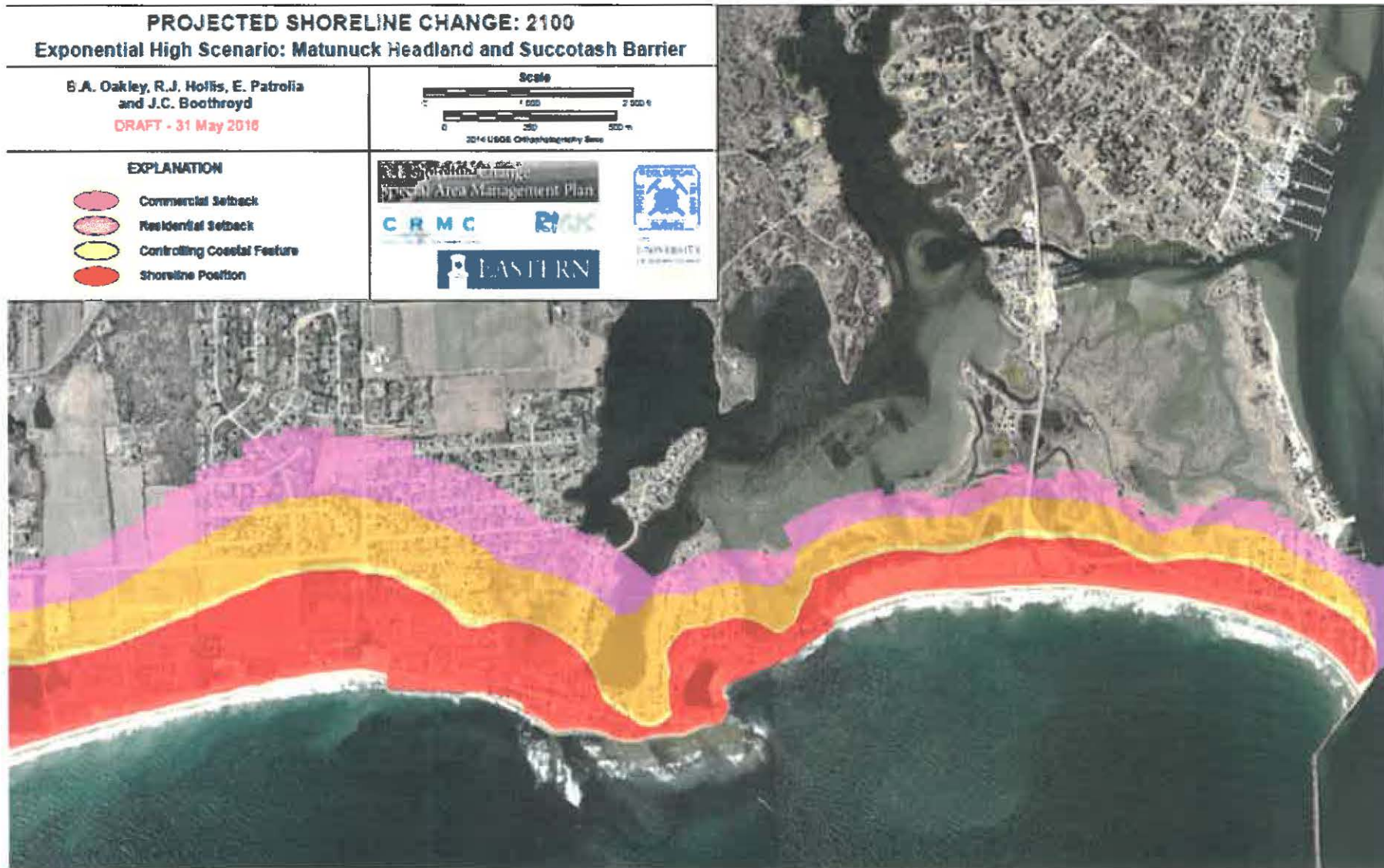
**PROJECTED SHORELINE CHANGE: 2100**  
**Exponential High Scenario: Matunuck Headland and Succotash Barrier**

B.A. Oakley, R.J. Hollis, E. Patroia  
and J.C. Boothroyd  
**DRAFT - 31 May 2016**



**EXPLANATION**

- Commercial Setback
- Residential Setback
- Controlling Coastal Feature
- Shoreline Position







1  
Projected Percent Damage  
100

0  
Projected Sea Level Rise  
5  
7

100  
Year Return  
Period

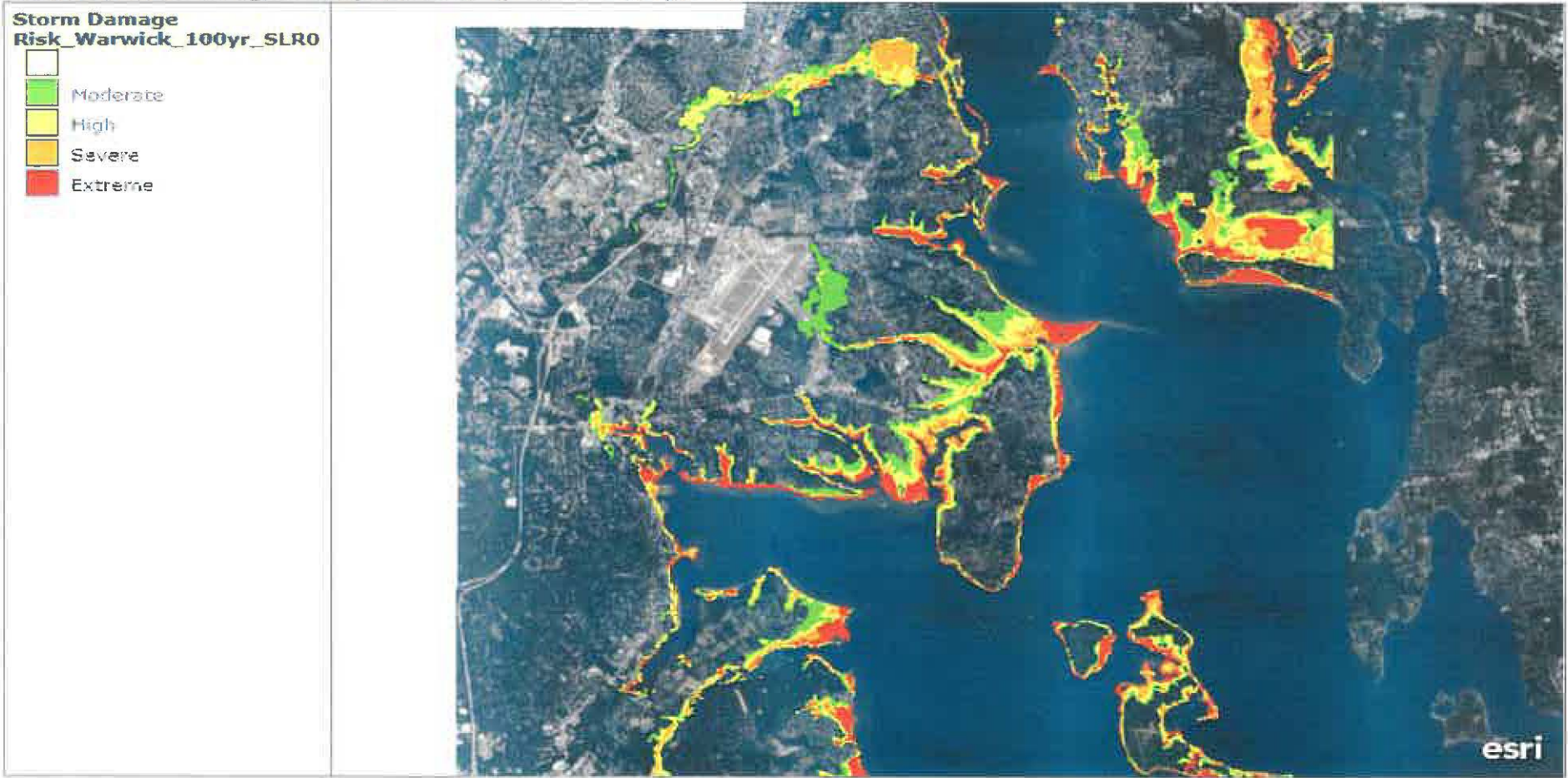
Stempel 2015







### Structural Damage Risk, Warwick, CERI 100yr SLR 0

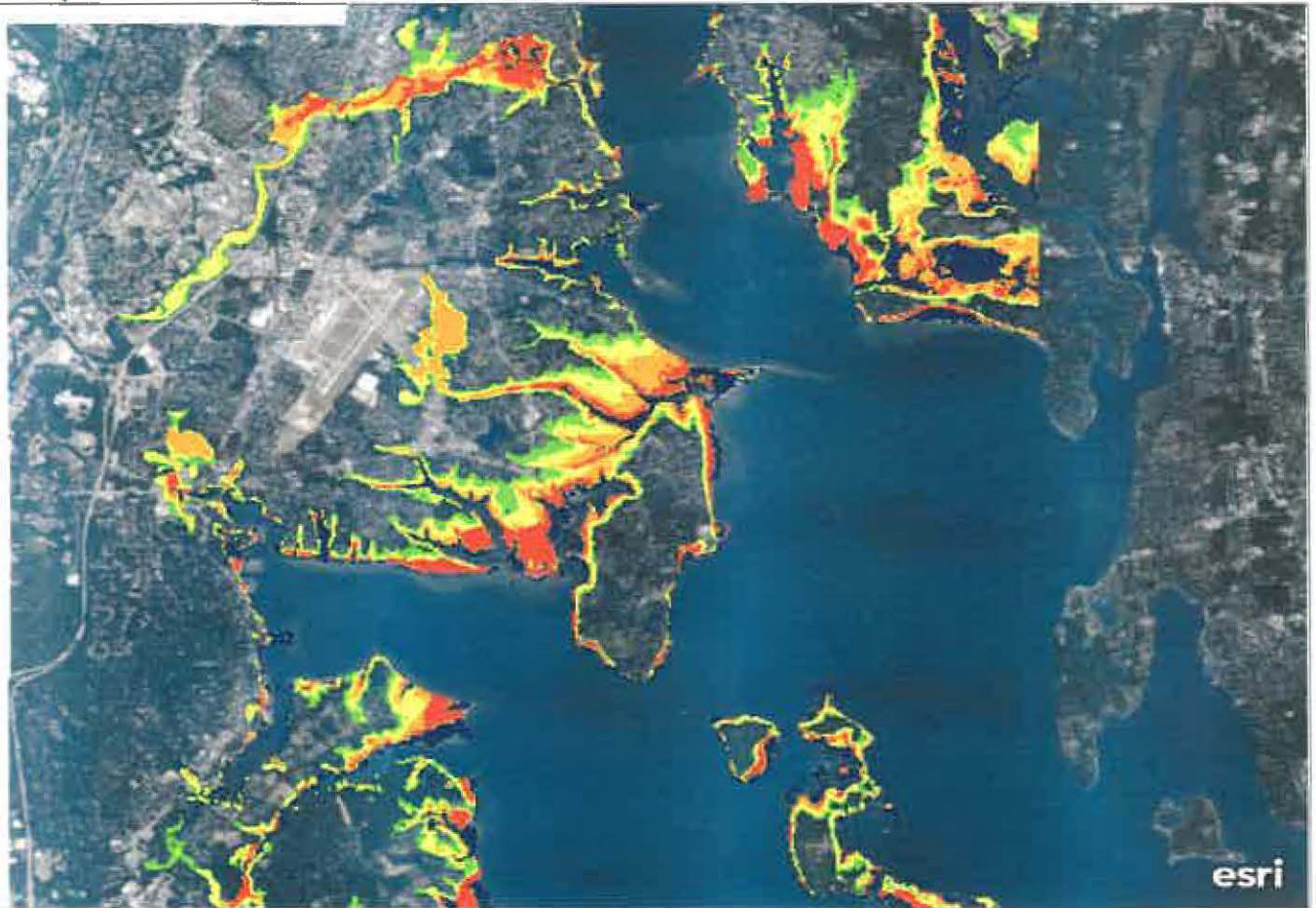


Structural Damage estimates for Warwick, RI

## Structural Damage Risk, Warwick, CERI 100yr SLR7

Structural Damage Risk  
Warwick 100yr SLR 7

-  Inundated by 2100
-  Moderate
-  High
-  Severe
-  Extreme



Structural Damage Estimates, Warwick RI 100yr SLR7

URI EDC, RIGIS | URI OCE, URI EDC, RI CRMC



# CHAPTER 5

## RI CRMC Coastal Hazard Application Guidance

### Overview of Process

The steps presented below provide guidance for applicants to address Coastal Hazards for selected projects in the design and permitting process for the Rhode Island Coastal Resources Management Council (CRMC).





## 7.2 Adaptation Tools and Strategies for Coastal Properties

### 7.2.1 CRMC Guidance on Coastal Property Adaptation Tools and Strategies

1. This section includes brief descriptions of a range of adaptation tools and strategies which property owners and decision-makers may choose to consider for use at individual coastal properties. **It is important to note that adaptation strategies and tools included here are not necessarily limited to those that are currently eligible for permitting by all relevant regulatory agencies, including CRMC. Please refer to the RICRMP for current CRMC regulations.**
2. In general, the CRMC prefers “natural” or “nature-based infrastructure” solutions for adaptation; many such solutions are described below in section 7.2.6. Such solutions are often particularly appropriate at the site level. However, the CRMC recognizes that so-called “grey infrastructure” solutions, such as those described below in section 7.2.7 and section 7.2.8, are appropriate in certain cases, particularly for public infrastructure.
3. Table 1 includes a summary of the coastal property adaptation tools and strategies discussed in this chapter. Each tool and strategy is detailed in the chapter text. Additionally, references are included throughout the chapter and at the end for more information on each adaptation measure.

Table 1. Summary table of coastal property adaptation tools and techniques

Strategy	Existing or New Construction	Protection, Accommodation or Retreat	Site or Structure
Site selection	New	Accommodation or Retreat	Site or structure
Distance inland	Existing or new	Retreat	Site or structure
Elevation	Existing or new	Accommodation	Site or structure
<b><i>Terrain management</i></b>			
Site grading	New	Accommodation	Site
Site layout	New	Accommodation	Site
Drainage	Existing or new	Accommodation	Site or structure
<b><i>Natural or nature-based measures</i></b>			
Coastal bank protection	Existing or new	Protection	Site
Living breakwaters	Existing or new	Protection	Site
Dune restoration	Existing or new	Protection	Site
Beach replenishment	Existing or new	Protection	Site

<b>Coastal wetland or enhancement</b>	Existing or new	Protection	Site
<b><i>Flood barriers</i></b>			
<b>Floodwalls</b>	Existing or new	Protection	Site
<b>Temporary flood barriers</b>	Existing or new	Protection	Site
<b>Floodgates and tide gates</b>	Existing or new	Protection	Site
<b>Berms</b>	Existing or new	Protection	Site
<b><i>Structural shoreline protection measures</i></b>			
<b>Seawalls</b>	Existing or new	Protection	Site
<b>Revetments</b>	Existing or new	Protection	Site
<b>Bulkheads</b>	Existing or new	Protection	Site
<b><i>Wet Floodproofing</i></b>			
<b>Choice of building materials</b>	Existing or new	Accommodation	Structure
<b>Wall openings and vents</b>	Existing or new	Accommodation	Structure
<b>Protect underside of elevated buildings</b>	Existing or new	Accommodation	Structure
<b>Elevation of utilities and living quarters</b>	Existing or new	Accommodation	Structure
<b>Breakaway walls</b>	Existing or new	Accommodation	Structure
<b><i>Dry Floodproofing</i></b>			
<b>Impermeable building materials or sealants</b>	Existing or new	Protection	Structure
<b>Watertight doors or windows</b>	Existing or new	Protection	Structure
<b>Pumps and drains</b>	Existing or new	Protection	Structure
<b>Backflow valves</b>	Existing or new	Protection	Structure
<b><i>Other Retrofitting Techniques</i></b>			
<b>Fortified™</b>	Existing or new	Protection	Structure
<b><i>Relocation or Managed Retreat</i></b>			
<b>Site selection</b>	Existing or new	Retreat	Site or structure
<b>Construct moveable structure</b>	New	Retreat	Structure
<b>Relocate</b>	Existing	Retreat	Site or structure

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2018 ANNUAL MEETING**

**ENVIRONMENTAL, LAND USE AND ENERGY CASE LAW UPDATES**

United States Supreme Court

United States Court of Appeals for the D.C. Circuit

United States Court of Appeals for the Federal Circuit

United States Court of Federal Claims

United States Court of Appeals for the First Circuit

United States District Court for the District of Rhode Island

Supreme Court of Rhode Island

Superior Court of Rhode Island

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## UNITED STATES SUPREME COURT

**Trinity Lutheran Church of Columbia, Inc. v. Comer**, 137 S. Ct. 2012 (2017)

OVERVIEW: Trinity Lutheran Church Child Learning Center operated a preschool and daycare on church property in Missouri. The Center's playground gravel surface needed replacing and the Center applied to the state's Scrap Tire Program for rubber playground surfacing. The application was denied because the Department of Natural Resources' policy precluded grants to religious organizations. After its application was rejected, Trinity Lutheran filed a lawsuit alleging the Department violated the Free Exercise Clause. The Court's analysis was fourfold. 1) Benefits that are generally available to the public cannot be denied based on religion. 2) The policy amounted to a denial of the Center's ability to participate in the Department's program alongside secular organizations. 3) The Department's policy forces the Center to choose between religion and government benefits. 4) The policy did not survive strict scrutiny.

OUTCOME: The Court held that Trinity Lutheran's rights were violated when the Department denied the Center's application to the Scrap Tire Program on the basis of the Center's religious affiliation.

## UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

**Delaware v. Surface Transp. Bd.**, 859 F.3d 16 (D.C. Cir. 2017)

OVERVIEW: Delaware petitioned for review of an order of Surface Transportation Board (STB) that held that state senate bill prohibiting the nonessential idling of locomotives at nighttime was preempted by the Interstate Commerce Act (ICA) and the Interstate Commerce Commission Termination Act (ICCTA).

OUTCOME: The court held the senate bill was preempted by ICCTA because it targeted the railroad industry. Under the ICCTA's preemption of state laws governing rail transportation, states retain certain traditional police powers over public health and safety concerns, such as electrical, plumbing and fire codes, direct environmental regulations, and other generally applicable, non-discriminatory regulations and permit requirements, provided the regulations protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved or rejected without the exercise of discretion on subjective questions. Under ICCTA, states' power to impose rules of general applicability includes authority to issue and enforce regulations whose effect on railroads is incidental, and which address state concerns generally, without targeting the railroad industry.

## **UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

**St. Bernard Par. Gov't v. United States**, 887 F.3d 1354 (Fed. Cir. 2018)

**OVERVIEW:** Saint Bernard Parish and other property owners sued the United States in the Court of Federal Claims alleging a taking under the Tucker Act. The plaintiffs argued that the government was responsible for property damage from flooding because the government failed to “maintain or modify the Mississippi River Gulf Outlet (MRGO) and because the government constructed the MRGO channel. The Claims Court awarded damages to the plaintiffs, having found a taking. The government appealed, and the plaintiffs argued their damages were inadequate.

**OUTCOME:** The Federal Circuit Court of Appeals reversed. It found that there could be no takings liability for the government’s inaction (failure to maintain or modify the MRGO). The court also found that the plaintiffs failed to establish causation under the proper standard. On a takings theory, the government cannot be liable for failure to act, but only for affirmative acts by the government. In order to establish causation, a plaintiff must show that in the ordinary course of events, absent government action, plaintiffs would not have suffered the injury.

## **UNITED STATES COURT OF FEDERAL CLAIMS**

**Sacramento Grazing Ass'n v. United States**, 135 Fed. Cl. 168 (2017)

**OVERVIEW:** In 2004, livestock grazing permittees (SGA) sued United States Forest Service (USFS), asserting 5th Amendment claims arising from USFS’s alleged taking of water rights, ranch, and preference grazing right on federally administered grazing allotment in national forest, and asserting claims for compensation for USFS's de facto cancellation of grazing permit. USFS argued the action was time barred under the Tucker Act, which requires a plaintiff to file a complaint in the United States Court of Federal Claims within six years after a claim “first accrues.”

**OUTCOME:** A claim first accrues when all the events have occurred that fix the alleged liability of the Government and entitle the claimant to institute an action. The six-year statute of limitations period began to run in 1998, when USFS “officially” excluded permittees' cattle from using water inside riparian enclosures within federal grazing allotment, instructed permittees to remove cattle within the enclosures, and warned that failure to do so could result in the suspension or cancellation of the grazing permit. Rather than calculate taking damages, the court directed parties to undertake a renewed effort to ascertain whether alternative water sources can be made available.



## **UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

**Riggs v. Curran**, 863 F.3d 6 (1st Cir. 2017)

**OVERVIEW:** Utility ratepayers brought action against RI Public Utility Commission (PUC) and the utility company, alleging that the commission's order approving a power purchase agreement related to new wind farm violated the Federal Power Act (FPA) and the Public Utility Regulatory Policies Act (PURPA) because the agreement had above-market cost and would result in a significant increase in their electric bills.

The United States District Court for the District of Rhode Island, William E. Smith, Chief Judge, 196 F.Supp.3d 338, dismissed the action. The ratepayers appealed.

**OUTCOME:** The court dismissed the claim because state's three-year limitations period for personal injury actions expired, rather than apply the five-year general federal statute of limitations period. The ratepayers' claims accrued, for limitations purposes, on the date that PUC's order approving the wind farm project became final. Since the order was a discrete, final decision, later decisions by other agencies could not have changed the commission's order.

## **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND**

**Indus. Tower & Wireless, LLC v. Esposito**, No. 17-057-JJM-PAS, 2018 U.S. Dist. LEXIS 11507 (D.R.I. Jan. 22, 2018)

**OVERVIEW:** ITW applied for a special use permit for a telecommunications tower in Foster, RI. The Foster Zoning Board denied the application. ITW sued the Zoning Board and its members alleging a Federal Telecommunications Act (TCA) violation. ITW alleged that the Zoning Board prevented personal wireless services provisions. ITW sought a court order requiring the Zoning Board to grant the special use permit. Under the TCA, "any decision by a municipality to deny a request to place, construct, or modify personal wireless services facility shall be in writing and be supported by substantial evidence in the written record" and "local zoning authorities 'shall not prohibit or have the effect of prohibiting the provision of personal wireless services.'" To determine whether the Board's decision includes support by substantial evidence, "the court must review the record as a whole." In applying this standard, the court determined that ITW established that the Board's denial was "plainly deficient."

**OUTCOME:** The court ordered the Foster Zoning Board to issue the special use permit to ITW in light of Congress' instruction that "disputes under the TCA must be determined on an expedited basis" and that "injunctive relief, rather than a remand for further proceedings, best fulfills this statutory goal."

## SUPREME COURT OF RHODE ISLAND

**Gerald P. Zarrella Tr. v. Town of Exeter**, 176 A.3d 467 (R.I. 2018) (affirmed Zarrella Tr. v. Town of Exeter, No. WC-15-0218, 2016 R.I. Super. LEXIS 80 (Super. Ct. July 19, 2016))

OVERVIEW: Exeter and Zarrella entered into a consent agreement in 2011 prohibiting Zarrella from using or renting his property for weddings or commercial events until the agreement's terms were superseded by statutory amendment. In 2014, RIGL § 2-23-4(a) ("Farm Act") was amended. Zarella applied for a zoning certificate for events, arguing the Act's amendment superseded the agreement with the Town because the definition of farm uses was expanded. The Town refused to issue a preferable Zoning Certificate on the grounds that the Act's amendments were policy statements only.

OUTCOME: The Rhode Island Supreme Court affirmed the trial court judgment. The court determined that the statute did not expand the uses under the Act, but simply included "a list of encouraged uses of farms and farmland, which did not preempt the town's authority to restrict . . . commercial events, including weddings for a fee."

**State ex rel. Town of Tiverton v. Pelletier**, 174 A.3d 713 (R.I. 2017)

OVERVIEW: Defendants were convicted in Superior Court for violating a Tiverton Zoning Ordinance by manufacturing compost on their property in an R-80 zoning district. Farming commercial crops is permitted in the district, but "industrial manufacturing, storing, processing, and fabricating activities" are prohibited. The court distinguished the defendants' composting activities from "the average homeowner" and explained that the average homeowner does not use heavy, industrial machines to deliver waste and then remove compost to off-site locations. The defendants argued that they had not violated the zoning ordinance because they had not "packaged, shipped, and sold" the compost. The court held that the ordinance does not require retail activity and, therefore, the lower court properly applied the law. The court also rejected the argument that defendant's composting activities fell within a permitted accessory use.

OUTCOME: The Rhode Island Supreme Court affirmed the Superior Court's judgment.

## SUPERIOR COURT OF RHODE ISLAND

**Biggs v. Bongiolatti**, No. WC-2016-0382, 2018 R.I. Super. LEXIS 36 (Super. Ct. Apr. 11, 2018)

OVERVIEW: Biggs sought to construct a “widow's walk”, which required a building permit. To obtain a building permit, a zoning certificate was required from the Zoning Officer. Biggs did not apply for a building permit, but applied for a zoning certificate. The Officer denied the zoning certificate due to 2012 conditions contained in a prior permit and variance. The Officer instructed Biggs to apply to the Zoning Board for a variance. Despite the Officer’s instructions, Biggs filed an appeal of his decision denying the zoning certificate to the Zoning Board of Review. The Board upheld the Zoning Officer’s decision.

Biggs appealed the Board’s denial and argued that the Board misapplied the condition from the 2012 decision. The Board argued that Biggs had no right to appeal because she has not been aggrieved pursuant to the RI Zoning Enabling Act, which states: “[Z]oning certificates have no legal effect on the subject property, they cannot ‘injure’ a property owner or piece of property.”

While the parties stipulated that the Town's building department would not act on the building permit application without a valid zoning certificate, there was no evidence in the record that Biggs actually applied for a building permit. This distinction is notable because the Town's refusal to issue a building permit is an appealable event for which a property owner is aggrieved and an appeal can be taken.

OUTCOME: The court held Zoning Board acted in excess of its statutory authority by affirming the Officer’s decision because zoning certificates are not appealable. Furthermore, Biggs was not aggrieved by the Officer or Board's actions, and, therefore, she lacks standing to appeal the Board's decision in the Superior Court.

**Perrywinkle Realty, LLC v. Tikoian**, No. WC-2010-0647, 2018 R.I. Super. LEXIS 15 (Super. Ct. Feb. 14, 2018)

OVERVIEW: The applicant applied for CRMC approval to expand an existing commercial pier. Perrywinkle owns property across the street from the existing pier and filed a timely objection that the pier expansion would interfere with Perrywinkle’s littoral rights. Perrywinkle also filed for declaratory judgment in the Superior Court. CRMC issued a written approval for the pier expansion.

OUTCOME: While CRMC exclusively determines whether to approve wharf or dock construction in tidal waters, it is for the judiciary to determine littoral and riparian rights. The Superior Court determined that it has jurisdiction to determine the threshold question regarding Perrywinkle’s action for declaratory judgment on the littoral boundaries issues.

**Town of Exeter v. State**, Nos. PC 2017-1549, PC 2017-1666, 2017 R.I. Super. LEXIS 164 (Super. Ct. Dec. 15, 2017)

**OVERVIEW:** RIDEM developed plans to build a visitor center in Richmond. The accompanying parking lot and wastewater treatment system extend into Exeter. Exeter argued the building violates its zoning ordinances. Richmond argued building is in an R-3 zoning district, which prohibits the visitor center use. Both Towns sued and moved for preliminary injunctive relief.

The central issue in the case is whether the state must “conform to and comply with municipal zoning and land use ordinances and regulations and the procedures related thereto.” The court rejected Blackstone Park Improvement Ass’n v. State of R.I. Bd. of Standards and Appeals’ test of five factors that should be weighed to decide if the state has immunity from local zoning. The Towns claim that the state must first apply to the local zoning or planning boards for approval before asserting immunity. The court disagreed and refused to require the state “to submit to local administrative review prior to raising the issue of immunity.” The Towns failed to show a likelihood of success on the merits in light of the *Blackstone Park* case and the Comprehensive Planning and Land Use Regulation Act, which lays out the process for municipality objections to proposed state projects.

**OUTCOME:** The Towns failed to satisfy the requirements for preliminary injunctive relief.

**Conservation Law Found., Inc. v. Clear River Energy, LLC**, Nos. PC-2017-1037, PC-2017-1039, 2017 R.I. Super. LEXIS 151 (Super. Ct. Oct. 4, 2017)

**OVERVIEW:** CLF and Burrillville claim Johnston has no legal authority to sell to CREC water initially purchased from the Providence Water Supply Board (PWSB). CREC and Johnston, moved to dismiss Plaintiffs’ Amended Complaints. Defendants aver: 1) that CLF and Burrillville lack standing—a prerequisite to seeking a declaratory judgment, (2) Plaintiffs have not exhausted their administrative remedies with the Energy Facility Siting Board (EFSB) and, (3), EFSB has primary jurisdiction over all issues of licensing and permitting major energy facilities—including CREC’s proposed power plant and, therefore (4) Court is without any role in the EFSB’s decision-making process because decisions of the EFSB are appealable only to the Rhode Island Supreme Court, and (5) Failure to join indispensable parties. The statute at the root of these cases, P.L. 1915, ch. 1278, § 18, provides, in pertinent part, that certain towns, cities, and other entities—including both Johnston and Burrillville— “shall have the right to take and receive water [from the PWSB] for use **for domestic, fire and other ordinary municipal water supply purposes...**” Before determining the merits, the court first considered whether Plaintiffs have standing.

**OUTCOME:** Although the court concluded that Burrillville and CLF had not alleged injuries in-fact for purposes of establishing standing, the court invoked what is known as the “substantial public interest” exception. Here, the court was presented with a question of statutory interpretation affecting the legal authority of towns, cities, and other entities—including Burrillville and Johnston—to use the water they

take and receive from the PWSB. Based on the number of people affected, the court found the public interest is affected in a significant way.

**R.I. Patient Advocacy Coal. Found. (RIPAC) v. Town of Smithfield**, No. PC-2017-2989, 2017 R.I. Super. LEXIS 150 (Super. Ct. Sep. 27, 2017)

**OVERVIEW:** Town adopted a zoning ordinance amendment “to regulate the cultivation and distribution of medical marijuana” that restricts who can grow marijuana as well as where and how it may be grown. The plaintiffs, medical marijuana patient cardholders and RIPAC, sought declaratory judgment and injunctive relief from the Superior Court. Plaintiffs claim Smithfield is preempted by State and Federal laws and the zoning ordinance is beyond the authority of the Town pursuant to the Zoning Enabling Act. Smithfield challenged the Plaintiffs’ standing on the grounds that another remedy exists under the Hawkins-Slater Act.

**OUTCOME:** The court found the plaintiffs had both a private right of action and standing. The court determined that the plaintiffs established the requirements for preliminary injunctive relief based on the plaintiff’s assertions that state law preempts the Town’s ordinance, that the ordinance would invade the plaintiffs’ privacy and hinder their access to healthcare, and that the Town may address concerns by enforcing other laws. Finally, the court determined that issuing a restraining order would maintain the status quo under existing state law.

**Sullivan v. R.I. Dep’t of Env’tl. Mgmt.**, No. PC-2016-2165, 2017 R.I. Super. LEXIS 87 (Super. Ct. May 19, 2017)

**OVERVIEW:** RIDEM denied Sullivan’s application to renew his expired multi-purpose commercial fishing license. Sullivan appealed to RIDEM’s Administrative Adjudication Division (the AAD). The AAD affirmed and sustained the denial. Sullivan timely appealed the AAD decision. RIDEM contends that Sullivan failed to properly serve process because he did not include a copy of the summons with the complaint. Additionally, RIDEM contends that the complaint was served upon the incorrect party—namely, RIDEM’s attorney. Second, RIDEM argues that the AAD Hearing Officer had express authority under AAD Rules of Procedure § 16(k) to conduct the Hearing without a stenographer or a recording.

**OUTCOME:** The court found that RIDEM waived challenges to the court’s jurisdiction on the basis of improper service of process when RIDEM entered a general appearance it submitted itself to this court’s jurisdiction. The court found RIDEM’s failure to record the Hearing was a violation of statutory procedure that substantially impaired the court’s ability to consider the Appellant’s appeal and thus substantially prejudiced his rights. The decision was vacated and remanded for a new hearing consistent with the decision.



# PFAS IN DRINKING WATER: NEW REGULATORY CONSIDERATIONS & WHAT PRACTITIONERS SHOULD KNOW

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## I. What are PFAS?

1. Perfluoroalkyl or Polyfluoroalkyl fluorinated organic chemicals.
2. PFAS do not occur naturally, but are widespread in the environment.
3. PFAS are found in people, wildlife, and fish all over the world.
4. PFAS do not break down easily in the environment.
5. These substances are man-made chemicals that have been used in industry and consumer products worldwide since the 1950s.

## II. What are the Exposure Pathways?

1. PFAS contamination may be in drinking water, food, indoor dust, consumer products, and workplaces.
2. Although some types of PFAS are no longer used, some products may still contain PFAS:

Food packaging materials  
Nonstick cookware  
Stain resistant fabric

Carpets  
Electroplating  
Cosmetics

Water resistant clothing  
Firefighting foam  
Cleaning products

They have also been used to make carpets, clothing, fabrics for furniture, paper packaging for food (Subway!), and other materials that are resistant to water, oil, grease, or stains.

<https://www.atsdr.cdc.gov/pfas/index.html>

## III. What are the Possible Effects?

- Developmental effects in infants and lower birth rates
- Interference with the body's natural hormones
- Increase in cholesterol levels
- Impacts to the immune system
- Increase in cancer risk
- Lowers a woman's chances of getting pregnant

## IV. Regulatory and Programmatic Issues and Risks

### Existing Regulations:

In October of 2017, RIDEM adopted 70 parts per trillion as the groundwater quality standard for PFOA, PFOS or a combination of PFOA and PFOS where the groundwater is classified GAA or GA. This was based on the USEPA's Health Advisory, and was promulgated in an emergency fashion.



Rhode Island Department of Environmental  
Management Determination of a Groundwater Quality  
Standard for:  
Perfluorooctanoic Acid (PFOA) and  
Perfluorooctane Sulfonate (PFOS)

### Existing Rationale:

The establishment of a groundwater quality standard for PFOA and PFOS is justified by:

- Widespread use of these chemicals;
- Potential for these chemicals to be in groundwater;
- The presence of these chemicals in groundwater in other New England states; and
- The detection of these chemicals in groundwater in public water systems in RI.

This new standard has the potential to impact clients through:

- 1) Siting Prohibitions and Setbacks
- 2) Absolute prohibitions in GAA and GA Areas
- 3) Revised setbacks from public and private wells
- 4) Revised Design and Performance Standards
- 5) Construction standards
- 6) Treatment standards
- 7) Discharge standards

Expected impacts to the following programs:

- 1) Underground Storage Tanks
- 2) Onsite Wastewater Treatment Systems
- 3) Groundwater Discharge Rules (non-sanitary waste, including stormwater)
- 4) Solid Waste Disposal
- 5) Wastewater Treatment Facility Sludge Disposal
- 6) Dredge Material Disposal
- 7) Groundwater Remediation
- 8) Water Quality Certification
- 9) Landfill programs

IN FACT, RIDEM is currently accepting comments on amendments to its Hazardous and Solid Waste Regulations.

**Solid Waste Regulations:**

1. Updates to include adding PFAs to Constituents for Detection Monitoring
2. Quarterly monitoring or Semi-annual monitoring?
3. Requirement for testing at Site Remediation and Superfund Sites
4. Not considering adding PFAs as a hazardous waste

**V. Practical Impacts to Your Clients and Cases**

**Recent Examples:**

Car Wash in New Hampton, NH – May 25, 2018  
Rockford Dam, Michigan - April 13, 2018  
Newport Naval Base, Newport, RI – March, 2018  
Cape Fear, North Carolina – June 22, 2017

## ENERGY UPDATES

Good afternoon and thank you for attending this seminar. This portion of the seminar addresses updates on energy policy in Rhode Island.

### RATE CASE & “POWER SECTOR TRANSFORMATION”

1. Context:
    - a. Flat sales & revenue concerns (**Exhibit A**)
    - b. Docket 4563 on proposed access fee;
    - c. Docket 4600 on valuation, best value procurement & time of use rates (**Exhibit B** – Benefit Cost Framework);
    - d. Power Sector Transformation on utility business model, grid modernization & beneficial electrification (**Exhibit C** – Executive Summary)
  2. Issues:
    - a. Return on investment and performance incentive mechanisms
    - b. Grid modernization: paying for advance metering infrastructure; system planning; transparency and information as market power
    - c. market mobilization
  3. Parties & procedural schedule
- 

### SITING RENEWABLE ENERGY

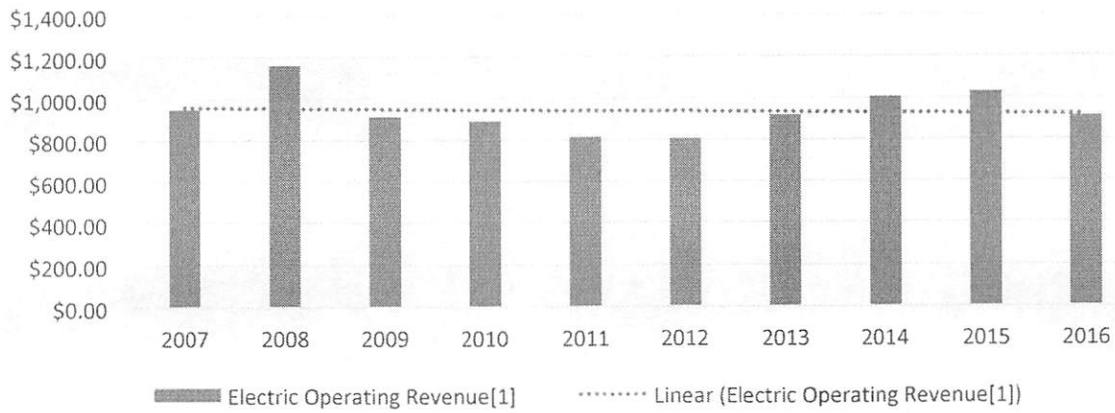
1. Context:
    - a. State Guide Plan elements; prior State processes (attempted siting guidelines; sound study; no mapping)
    - b. transformative initiatives
    - c. success in attracting volume; impact in communities
  2. Stakeholder process (**Exhibit D** – “placeholder legislation”)
  3. Next steps. . .
- 

### INTERCONNECTION TAX CASE

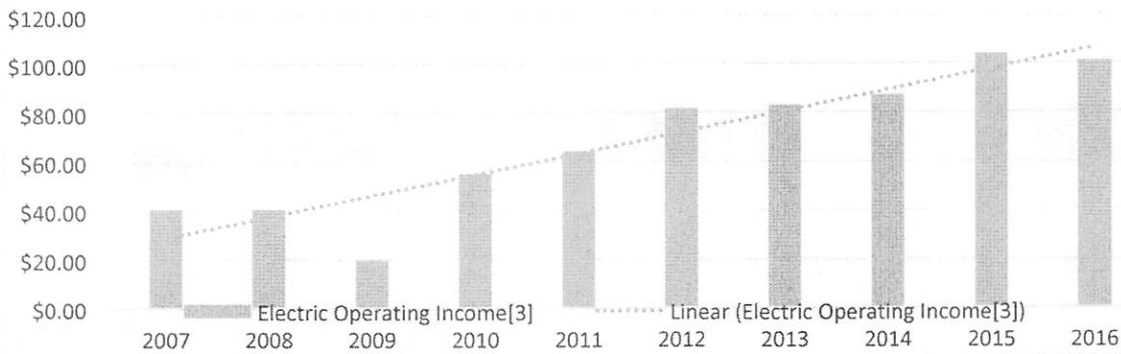
1. Context:
    - a. CIAC rule & charge
    - b. Safeharbor
    - c. Private Letter Ruling Request returned in favor of guidance
    - d. Ambiguity and contest – just & reasonable charge?
  2. PUC decision
  3. RI Supreme Court appeal
-

**Exhibit A**

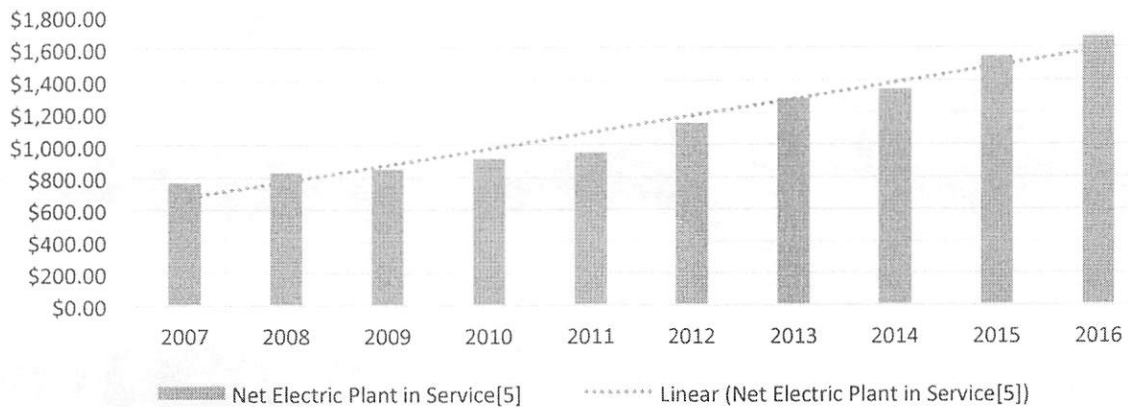
### Electric Operating Revenue



### Electric Operating Income



### Net Electric Plant in Service



**Exhibit B**



## Appendix B: Benefit-Cost Framework

	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
Power System Level	Energy Supply & Transmission Operating Value of Energy Provided or Saved (Time- & Location-specific LMP)	Bids, Offers, Marginal Losses, Constraints, & Scarcity in Time & Location specific LMP (+ Reactive Power requirements & Impacts on Distribution Assets in DLMP)	AESC Seasonal On- & Off-Peak Energy Price Forecasts	
			Expected Time- & Location-specific Bulk Power LMP for forecast period of resource operation	Requires interval or advanced metering functionality & Tracking of ISO Nodal Prices
			Expected Time-, Location-, & Product-specific Distribution LMP for forecast period of resource operation	Requires interval or advanced metering functionality & analysis of actual power flows
	Renewable Energy Credit Cost / Value	Cost of REC Obligation or REC Revenue Received	AESC Forecast of REC prices	
	Retail Supplier Risk Premium	Differential between retail prices and ISO market prices * retail purchases	Absent AMI + dynamic retail pricing, AESC estimate or risk adjusted observed differentials	Quantitative estimation requires detailed economic modeling
	Forward Commitment: Capacity Value	Whether an FCM Qualified Resource &, if so, FCA bid and Provision of Qualified Capacity	Estimate of likely FCA Auction bid capacity from FCM Qualified Resources	Quantitative estimation requires detailed economic modeling
		Change in Demand reflected (~4 yr. later) in a Revision of FCM forecast Capacity Requirements	Review of FCM capacity requirements & estimate of likely future impacts (Same as Capacity DRIPE below)	Quantitative estimation requires detailed economic modeling
	Forward Commitment: Avoided Ancillary Services Value	Whether it is a Qualified Ancillary Service Resource &, if so, Qualified Capacity	Forecasts of AS requirements / Provision of AS net of Energy supplied * Forecast AS prices	
Utility / Third Party Developer Renewable Energy, Efficiency, or DER costs	Direct Cost of New Non-customer Resources (Capital & Operating costs of resources) + Customer Program costs (Participant recruitment, administrative, incentive and EM&V costs)	Cost Estimates		

<b>Power System Level</b>	<b>Mixed Cost-Benefit, Cost, or Benefit Category</b>	<b>System Attribute Benefit/Cost Driver</b>	<b>Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)</b>	<b>Potential Visibility Requirements</b>
	Electric Transmission Capacity Costs / Value	Change in transmission capacity requirements associated in change in resource mix	Annualized statewide transmission capacity value associated with load growth * change in net demand (ICF)	
			Forecast impacts of specific resources on transmission planning requirements	Requires detailed planning studies
	Electric transmission infrastructure costs for Site Specific Resources	Cost to develop new transmission (For peak output + any contingency requirement)	Direct cost estimates for remotely sited resources (e.g. offshore wind)	Requires detailed planning studies
	Net risk benefits to utility system operations (generation, transmission, distribution) from 1) Ability of flexible resources to adapt, and 2) Resource diversity that limits impacts, taking into account that DER need to be studied to determine if they reduce or increase utility system risk based on their locational, resource, and performance diversity	Flexible DERs (storage, flexible demand) can reduce risk by enabling the system to respond to disruptive events	Use proxy value for ability of system to respond to disruptive events	
			Model system with additional flexible resources	Quantitative estimation requires detailed economic modeling
		DERs need to be studied to determine if they reduce or increase utility system risk based on their locational, resource, and performance diversity.	Use proxy values for size and locational and resource diversity.	
		Portfolio analysis with risk assessment technique	Quantitative estimation requires detailed economic modeling	

Power System Level	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
	Option value of individual resources	Impacts of individual resources on the cost of other potential resources	Estimates of impacts of one resource on the costs of others	Quantitative estimation requires detailed economic modeling
			Option value calculation based on scenario analysis of potential future resource choices	Quantitative estimation requires detailed economic modeling
			Portfolio analysis - comparison of alternative portfolios	Quantitative estimation requires detailed economic modeling
	Investment under Uncertainty: Real Options Cost / Value	Impacts of reduced flexibility / discovery of new information	Scenario analysis: calculation of real option value associated with different decision times & resources	Quantitative estimation requires detailed economic modeling
	Energy Demand Reduction Induced Price Effect	Change in Energy price, Net of Any Capacity Cost Change from Net CONE	AESC Estimate of DRIPE (Need to clarify whether accounts for impact on Net CONE)	
Estimate of Energy Price change with an adjustment of impacts on Net CONE in ISO FCM			Quantitative estimation requires detailed economic modeling	

	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
<b>Power System Level</b>	Greenhouse gas compliance costs	Forecast prices under RGGI and other market-based regulations (e.g. Clean Power Plan) + changes other compliance costs under likely environmental regulations Forecast compliance costs associated with meeting the GHG emission targets in the Resilient Rhode Island Act Net marginal emissions or emissions avoided from changes in resource use	Forecasts of RGGI and CPP prices + estimates of likely compliance costs under any other GHG regulation  Estimates of likely compliance costs under RI GHG regulation  Forecast of net emissions impacts from change in regional dispatch and resource mix	Quantitative estimation requires detailed economic modeling  Quantitative estimation requires detailed economic modeling  Quantitative estimation requires detailed economic modeling
	Criteria air pollutant and other environmental compliance costs	Changes in forecast compliance costs under air pollution or other environmental regulations Net marginal emissions or emissions avoided from changes in resource use	Forecasts of the costs of compliance under affected environmental regulations  Forecast of net environmental impacts from change in regional dispatch and resource mix	Quantitative estimation requires detailed economic modeling  Quantitative estimation requires detailed economic modeling
	Innovation and Learning by Doing	Experimentation Costs	Direct costs of innovation / demonstration programs	

		Anticipated rate of cost reduction or performance improvement	Qualitative assessment	
	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
<b>Power System Level</b>	Distribution capacity costs	<p>Change in distribution capacity requirements generally with change in resources</p> <p>Forecasted change peak distribution circuit requirements</p> <p>Location-specific DER hosting capacity</p> <p>Impacts on system performance, thermal and reactive power constraints, and associated investment and operating costs</p>	<p>Annualized statewide distribution capacity value associated with load growth * change in net demand (ICF)</p> <p>Distribution planning studies</p> <p>Analysis of capability to host DER with existing and already-planned facilities</p> <p>Distribution planning studies</p>	<p>Requires detailed planning studies</p> <p>Requires detailed planning studies</p> <p>Requires detailed planning studies</p>
	Distribution delivery costs	<p>Location-specific distribution constraints, losses, equipment cycling, DLMP</p>	<p>Dynamic, multi-layered forecasts as a basis for circuit specific DER and Distribution System Plans</p> <p>Analysis of time-, location-, and product-specific DLMP value, potentially leading toward DLMP markets</p>	<p>Requires interval or advanced metering functionality, modeling, and planning studies</p> <p>Requires interval or advanced metering functionality &amp; analysis of actual power flows</p>

Power System Level	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
	Distribution system safety loss/gain	Changes in risks, real-time information on system conditions, and training	Qualitative Assessment, Tracking and Assessment of Safety Metrics	Distribution system safety loss/gain
	Distribution system performance	Performance metrics include: voltage stability and equalization, conservation voltage reduction, operational flexibility, fault current / arc flash avoidance, and effective asset management	Distribution planning and benchmarking to best practices	Requires advanced metering functionality and / or distribution sensors
	Utility low income	Energy efficiency impacts on reducing utility arrearage carrying costs, uncollectibles, customer service and collection costs Incremental utility costs for low income efficiency programs net of system energy cost savings Expected impacts on customer voltages and power quality	Marginal impacts on arrearages, uncollectibles, and other utility costs  Direct costs net of system general system benefits  Voltage and power quality measurement and assessments	Requires advanced metering functionality and / or distribution sensors

<b>Power System Level</b>	<b>Mixed Cost-Benefit, Cost, or Benefit Category</b>	<b>System Attribute Benefit/Cost Driver</b>	<b>Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)</b>	<b>Potential Visibility Requirements</b>
	Distribution system and customer reliability / resilience impacts	<p>Customer-specific &amp; critical facility outage costs and value of uninterrupted service</p> <p>Expected impacts on the probability of outage</p> <p>Expected impacts on the duration of outages</p> <p>Expected impacts on customer voltages and power quality</p> <p>Costs of distribution improvements &amp; microgrids</p>	<p>US DOE Interruption Cost Estimator</p> <p>Customer value of uninterrupted service studies</p> <p>Distribution system risk assessment studies</p> <p>Distribution system / microgrid resilience studies</p> <p>Voltage and power quality measurement and assessments</p> <p>Distribution planning and costing</p>	<p>Requires customer surveys</p> <p>Requires detailed planning studies</p> <p>Requires detailed planning studies</p> <p>Requires advanced metering functionality and / or distribution sensors</p> <p>Requires detailed planning studies</p>
	Distribution system safety loss/gain	Changes in risks, real-time information on system conditions, and training	Qualitative Assessment, Tracking and Assessment of Safety Metrics	



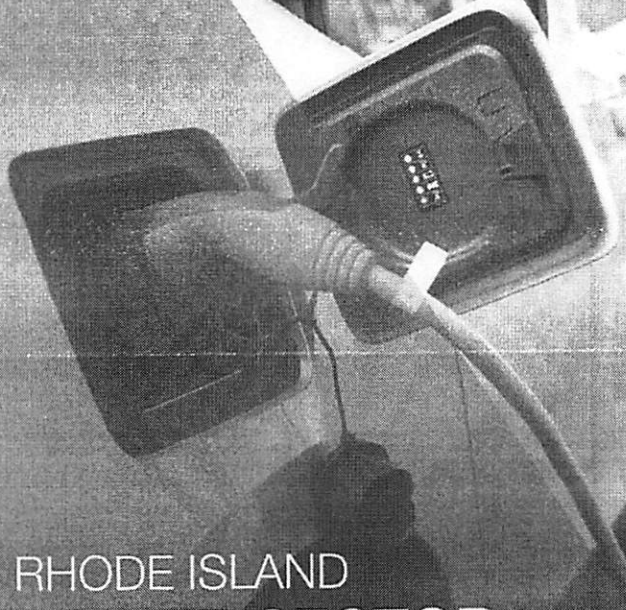
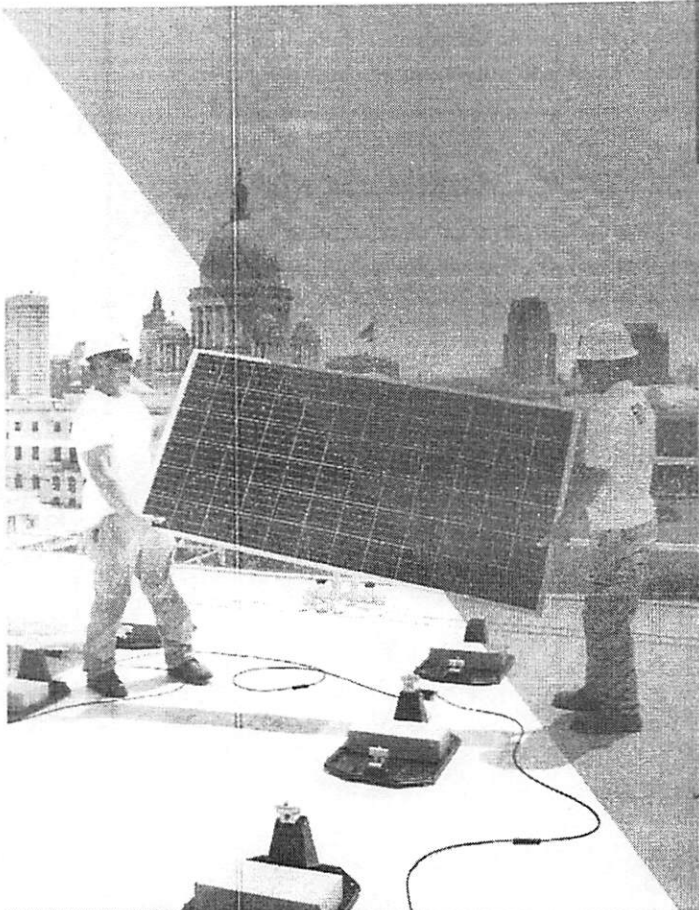
Customer Level	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
	Program participant / prosumer benefits / costs	Direct participant / prosumer cost of technology, investment, and/or program participation costs Participant indirect costs (includes required behavioral changes and inconvenience costs)  Participant non-energy impacts (includes value of improvements in quality of life)	Estimates of net direct costs  Qualitative assessment  Willingness to accept / pay estimates (observation or surveys)  Qualitative value Deemed Benefits Not Reflected in Other Categories - Efficiency Technical Reference Manual Willingness to pay estimates (observation or surveys)	Requires customer surveys
	Participant non-energy costs/benefits: Oil, Gas, Water, Waste Water	Value of Energy and Water Savings / Requirements	AESC Estimate of Avoided Natural Gas, Oil, and Other Fuel Costs  Estimate of Net Costs or Cost Savings	Requires customer surveys

	<b>Mixed Cost-Benefit, Cost, or Benefit Category</b>	<b>System Attribute Benefit/Cost Driver</b>	<b>Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)</b>	<b>Potential Visibility Requirements</b>
<b>Customer Level</b>	<b>Low-Income Participant Benefits</b>	Improved comfort, reduced noise, increased property value, increased property durability, lower maintenance costs, improved health, and reduced tenant complaints.	Begin with values from Rhode Island EE cost-effectiveness analyses.	
				May require interval or advanced metering functionality
	<b>Consumer Empowerment &amp; Choice</b>	Retail Competition, Facilitation of Flexible Demand, Integration of Commodity & Energy Services, Development of Platform Market, & Third Party DER Development	Qualitative Assessment	
	<b>Non-participant (equity) rate and bill impacts</b>	Utility revenue requirements, cost allocation and rate design	Long-term rate and bill analysis Analysis of non-participant usage, price elasticity, and income patterns	May require interval or advanced metering functionality

Societal Level	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
	Greenhouse gas externality costs	GHG Externality Value net of RGGI costs	Customer willingness to pay for reductions in excess of compliance levels (observation or WTP surveys)	Requires customer surveys
		Net marginal emissions or emissions avoided from changes in the use of resources	Forecast of net emissions impacts from change in regional dispatch and resource mix	Quantitative estimation requires detailed economic modeling
	Criteria air pollutant and other environmental externality costs	Criteria Pollutant (e.g. Fine Particulates) and other Environmental Externality Value Net of any Emission Allowance / Emission Credit Value	Customer willingness to pay for reductions in excess of compliance levels (observation or WTP surveys)	Requires customer surveys
		Net marginal emissions or emissions avoided from changes in the use of resources	Forecast of net environmental impacts from change in regional dispatch and resource mix	Quantitative estimation requires detailed economic modeling
	Conservation and community benefits	Land use impacts (net of property costs for resource deployments): Loss of sink, habitat, historical value, sense of place	Value of carbon sink per acre	
			Environmental and historical conservation easement cost	
		Equity in distribution of harmful or nuisance infrastructure	Qualitative assessment MW of infrastructure per acre, \$ of infrastructure per value of property	

Societal Level	Mixed Cost-Benefit, Cost, or Benefit Category	System Attribute Benefit/Cost Driver	Candidate Methodologies (Includes options with increasing specificity where multiple methods per driver)	Potential Visibility Requirements
	Non-energy costs/benefits: Economic Development	Estimate of Impacts on State Product or Employment, Effects of land use change on property tax revenue	Qualitative Assessment	Quantitative estimation requires detailed economic modeling
			Economic modeling (e.g. input / output life-cycle analysis, property tax base studies)	
	Innovation and knowledge spillover (Related to demonstration projects and other RD&D preceding larger scale deployment)	RD&D, Strength of innovation ecosystem, knowledge capture & sharing from public / utility/private sector funded initiatives	Qualitative Assessment	
	Societal Low-Income Impacts	Poverty alleviation, reduced energy burden, reduced involuntary disconnections from service, reductions in the cost of other social services, local economic benefits, etc.	Qualitative assessment or Adder	Quantitative estimation requires detailed economic modeling
			Direct estimate of cost savings Alternate input factor in modeling of local economic impacts	
	Public Health	Indoor air quality, heating, cooling, and noise impacts of efficiency programs (Additional environmental and economic impacts on vulnerable customers addressed elsewhere)	Qualitative Assessment	
National Security and US international influence	Impacts on oil imports	Analysis of oil imports into Rhode Island and the region		

**Exhibit C**



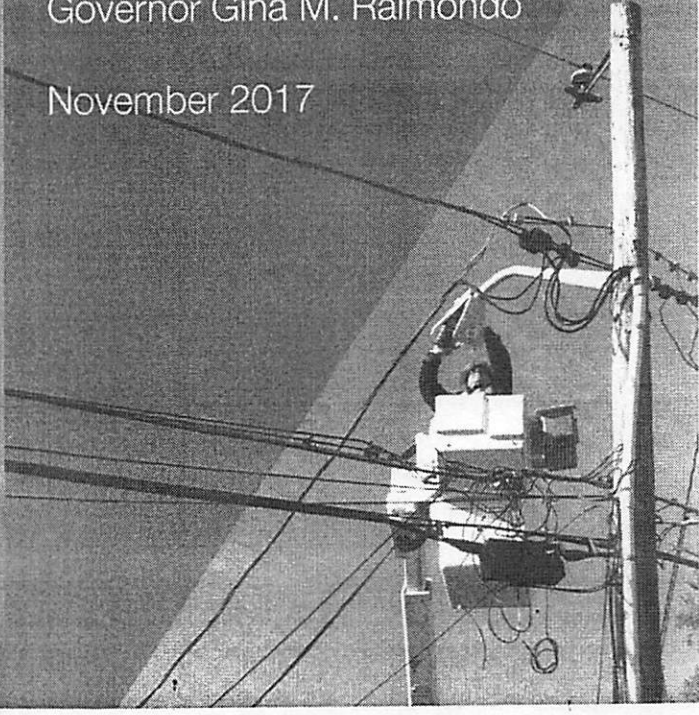
# RHODE ISLAND POWER SECTOR TRANSFORMATION

Phase One Report to  
Governor Gina M. Raimondo

November 2017



*An inter-agency report from the Division of  
Public Utilities & Carriers, Office of Energy  
Resources and Public Utilities Commission*



## Special Note: The Public Utilities Commission's Role in the Power Sector Transformation Process

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From February through September 2017, staff from the Division of Public Utilities and Carriers (Division), Office of Energy Resources (OER), and Public Utilities Commission (Commission) worked together to address topics related to Rhode Island's future electricity system. The inter-agency team collaborated closely and managed the Power Sector Transformation (PST) Initiative with four work-streams: 1) utility business models, 2) grid connectivity and functionality, 3) distribution system planning, and 4) beneficial electrification. The recommendations in this Phase One Report are based on significant stakeholder engagement, staff expertise, and consultation with national experts. The stakeholder engagement process and summary of stakeholder feedback is explained in each chapter. The recommendations in this report build upon the inter-agency working group, but are solely the recommendations of the Division and OER.

The Commission, through its staff, collaborated with the Division and OER on each of the four work streams. The PST process assisted staff in valuable learning opportunities and provided the project team with staff's expertise on existing regulatory processes and issues. Given the Commission's quasi-judicial function, it is important that the Commissioners and their staff avoid even the appearance of having pre-judged an issue. For this reason, Commission staff was careful to avoid discussions of actual implementation pathways and decisions once the exploratory phase of the project ended and shifted toward identifying deployment strategies. In particular, Commission staff avoided substantive PST decision-making to avoid a conflict such that Commission staff could not assist the Commission in its review of any future regulatory filings.<sup>1</sup>

The Commission was the lead agency on the Beneficial Electrification work stream, primarily through staff. The Commission focused its contribution on developing a draft whitepaper to explain what information should be required for review by the Commission in a utility proposal regarding beneficial electrification and what principles the Commission should apply in reviewing such a proposal. Consistent with the Commission's general engagement on PST described above, to avoid the appearance of pre-judging future utility proposals, the Commission refrained from collaborating on specific deployment proposals for beneficial electrification.

The result of the Commission's work was the development of a body of background information, including stakeholder comments, research on other jurisdictions, and general electrification research. The intent was to include the information with the draft whitepaper to support the Division and OER's development of additional implementation and deployment policies. Accordingly, on September 25, 2017, the Commission led a final stakeholder discussion on the Beneficial Electrification work stream and then transferred the draft whitepaper to the Division and OER, thus ending its role as lead agency. At that point, while the Commission also ended its active collaboration on this project with the other agencies, it continued to be in favor of the PST process and provided procedural and administrative support when necessary.

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<sup>1</sup> Commission staff did provide some input on procedural issues, such as what existing regulatory processes might be germane for considering certain PST concepts.



## Executive Summary

The demands on Rhode Island's electric distribution system are rapidly evolving, driven by consumer choice, technological advancement and transformative information. The state's electric utility and regulatory framework were developed in an era in which demand for electricity consistently increased, technology changed incrementally, customers exerted little control over their electricity demand, electricity flowed one-way from the utility to customers, and the risks of climate change were unknown. Today, none of those factors is true: demand for electricity has plateaued; many customers generate their own power; electricity flows to and from customers; technologies are being introduced at rapid pace; and the need to mitigate and adapt to climate change is real. In these new circumstances, the traditional regulatory framework will not continue to serve the public interest. It will continue to push consumer prices upward without a corresponding increase in value for customers. This report presents recommendations to transform the power sector for these new circumstances and help control long term costs for consumers.

Rhode Island now has the opportunity to permanently change how the electric system serves its residents and businesses. As illustrated in Figure 1, the levelized cost of some renewable energy generation has declined dramatically over the last decade. As businesses and residents continue to build renewable energy, Governor Gina M. Raimondo set a goal for the state to procure 1,000 megawatts of new renewable energy generation by 2020, putting Rhode Island on a pathway to clean, reliable and affordable generation.

At the same time, the rapid advancement of information management, communications, power distribution, and consumer products have shown the potential to transform our electrical grid. That potential can be unleashed only by reforming regulatory frameworks that today inhibit the utility from pursuing new technologies and limit the ability of third-party businesses from selling their innovative technologies and services to customers.

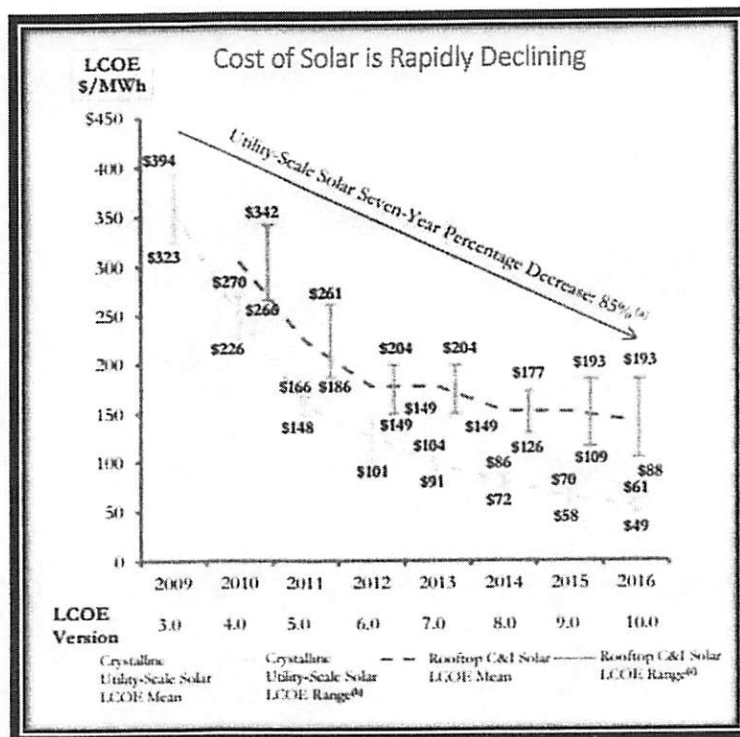


Figure 1: Levelized Cost of Large Scale Solar.  
Source: ACORE, 2017<sup>1</sup>

As illustrated in Figure 2, the cost of electricity will continue to increase if nothing changes. A new regulatory framework will fundamentally change the trajectory of costs both by avoiding system costs and by forcing the utility to find more value from our electric distribution system, creating additional revenue streams.

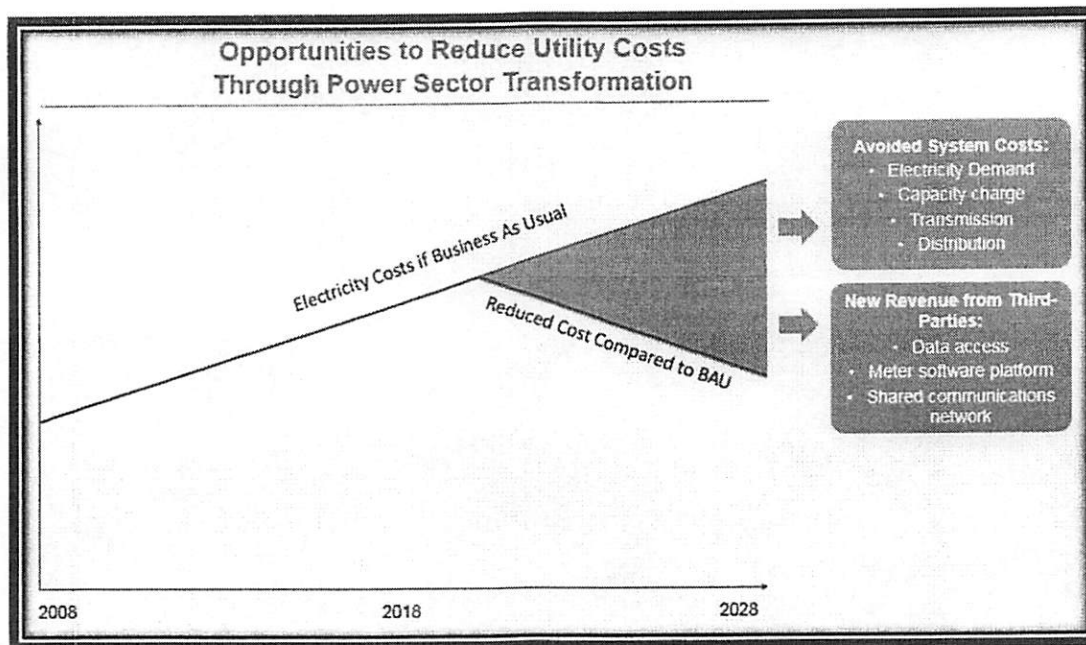


Figure 2: Conceptual Illustration of Cost Saving Opportunities from PST.  
Source: DPUC, 2017

To address the need for change, Governor Raimondo directed the Division of Public Utilities and Carriers (Division), Office of Energy Resources (OER) and Public Utilities Commission (Commission) to collaborate in developing a more dynamic regulatory framework that will enable Rhode Island and its major investor-owned utility to advance a cleaner, more affordable, and reliable energy system for the twenty-first century.<sup>2</sup> The new regulatory framework should seek to achieve the following goals:

### Goals

1. **Control the long-term costs of the electric system.** The regulatory framework should promote a broad range of resources to help right-size the electric system and control costs for Rhode Islanders. Today's electric system is built for peak usage. New technology provides us with more ways to meet peak demand and lower costs.
2. **Give customers more energy choices and information.** The regulatory framework should allow customers to use commercial products and services to reduce energy expenses, increase renewable

<sup>2</sup> Directive from the Governor on March 2, 2017 is included in Appendix I.

energy, and increase resilience in the face of storm outages. Clean energy technologies are becoming more affordable. Our utility rules should allow customers to access solutions to manage their energy production and use.

3. **Build a flexible grid to integrate more clean energy generation.** The regulatory framework should promote the flexibility needed to incorporate more clean energy resources into the electric grid. These resources would help Rhode Island meet the greenhouse gas emission reduction goals specified in the Resilient Rhode Island Act of 2014 and consistent with Governor Raimondo's goal of 1,000 megawatts of clean energy, equal to roughly half of Rhode Island's peak demand, by 2020.

## Levers of Reform

Building on the *Energy 2035 Rhode Island State Energy Plan* and the work of stakeholders in the Commission's Docket 4600, the blueprint for regulatory reform has identified the following levers of reform:

**Pay for Performance.** We recommend shifting the traditional utility business model away from a system that rewards the utility for investment without regard to outcomes towards one that relies more upon performance-based compensation, which relies on a set of regulatory tools to improve the utility's performance based on outcomes aligned with the public interest and ties that performance to financial incentives

**Invest in Intelligence and Connectivity.** We recommend investment in advanced meter functionalities. Advanced meters provide a range of capabilities, including serving as a software platform for third-parties to provide new services, similar to how cell phones allow third-party application development.

**Replace ratepayer funds with new sources of utility revenue.** There is an opportunity for the utility to better realize the value inherent to the existing distribution network by providing new kinds of services and entering in to new kinds of partnerships. The revenue from these new services and partnerships has the potential to lower the amount of revenue needed to be recovered directly from ratepayers to operate the system.

**Leverage the power of information.** Underpinning all of the following recommendations are considerations of access to information and cyber security. Innovation in the electricity sector depends on allowing new market entrants increased access to information from the grid, while ensuring that customer privacy and cyber resiliency considerations are accounted for.

**Increase the reliability and resilience of the electric distribution system.** Investment in grid connectivity and advanced meter functionality will help a utility shorten the time of outages by instantly communicating the scope and location of power outages, predict where a future outage might occur by reporting abnormal grid activity, and allow regulators to better hold utilities accountable by tracking the length of outages.

## Recommended Actions

The above policy goals can be advanced by the following recommendations.

**1.0 Modernize the utility business model through the following actions:**

- 1.1 **Create a multi-year rate plan and budget with a revenue cap to incent cost savings.** The utility should submit a multi-year rate plan with a revenue cap that incepts cost saving and shares those savings with ratepayers. This will better align the utility's financial incentives with economic efficiency and sound investments in capital and non-capital expenditures, and ultimately pass reduced costs on to customers.
- 1.2 **Shift to a pay for performance model by developing performance incentive mechanisms for system efficiency, distributed energy resources, and customer and network support.** The utility's earnings growth will shift away from being based on the amount of capital it invests and towards a reflection of its performance. Incentives will encourage prudent investments in system efficiency, increasing distributed energy resources, network support services, and customer engagement.
- 1.3 **Develop new value-streams from the distribution grid to generate third-party revenue and reduce the burden on ratepayers.** The modernization of the distribution grid will yield opportunities to get more value from the grid. It will involve the creation of at least three valuable platforms, the communications network that supports advanced meters, the advanced meters themselves, and the data portal. These platforms must appropriately be monetized by the utility by charging third parties for access and services, according to the principles established by the Commission.
- 1.4 **Update service quality metrics to address today's priorities, including power outage prevention, cyber-resiliency and customer engagement.** In some areas, such as cyber-security, the utility should demonstrate it meets threshold performance levels consistent with its role in managing critical infrastructure.
- 1.5 **Assess the existing split-treatment of capital and operating expenses.** The Division should convene a collaborative of stakeholders to consider opportunities for a total expenditure approach for future implementation to remove capital bias of the regulatory framework that currently drives cost increases.

**2.0 Build a connected distribution grid through the following actions:**

- 2.1 **Deploy advanced meters.** National Grid should develop an advanced meter roll-out plan that includes: a business case, time-varying rates, an aggressive implementation schedule, and list of planned capabilities that includes the capabilities identified by the Power Sector Transformation process. The plan must include protections for low income ratepayers as well as a platform upgrade model to protect all ratepayers from a growing obsolescence risk. The plan must include a proposal to provide third-party access to the advanced meter platform data to ensure fair market access for grid upgrade opportunities.
- 2.2 **Plan for third-party access and innovation.** National Grid should submit a plan for how advanced meter capabilities can be accessed by third-party providers. The plan should address consumer privacy and cyber resiliency protections.

- 2.3 **Share the cost burden through partnerships.** The utility should share communication infrastructure through partnerships to reduce costs. The utility's proposal must include consideration of shared communications network to supply connectivity to meters and other automated grid components to deliver greater customer value. Leveraging already planned deployment of advanced wireless networks by major carriers should significantly lower the incremental costs to ratepayers of the new infrastructure.
- 2.4 **Focus on capabilities to avoid technological obsolescence.** Rather than address particular technologies, the regulatory process should advance a benefit-cost analysis for advanced meter capabilities using the categories established in Docket 4600 and based on a business case, making the utility responsible for technology selection risk. The utility should conduct an in-depth assessment of benefits and costs for each grid function identified by through this initiative and integrate the results in its business case.
- 2.5 **Proactively manage cyber resilience.** The utility should provide annual cybersecurity briefings to the Commission on threats, responses, and proactive measures. Additionally, each of the advanced grid functionality actions listed above should explain cybersecurity issues and plans to address them.
- 3.0 **Leverage distribution system information to increase system efficiency through the following actions:**
- 3.1 **Synchronize filings related to Distribution System Planning.** The utility should begin filing the Infrastructure, Safety, and Reliability (ISR) Plan and System Reliability Procurement (SRP) Plan as two linked, synchronized, and cross-referenced distribution system planning (DSP) filings each year. Linking these two filings and including key DSP-related content will: (1) provide increased transparency and a codified mechanism for stakeholder and regulatory input into the improvement of DSP analytics and tools over time and (2) enable the Commission and stakeholders to consider investments proposed in the ISR and SRP in a comprehensive and holistic manner.
- 3.2 **Improve forecasting.** The utility should include detailed information on distribution system planning forecasts in annual SRP/ISR filings and implement a stakeholder engagement plan during forecast development.
- 3.3 **Establish customer and third-party data access plans.** The utility should develop a plan for establishing seamless customer and third-party access to data. Implementation of data access plans should enable customers to share their data with third-parties and allow distributed energy resource providers to easily access system data in order to identify where non-wires alternatives opportunities exist to provide value to ratepayers and the system.
- 3.4 **Compensate locational value.** State regulators and policymakers should develop a strategy to compensate the value of distributed energy resources based, in part, on their location on the distribution system.
- 4.0 **Advance electrification that is beneficial to system efficiency and greenhouse gas emission**



reductions, especially through electrification of transportation and space heating, through the following actions:

- 4.1 **Design rates to increase system efficiency.** The utility should design electricity rates to encourage electric vehicle users to charge their cars outside of peak demand time and make their batteries available to the grid in order to maximize system benefits.
- 4.2 **Establish outcome-based metrics.** Beneficial electrification proposals should include tracking of outcome-based metrics that are relevant to consumers and public policy objectives.
- 4.3 **Beneficial heating proposals should be consistent with principles outlined in the Commission White Paper on beneficial electrification.**

## Implementation

Transforming the power sector will not occur overnight. This report provides the starting point for substantial change. As a national leader in clean energy innovation, Rhode Island is no stranger to the complex issues posed by our changing electric distribution system. Over the past years, the state has curated a strong foundation of policy thought on the evolving utility system through the work of the Energy Efficiency and Resource Management Council, the Distributed Generation Board, the Systems Integration Rhode Island Working Group, the Commission's Docket 4600, and National Grid's continuing innovation across its service territory. This report draws on lessons from this collective work and proposes a broad-reaching vision for moving forward in key areas. It proposes concrete, tangible, and no-regrets actions that Rhode Island can take to move toward a more performance-oriented and information-driven utility over the next three to five years.

During the coming year, the recommendations of this report will begin the evolution of the power sector through a variety of regulatory vehicles. In particular, National Grid's distribution rate case filing expected in December 2017 represents a strategic opportunity to modernize the utility business model, deploy advanced meters, enhance distribution system planning, and pursue beneficial electrification. Other regulatory dockets that will be used to implement the recommendations may include, but are not limited to, the Infrastructure Safety and Reliability (ISR) Plan, the System Reliability Procurement (SRP) Plan, and Energy Efficiency Plans. The implementation vehicles will be determined in collaboration with National Grid, stakeholders, and regulators. The precise implementation pathway will depend on future decisions that National Grid, the Commission and stakeholders will each make. There are many available tools for the state's policymakers and regulators to pursue change.

This report calls for a higher degree of stakeholder engagement with key issues related to utility planning, operations, and investment decision-making. Regulators and policymakers will work with National Grid to create the proper forums for stakeholder participation and input into key implementation areas such as data access, distributed energy resource compensation, and distribution forecasting.

The OER and Division look forward to working with stakeholders, regulators, and National Grid to advance Rhode Island's position as a national leader in utility regulatory reform in order to achieve our collective policy goals of controlling long-term system costs, enhancing customer choice, unleashing third-party innovation and integrating more clean energy into our electric grid.



**Exhibit D**

2018 – XXXX

STATE OF RHODE ISLAND  
IN GENERAL ASSEMBLY  
JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT – THE RHODE ISLAND ENERGY  
RESOURCES ACT

Introduced By:  
Date Introduced:  
Referred To:

It is enacted by the General Assembly as follows:

SECTION 1. Title 42 of the General Laws entitled “STATE AFFAIRS AND GOVERNMENT” is hereby amended by adding to Chapter 140 entitled “Rhode Island Energy Resources” the following section:

**§42-140-11. Renewable energy siting.**

(a) – The purpose of this section is to provide for the establishment of renewable energy siting ordinances in all cities and towns in the State of Rhode Island as a means of achieving the renewable energy and greenhouse gas reduction goals of the state, while promoting equity and protecting natural resources.

(b) – Definitions. – For the purposes of this act, renewable energy resources shall include technologies and energy sources as set forth in §39-26-5 of a size no greater than forty megawatts (AC) of nameplate capacity.

(c) – Renewable Energy Siting. – (1) No later than July 1, 2019, all cities and towns in the State of Rhode shall have adopted a local renewable energy siting ordinance or ordinances that meet(s) the guidance and standards as set forth in paragraph (d) below for wind and solar energy production. An extension to this deadline shall be automatically provided due to any delay in establishing said guidance, model ordinances and standards for the siting of renewable energy resources, and the period of the extension shall be at least six months from the date of publication of said guidance, model ordinances and standards.

(2) All municipalities that have adopted or are currently developing renewable energy siting ordinances shall file such renewable energy siting ordinances to the Office of Energy Resources and Division of Statewide Planning for review to verify that such ordinances are

consistent with state renewable energy laws and programs and reflect the guidance for the siting of renewable energy systems as set forth in paragraph (d), and the State Guide Plan. The Office of Energy Resources and Division of Statewide Planning, shall review all such ordinances prior to a public hearing for adoption by a municipality, to confirm that such ordinances are consistent with state renewable energy programs and laws and do not unreasonably deny constituents access to state renewable energy programs. The Office of Energy Resources and Division of Statewide Planning shall notify the municipal official within fifteen (15) business days of receipt of the drafted ordinance(s) and whether their renewable energy siting ordinance(s) are consistent with state renewable energy laws and programs as set forth in paragraph (d) below, and the State Guide Plan.

(d) The Office of Energy Resources and Division of Statewide Planning in consultation with the Department of Environmental Management shall establish an Advisory Working Group to develop guidance, standards, and model ordinances for use by municipalities in order to provide for the development of wind and solar energy as a means to achieve the state renewable energy and greenhouse gas reduction targets and goals and implement the State Guide Plan while promoting equity and protecting natural resources. The objective of the Advisory Working Group is to advise the Office of Energy Resources and Division of Statewide Planning in developing guidance and model ordinances through a consensus based approach. The Advisory Working Group shall expire on June 30, 2019.

The Office of Energy Resources and Division of Statewide Planning in consultation with the Department of Environmental Management shall provide at a minimum one (1) or more staff each to support the Advisory Working Group. The Advisory Working Group shall be composed of the following representatives:

- 1.) One (1) individual representing an organization representing municipal interests;
- 2.) Two (2) individuals representing municipalities from rural areas;
- 3.) Two (2) individuals representing municipalities from coastal areas;
- 4.) Two (2) individuals representing municipalities from urban areas;
- 5.) Two (2) individuals representing municipalities from suburban areas;
- 6.) Two (2) individuals with expertise in state and federal renewable energy laws and programs;
- 7.) Two (2) individuals representing renewable energy development interests;
- 8.) Two (2) individuals representing conservation and environmental interests;
- 9.) One (1) individual representing environmental justice interests;
- 10.) One (1) individual representing a statewide organization of municipal planners;
- 11.) One (1) individual representing a statewide farmers organization;
- 12.) One (1) individual representing a statewide forestry organization; and
13. One (1) individual representing an organization representing a renewable energy advocacy organization

In addition to the meetings of the Advisory Working Group, the Office of Energy Resources and Division of Statewide Planning shall host a minimum of four (4) public meetings in the development of a renewable energy siting guidance and model ordinances. The guidance and model ordinances shall be finalized by January 1, 2019. In developing the guidance and model ordinances, the Office of Energy Resources and Division of Statewide Planning in consultation

with the Department of Environmental Management and Advisory Working Group shall take into account climate change, reducing renewable project development costs, the guidance provided by stakeholders and adopted by the Public Utilities Commission in Docket 4600, and with consideration of the uniqueness of each municipality's conservation areas, open space, farmland, forests, historic districts, natural resources and the role these features play in the both economic development and quality of life, and any other relevant matters.

(e) The Office of Energy Resources and Department of Environmental Management, in coordination with the Advisory Working Group, shall evaluate existing state renewable energy procurement laws and other relevant policies to assess and identify economic and other incentives to enhance the siting of renewable energy on industrial and business zoned land as well as on roof tops, landfills, brownfields, gravel pits and superfund sites. The Office of Energy Resources and Department of Environmental Management, in coordination with the Advisory Working Group, shall also evaluate and develop strategies regarding the impacts and opportunities associated with renewable energy and protection of forest lands. The Office of Energy Resources shall develop policy recommendations by November 30, 2018

(f) Technical Assistance – The Office of Energy Resources and Division of Statewide Planning shall provide technical assistance upon request to any municipality in the development of its pathway to thoughtfully and strategically achieve the state renewable energy and greenhouse gas reduction goals while promoting equity and protecting natural resources. The Office of Energy Resources and Division of Statewide Planning shall provide technical assistance upon request to any municipality in the development of its wind and or solar energy siting ordinance.

SECTION 2. This act shall take effect upon passage.