

Rhode Island's Economic Opportunity to Act on Climate

by
Seth Handy
Winter 2023

My article called The RI Constitution on Economic Stewardship was published here in 2013.¹ It encouraged Rhode Island leaders to seize the opportunity of economic stewardship as embodied in our state constitutional right to use and enjoy Rhode Island's rich natural resources and the responsibility to preserve their values.² Article 1, section 17 grants that Rhode Island citizens:

shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.³

Our Courts have held that Article 1, section 17 is "carried into effect by legislative regulation, such regulation having for its object to secure to the whole people the benefit of the constitutional declaration, and being necessary for that purpose."⁴ Many energy laws were built on the foundational intent of improving environmental quality while enhancing local economy.⁵ Our courts have long understood and applied the need to balance private economic interests against our constitutional rights and economic opportunity to preserve and protect our rich natural resources for public use.⁶ The general assembly's recent Act on Climate takes our opportunity of economic stewardship to a new peak.⁷

The Act on Climate irreversibly commits Rhode Island to plan and execute a future economy that eliminates greenhouse gas causing emissions. It commits us to bring those emissions down to 45

¹ R.I. Bar Journal, Vol. 62, No. 3 at p. 25 (Nov/Dec 2013)(see https://www.ribar.com/UserFiles/Nov-Dec_2013%20Jrnl.pdf).

² *Id.* citing R.I. Const., Art. 1, § 17.

³ *Id.*

⁴ *Id.* citing *Windsor et al. v. Coggeshall*, 169 A. 326, 327 (R.I. 1933) citing *State v. Cozzens*, 2 R. I. 561 (R.I. 1850).

⁵ *Id.* citing R.I. GEN. LAWS §§ 42-140-3(1) (Office of Energy Resources to provide energy resources that enhance economic well-being, social equity, and environmental quality); 39-26-3 (renewable energy standard passed in part to create jobs in the renewable energy sector); 42-140.3-2(2) (renewable energy coordinating board formed to reduce environmental impact of energy use while creating new businesses, jobs and economic growth).

⁶ *Id.* citing *Riley v. RI Dept. of Env. Mngmnt.*, 941 A.2d 198, 206 (R.I. 2008) (no fundamental right to fish without licensing restrictions); *Cherenzia v. Lynch*, 847 A.2d 818, 823-24 (R.I. 2004) (no fundamental right to gather shellfish in particular waters by particular method without restrictions intended to benefit the greater public right).

⁷ R.I. Gen. Laws § 42-6.2-1 et seq.

percent below 1990 levels by 2030, 80 percent below 1990 levels by 2040, and to net-zero emissions by 2050.⁸ It mandates that state agencies must conform their mission, duties, responsibilities, projects and programs to the goals of climate change mitigation, adaptation and resilience.⁹ There is no longer a question of science or resolve; now it is only about how and how quickly Rhode Island will execute. That game changing commitment sends an economic signal that transforms and activates each economic sector of a new Rhode Island economy.

This article focuses on the energy sector. There are three elements to the Act on Climate's mandated reengineering of Rhode Island's energy sector: transportation, thermal energy (heating and cooling), and electricity. I will leave all the economic opportunity to transform our transportation sector (e.g., electrification, mobility, rail, water transport) to another article. Our firm does more work in the thermal and electric sectors.

Long ago our state ceded to our utilities monopoly control of our electric and thermal systems through legislative charters that gave them the exclusive right to design, build and operate those systems in the public interest.¹⁰ Until 1996, the monopoly franchises included not only the operation and management of the systems themselves but also gave the utilities exclusive control over the supply of electricity and thermal energy.

There has long been tension between the private profit motive and the public interest in the efficient and cost-effective management of our electric and gas systems and supply. In 1996, our legislature took control of electrical supply away from Narragansett Electric, resolving that a competitive supply market would reduce costs and help bring us clean, local electricity.¹¹ Even thereafter, the same utility that administers our electric supply options continues to exercise monopoly control over the system designed to move electricity. Rhode Island's "Transforming the Power Sector" report found that our electric utility grows its business and its shareholder earnings by investing in capital projects to move our supply of electricity.¹² "The utility neither benefits nor is penalized from increasing electricity supply costs that customers pay."¹³ While many industries have become more efficient over the last few decades, nearly half of the utility's capital investment in

⁸ R.I. Gen. Laws § 42-6.2-9.

⁹ R.I. Gen. Laws §42-6.2-8.

¹⁰ An Act to Incorporate the Narragansett Electric Lighting Company (May 29, 1884); See 1956 Amendment, S. 400; 1964 Amendment, S. 607; 1976 Amendment, S. 2806; R.I. Gen. Laws §39-1-27.3.

¹¹ R.I. Gen. Laws § 39-1-27.3

¹² *Transforming the Power Sector Phase 1 Report* (Nov. 2017) -

https://ripuc.ri.gov/sites/g/files/xkgbur841/files/utilityinfo/electric/PST-Report_Nov_8.pdf), at pp. 13-16.

¹³ *Id.* at p. 18.

capacity to serve our peak demand for electricity is not utilized most of the time.¹⁴ That is avoidable cost. Now, the Act on Climate requires Rhode Island to prefer our own local sources of clean electricity. It forces our regulated monopoly utility to realize all the benefits (and avoided costs) of local supply. This new commitment drives new economic opportunity for Rhode Island's producers of local, clean power. It also promises to reduce electric rates by driving down the expense of peak electric production and avoiding inefficient investments to move electricity long distances across our electrical system.

On thermal energy, the PUC is overseeing a study of the "future of gas" in docket 22-01-NG.¹⁵ The PUC recognizes that such future must meet the mandates of the Act on Climate. The question is how and how quickly Rhode Island can transition away from natural gas as our dominant heating fuel. Massachusetts is on a parallel and recently published its resolution.¹⁶

The Massachusetts Department of Public Utilities said it will use a new lens to look at gas infrastructure investments moving forward: "In this 'beyond gas' future, we will be exploring and implementing policies that are geared toward minimizing additional investment in pipeline and distribution mains and achieving decarbonization in the residential, commercial, and industrial sectors."¹⁷ The DPU concludes that non-gas pipeline alternatives, including electrification, thermal networked systems, targeted energy efficiency and demand response, and behavior change and market transformation, is needed to minimize over-investment in the gas pipeline system that is likely to become stranded cost as decarbonization measures are implemented.¹⁸ Massachusetts directs its utilities to focus on four new and transformative technologies: (1) networked geothermal (systems using the earth's core temperature); (2) targeted electrification (targeted to replace leaking gas lines); (3) hybrid heating systems; and (4) renewable hydrogen. The MA DPU agreed with the Attorney General that the gas distribution companies "should not be permitted to include in rates any costs associated with marketing geared toward the promotion or expansion of gas service."¹⁹ The resolve to move on to new heating systems drives giant new economies while ensuring that we are no longer

¹⁴ *Id.* at pp. 13-14.

¹⁵ R.I.P.U.C. Docket No. 22-01-NG, *Investigation Into the Future of the Regulated Gas Distribution Business in Rhode Island in Light of the Act on Climate* (6/9/22)(see <https://ripuc.ri.gov/Docket-22-01-NG>).

¹⁶ MA Dept. of Public Utilities, D.P.U. 20-80-B, *Investigation by the Department of Public Utilities on its own Motion into the role of gas local distribution companies as the Commonwealth achieves its target 2050 climate goals* (December 6, 2023), at pp. 1-2.

¹⁷ *Id.* at p. 14.

¹⁸ *Id.* at p. 3.

¹⁹ *Id.* at p. 54.

led to overinvest in tired and dirty business as usual. Similar resolution is likely to flow from Rhode Island's future of gas docket.

Back in 2015, our energy utility (then National Grid) joined the Rhode Island Office of Energy Resources, the Rhode Island Public Utilities Commission, our Division of Public Utilities and Carriers and many other advocates and stakeholders, working with a consultant on the development of our state energy plan, Energy 2035.²⁰ After much research and technical analysis, the plan concluded that:

Rhode Island cannot afford a business-as-usual course of action that increases energy security risks to the state, costs more than viable alternative paths, and fails to meet our obligation to mitigate the worst consequences of global climate change. Because the impact of long term planning and investment choices will reverberate for decades to come, we must be especially prudent and strategic as we address the weighty energy policy decisions that face us today.²¹

Yet, since Energy 2035 became Rhode Island's plan in 2015, the status quo has remained stubbornly intransigent in our energy sector. The Energy Plan's "cost effectiveness" analysis concluded that:

According to the Plan analysis, aggregate capital investments of between \$6.8 billion and \$7.3 billion in the efficiency, electric, thermal, and transportation sectors could generate between \$8.8 billion and \$14.5 billion in power and fuel expenditures in net present value terms over the life of the Energy 2035 planning horizon (Figure 30). Total net present value benefits range from \$1.6 billion to \$7.7 billion, depending on the scenario. This suggests that taking ambitious action to improve Rhode Island's energy security, cost effectiveness, and sustainability of its energy system is a good investment decision and a powerful economic strategy for generating long-term growth.²²

Since 2015, Rhode Island has been poised to unleash a transformative strategy for cost savings and economic development from our energy sector. Now the Act on Climate mandates that we act on that plan.

Of course, not all will see this as economic opportunity. Those reliant on the existing economics of centralized and transmitted/distributed energy production issued a report titled "Disruptive Challenges," in which they warned that the dramatic decline in the cost of solar panels posed an existential threat to their business model, and urged them to act quickly if they wanted "to survive and to protect investors from a 'Kodak moment.'"²³ The "Kodak moment" was not good for

²⁰ Energy 2035, Rhode Island Energy Plan (Oct. 8, 2015)(see <https://planning.ri.gov/sites/g/files/xkgbur826/files/documents/LU/energy/energy15.pdf>) at pp. iv – vii.

²¹ *Id.* at p. 4.

²² *Id.* at p. 47.

²³ Peter Kind, *Disruptive Challenges: Financial Implications and Strategic Responses to a Changing Retail Electric Business*, Edison Electric Institute (2013), <https://www.ourenergypolicy.org/wp-content/uploads/2013/09/disruptivechallenges-1.pdf>, at pp. 6, 16.

Kodak, no matter how beneficial it may have been to photography and society. Our energy monopolies can be expected to drag their (and our) feet until their regulators order change. It is time to acknowledge evolution and account for its impacts if/as appropriate. More importantly, some customers may have difficulty adapting their operations to this energy transformation. These interests are represented in agency deliberations, including the RI PUC's future of gas docket. Some are ahead of this curve, already reaping the benefits of their adaptation in lower energy costs and better energy security. Experts and regulators can and will help plan for those that are lagging, making strategic moves to ease the necessary transition.²⁴ Such concession may include district wide energy planning and temporary reliance on delivered fuels to enable discontinuance of society's investment in maintaining and upgrading the leaks and shortcomings of our gas pipeline system.²⁵

The general assembly has activated Rhode Island's constitutional right to a clean environment. With proper administration we will now enter a new era of environmental and economic stewardship and a transformative, clean economy.

Seth Handy is a Providence attorney.

²⁴ See e.g., supra note 16.

²⁵ *Id.* at p. 55.