

STATE OF RHODE ISLAND  
DIVISION OF PUBLIC UTILITIES AND CARRIERS

Docket No.: D-19-04

THE CITY OF EAST PROVIDENCE

V.

NATIONAL GRID

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID'S  
POST-HEARING BRIEF**

The City of East Providence (“City” or “East Providence”) wants Defendant, The Narragansett Electric Company d/b/a National Grid (“National Grid” or “Defendant”) to treat East Providence differently from every other Rhode Island city, town, and fire district that purchased, or sought to purchase, streetlight assets pursuant to the Municipal Streetlight Investment Act, R.I. Gen. Laws § 39-30-1 *et seq.* (the “Act”). The City is unwilling to: 1) pay the purchase price that National Grid provided to the City; or 2) enter into agreements with National Grid on substantially the same terms as National Grid has entered into with other Rhode Island municipalities purchasing public street and area lighting equipment pursuant to the Act. National Grid complied with the Act. If the City wants to purchase streetlight assets pursuant to the Act, then it must do so on substantially similar terms as any other municipality, including being current on all utility bills concerning those assets at the time of closing.

**I. Relevant Facts**

**a. History of Proposed Streetlight Purchase Activity by East Providence**

On July 29, 2016, East Providence sent a letter to National Grid stating that East Providence had decided to purchase its streetlight system pursuant to the Act. Joint Exhibit 1, Tab 3. East Providence requested the final purchase price and required closing documentation.

*Id.* Less than two weeks later, National Grid provided East Providence with the requested final purchase price and closing documentation. Joint Exhibit 1, Tab 4. National Grid's August 11, 2016 e-mail to East Providence's Department of Public Works Director and City Manager enclosed nine documents:

1. An Excel spreadsheet detailing the purchase price for East Providence;
2. A copy of East Providence's July 29, 2016 letter;
3. An Excel spreadsheet detailing East Providence's streetlight inventory (the "Streetlight Assets");
4. A draft agreement of sale between National Grid and East Providence;
5. A draft attachment agreement between National Grid and East Providence;
6. A fact sheet providing recommendations for customer owned street lighting;
7. A checklist describing potential costs associated with customer owned street lighting;
8. The National Grid equipment standard for customer owned lighting equipment; and
9. An information sheet on pole ownership and the National Joint Use Notification System.

East Providence did not follow through with its proposed purchase of its Streetlight Assets after receiving this information from National Grid. Hrng. Tr. p. 15. In November 2017, at East Providence's request, National Grid provided East Providence with an updated purchase price and closing documentation. Joint Exhibit 1, Tab 5. East Providence still did not act to complete its purchase of the Streetlight Assets. Hrng. Tr. p. 16. In May 2018, at East Providence's request, National Grid provided East Providence with an updated purchase price and closing documentation. Joint Exhibit 1, Tab 6. East Providence still did not purchase the Streetlight Assets. Hrng. Tr. p. 17. In November 2018, at East Providence's request, National Grid provided East Providence with yet another updated purchase price and closing documentation. Joint Exhibit 1, Tab 9. Again, East Providence did not complete the purchase of the Streetlight Assets. Hrng. Tr. p. 17.

It was not until September 18, 2018 – more than two years *after* East Providence sent its Notice of Intent to Purchase – that the East Providence City Council voted to conditionally

approve the purchase of the Streetlight Assets for \$218,000,<sup>1</sup> provided that the City entered into a maintenance contract for the Streetlight Assets. Joint Exhibit 1, Tab 8. During that meeting, the East Providence City Council noted that the maintenance contract would need to come before the Council, meaning that still further approvals were necessary before East Providence had authority to purchase the Streetlight Assets. Joint Exhibit 1, Tab 8. There is no evidence that East Providence ever approved a maintenance contract for the Streetlight Assets.

**b. History of Streetlight Sales Under the Act**

Since the Public Utilities Commission (“PUC”) approved the Street and Area Lighting – Customer Owned Equipment (S-05) tariff (“Rate S-05 Tariff”) in Docket No. 4442, National Grid has treated every municipal entity requesting to purchase streetlight assets equally. Twenty-three different Rhode Island municipal entities have purchased their streetlight assets pursuant to the Act. Hrng. Tr. p. 28. National Grid has employed a uniform process for each of those municipalities to follow to complete the purchases. Hrng. Tr. p. 28. Since 2014, National Grid has provided all municipal entities with substantially the same agreement of sale and substantially the same attachment agreement. Hrng. Tr. p. 30-31. The PUC approved the form of attachment agreement in Order No. 21704 in Docket No. 4442. Joint Exhibit 1, Tab 2, p. 48. East Providence did not appeal that order. Also, since 2014 National Grid has used the same methodology to calculate the streetlight asset purchase price for municipal entities. Hrng. Tr. pp. 32-34. National Grid explained this methodology in the PUC proceedings for Docket No. 4442. National Grid Exhibit 3. The Rhode Island League of Cities and Towns and The Washington County Regional Planning Council recognized that “The Act requires using the original price less depreciation to calculate price, and in its price calculations National Grid does use those

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<sup>1</sup> The purchase price that National Grid provided on May 30, 2018 was \$218,024.40. Joint Exhibit 1, Tab 6.

parameters.” Oct. 31, 2013 Mem. of Law, p. 18, submitted in PUC Docket No. 4442. Since 2014, National Grid has used the same methodology to identify the inventory of streetlight assets that a municipality would purchase under the Act. Hrng. Tr. p. 31, pp. 48-49. As a result, every Rhode Island municipality knew in advance how National Grid would identify their inventories and calculate their purchase price, and National Grid has universally employed these methods since the Rate S-05 Tariff was approved.

## **II. Argument**

The Division of Public Utilities and Carriers (the “Division”) should require East Providence to conform to the same practices as every other municipality in Rhode Island if East Providence decides to purchase the Streetlight Assets in the City. East Providence may seek a better deal than its fellow cities, towns, and fire districts, but neither the Act nor other Rhode Island law permits National Grid to provide East Providence with preferential treatment. East Providence offers no legal or factual basis for its request for preferential treatment such that National Grid should discriminate in favor of East Providence. Indeed, Rhode Island law prohibits National Grid from discriminating – negatively or positively – among similarly situated customers. R.I. Gen. Laws § 39-2-2. As the Rhode Island Supreme Court has stated, this statute prohibits “varying rates for a like and contemporaneous service provided under substantially similar circumstances or rates that confer an undue or unreasonable preference or advantage upon a customer group.” *Energy Council v. PUC*, 773 A.2d 853, 862 (R.I. 2001). That is what East Providence seeks; it asks the Division to require National Grid to convey the Streetlight Assets to the City using 1) a different pricing methodology; 2) a different attachment agreement; 3) different purchase and sale documents; and 4) a different inventory calculation. This request is inconsistent with National Grid’s obligation to operate in a non-discriminatory manner and it

is inconsistent with the Act. In making this extraordinary request, East Providence also asks the Division to invalidate the PUC-approved Rate S-05 Tariff without offering any legal basis for the Division to do so. East Providence makes these arguments even though it failed to make these arguments during the Rate S-05 Tariff proceedings in Docket No. 4442, where the PUC considered many of these issues.

Finally, East Providence, without any justification, stopped paying the full amount of its utility bills with National Grid. The Act does not give the City this right; instead East Providence improperly engaged in this self-help inaction rather than seeking expeditious review of its claims before the Division.

The Division should deny East Providence's petition and issue an order stating that *if* East Providence decides to purchase the Streetlight Assets, then it must do so on the same terms and conditions as every other municipality in Rhode Island, including receiving pricing based on the same methodology, purchasing its entire inventory, and entering into substantially the same attachment agreement and other contract documents as other Rhode Island municipalities, consistent with the Act and the duly authorized Rate S-05 Tariff.

**a. National Grid communicated with East Providence in a timely manner.**

East Providence cannot continue to argue in good faith that National Grid violated the Act by "failing to provide the City with a proper cost estimate." City Pet. ¶13. The parties agree that East Providence sent a letter to National Grid on July 29, 2016 stating that "the City of East Providence has decided to proceed with the purchase of its streetlight system as provided by R.I.G.L. § 39-30-1." Joint Exhibit 1, Tab 3. The parties also agree that National Grid responded to that letter 13 days later, on August 11, 2016. Joint Exhibit 1, Tab 4. National Grid's response included an Excel pricing sheet that described the purchase price for the Streetlight Assets, an

agreement of sale, an attachment agreement, an Excel sheet identifying the City's streetlight inventory, and other informational documents. Joint Exhibit 1, Tab 4. National Grid's communication to East Providence provided it with all information necessary to complete the purchase of the Streetlight Assets. *See* April 9, 2019 Hearing Transcript, p. 13.

National Grid's August 11, 2016 communication to East Providence satisfied any obligation that the Act imposed on it. The Act states in relevant part:

Any city or town receiving street lighting service from an electric distribution company pursuant to an electric rate tariff providing for the use by such municipality of lighting equipment owned by the electric distribution company, at its option, upon sixty (60) days notice to the electric company and to the department, and subject to the provisions of subsections (b) through (e)...

R.I. Gen. Laws § 39-30-3. Thus, East Providence was entitled to purchase the Streetlight Assets from National Grid after providing 60 days' notice. East Providence provided notice and National Grid provided East Providence with the documents necessary to close the transaction.<sup>2</sup> However, East Providence decided not to close and indeed there is no evidence that East Providence even had legal authority to close until the City Council granted *conditional* approval on September 18, 2018 – more than two years after National Grid provided the closing documents. *See* Joint Exhibit 1, Tab 8.

East Providence's assertion that National Grid's communications violated the Act because East Providence disagrees with National Grid's pricing methodology is baseless. The Act does not prescribe any particular communication from National Grid to a municipality. National Grid used the pricing methodology it presented to the PUC in Docket No. 4442 when it sought and received approval of the Rate S-05 Tariff. That methodology is consistent with the

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<sup>2</sup> To be clear, the Act does not explicitly require National Grid to draft contract documents or provide pricing; however, National Grid has done so with respect to every municipality that has requested the information because it has standardized attachment agreements and closing documents to provide, it maintains the inventory of municipalities' assets, and it is able to calculate their net book value.

Act. The time for East Providence to dispute that methodology was in 2013 during PUC Docket No. 4442. National Grid Exhibit 3. East Providence failed to do so.

Moreover, East Providence has not offered a single fact that would show National Grid's methodology for calculating the Streetlight Asset purchase price is improper or unreasonable. To the contrary, National Grid's methodology, uniformly employed with every municipal entity in Rhode Island that has requested a purchase price, is consistent with standard utility accounting practices and Rhode Island law. Hrng. Tr. pp. 32-34. The Act requires East Providence to compensate National Grid for the original cost of the Streetlight Assets, less depreciation and amortization, net of any salvage value. R.I. Gen. Laws § 39-30-3(b). National Grid determined this price each time East Providence requested it by obtaining the "net plant value" of streetlight assets within the physical borders of East Providence, and then allocating the net plant value among assets within the City's inventory and assets in other customers' inventories, such as residential and commercial customers, the federal government, and the State of Rhode Island. National Grid Exhibit 3. This is how National Grid determines the "net book value" of assets to be purchased. *Id.*

Net book value is another way of describing the compensation calculation in the Act. As the D.C. Circuit Court of Appeals explained in a case involving regulation of AT&T and its rate base, "Because the CPE was comprised of literally millions of disparate items, the Commission decided that the only feasible approach was to rely on net book value (defined as original cost less related depreciation reserve) as the proxy for the aggregate economic value of the equipment being removed from the rate base." *AT & T Info. Sys., Inc. v. FCC*, 854 F.2d 1442, 1445 (D.C. Cir. 1988); *see also, Bos. Gas Co. v. Bd. of Assessors of Bos.*, 458 Mass. 715, 718, 941 N.E.2d 595, 601 (Mass. 2011) ("net book value, which has been defined as 'the original cost of the

property at the time it was originally devoted to public use, less accrued depreciation.”); *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 937 N.E.2d 685, 703 (Ill. App. Ct. 2010) (describing relationship between plant value and rate base calculation). This was the proper calculation under the Act, and East Providence has no evidence that any other calculation was proper or would have yielded a different purchase price.

National Grid provided East Providence with a purchase price determined by the net book value of the Streetlight Assets. Hrng. Tr., p. 33. National Grid provided this communication within two weeks of East Providence notice of intent to purchase its Streetlight Assets. To the extent National Grid had any communication obligations under the Act, it fulfilled them.

**b. National Grid’s pricing information to East Providence was consistent with information provided to other municipalities and the PUC.**

East Providence offers no legal basis for the Division to order National Grid to provide it preferential discriminatory treatment over all other municipalities in Rhode Island. National Grid used the same methodology with East Providence that it has with every other municipal entity in Rhode Island to calculate the streetlight asset purchase price. Hrng. Tr. pp. 32-34. National Grid has been completely transparent about that process; in Docket No. 4442, National Grid explained its proposed method of calculating streetlight purchase prices to the PUC. National Grid Exhibit 3. And National Grid has an obligation under Rhode Island law not to discriminate amongst its customers in pricing matters. R.I. Gen. Laws § 39-2-2. The Division should permit National Grid to continue to apply the pricing methodology that it explained to the PUC in Docket No. 4442 and employed with the other twenty-three municipal entities that purchased streetlight assets in Rhode Island.



**c. National Grid's proposed attachment agreement was approved by the PUC.**

The PUC approved National Grid's proposed attachment agreement in Docket No. 4442. Joint Exhibit 1, Tab 2. In its order No. 21704, the PUC stated, "The revised attachment agreement, filed on July 31, 2014, is hereby approved." Joint Exhibit 1, Tab 2. As the PUC recognized in its order "It would make no sense for National Grid to subject cities and towns to harsher standards than it generally imposes on other third party attachment owners" and "persuasive testimony consistently emphasized that cities and towns should be treated the same manner as other third-party attachment owners." Joint Exhibit 1, Tab 2, pp. 42-43. Concerning review of the attachment agreements, the PUC found:

Therefore, it appears that the PUC and Division share discrete jurisdiction over the attachment agreements. More specifically, the PUC reviews and approves them at the outset; the Division resolves any disputes that arise under them. This is consistent with the regulatory structure related to public utilities generally in Rhode Island.

Joint Exhibit 1, Tab 2, pp. 40-41. East Providence did not appeal the PUC order approving the Rate S-05 Tariff and the draft attachment agreement. Thus, the City's claims regarding the attachment agreement fail for at least four reasons. First, the City failed to raise this argument in the appropriate forum – before the PUC in Docket No. 4442. Second, the PUC already approved the attachment agreement. Third, the PUC found that the PUC (not the Division) has jurisdiction to approve the attachment agreement; Division has jurisdiction to resolve disputes that arise under attachment agreements.<sup>3</sup> Fourth, even if East Providence had not waived its argument that the attachment agreement violates the Act, and even if the Division had jurisdiction, East Providence cannot demonstrate that the attachment agreement violates the Act. The Act states:

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<sup>3</sup> Because East Providence has not signed the attachment agreement, no dispute exists under that agreement for the Division to resolve. If the City signed the attachment agreement and made a purchase under the Act, and *then* a dispute arose, then the Division would likely have jurisdiction to address that dispute.

“The municipality is subject to the same terms and conditions that pole owners make to others that attach to the poles.” R.I. Gen. Laws § 39-30-3. This is precisely what the PUC found: It would make no sense for National Grid to subject cities and towns to harsher standards than it generally imposes other third party attachment owners. Joint Exhibit 1, Tab 2, pp. 42-43.

**d. National Grid’s proposed contract documents were consistent with contract documents provided to other municipalities.**

National Grid has presented substantially the same agreement of sale to every municipality that has sought to purchase streetlight assets under the Act. Hrng. Tr. pp. 30-31. Although East Providence contends National Grid’s proposed agreement of sale violates the Act, the City has not identified a single provision of the agreement of sale that creates a violation of the Act or any explanation of how National Grid’s agreement of sale violates the Act. Moreover, during Docket No. 4442, the PUC received and reviewed National Grid’s draft agreement of sale. Joint Exhibit 1, Tab 2, p. 39. The PUC determined that the agreement of sale is not subject to the alternative tariff (S-05) because execution of an agreement of sale is the triggering event that makes a municipal entity *eligible* for the alternative tariff. *Id.* The PUC ultimately declined to approve a draft agreement of sale because the PUC determined that approval would be outside its jurisdiction. *Id.* Critically, neither the PUC, nor any of the interested parties in Docket No. 4442 argued that the draft agreement of sale violates the Act, or identified a specific provision of the draft agreement of sale that would violate the Act.

This draft agreement of sale has worked for the twenty-three Rhode Island cities, towns, and fire districts that purchased their streetlight assets, and it would work for East Providence as well. *See* Hrng. Tr. pp. 30-31.

e. **East Providence must purchase all streetlight assets in its inventory.**

The Act defines what assets East Providence must purchase. It states that a municipal entity may: “after due diligence, including an analysis of the cost impact to the municipality, *acquire all of the public street and area lighting equipment of the electric distribution company in the municipality.*” R.I. Gen. Laws § 39-30-3(a)(3) (emphasis added). In addition, the Act defines “lighting equipment” as:

all equipment used to light streets in the municipality, the operation and maintenance of which is currently charged to the municipality, including lighting ballasts, fixtures, and other equipment necessary for the conversion of electric energy into street lighting service, but excluding the utility poles upon which the lighting equipment is fixed. Lighting equipment shall include, but not be limited to, decorative street and area lighting equipment and solid-state (LED) lighting technologies

R.I. Gen. Laws § 39-30-2. Finally, the Act states that East Providence must compensate National Grid for “active or inactive existing public lighting equipment owned by the electric distribution company and installed in the municipality as of the date the municipality exercises its right of acquisition pursuant to subsection (a).” R.I. Gen. Laws § 39-30-3(b).

East Providence will likely argue that the Act does not require it to purchase streetlight assets located on roads that are owned or maintained by the State of Rhode Island. However, nothing in the Act discusses whether a lighting equipment currently is located on “state roads” or even what “state roads” would mean. If East Providence wants to purchase under the Act, it must purchase “all of the public and area lighting equipment” in the City.

However, this does not mean that East Providence is without options. If there are specific lights in East Providence’s inventory that it does not want to purchase, the Act allows East Providence to request that National Grid remove that lighting equipment and reimburse

National Grid accordingly. R.I. Gen. Laws § 39-30-3(b). This gives East Providence ultimate control over which street lights will be in operation if it purchases the Streetlight Assets.

**f. The Division may not invalidate the Rate S-05 Tariff.**

Rhode Island law vests the PUC (not the Division) with authority to approve tariffs. *See e.g.* R.I. Gen. Laws §§ 39-1-27.3, 39-1-27.8. That is what took place in the tariff that East Providence currently challenges, the Rate S-05 Tariff. East Providence did not appeal the PUC's decision, so it has waived any argument that the Rate S-05 Tariff is invalid. In addition, East Providence does not identify any authority for the Division to review and invalidate a PUC-approved tariff. This argument must fail.

**g. East Providence is not entitled to damages or attorneys' fees.**

East Providence asks the Division to award damages and attorneys' fees without offering any legal basis for the Division to do so. The Act permits the Division to resolve:

Any dispute regarding the terms of the alternative tariff, the compensation to be paid the electric distribution company, or any other matter arising in connection with the exercise of the option provided in subsection (a), including, but not limited to, the terms on which space is to be provided to the municipality in accordance with subsection (c)

R.I. Gen. Laws § 39-30-3. Nothing in the Act states that the Division may award damages, let alone punitive damages, or award a prevailing party its attorneys' fees. Simply, the Act allows the Division to resolve disputes between East Providence and National Grid that pertain to the matters identified in the statute.

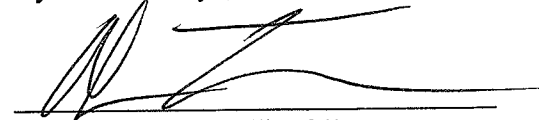
Moreover, East Providence elected not to offer witnesses or introduce exhibits other than the exhibits to the Joint Statement of Facts. East Providence did not offer any facts concerning potential damages. There is no evidence of damages. The Division would have no foundation on which to make a damages award to East Providence.

**III. Conclusion**

For these reasons, National Grid respectfully requests that the Division dismiss East Providence's petition and enter an order requiring the City – if it elects to purchase the Streetlight Assets – to purchase the Streetlight Assets on the same terms and conditions as every other Rhode Island city, town, and fire district that has purchased streetlight assets under the Act.

Respectfully submitted,

The Narragansett Electric Company d/b/a  
National Grid  
By its Attorneys,



Adam M. Ramos (#7591)  
Andrew S. Tugan (#9117)  
Hinckley, Allen & Snyder LLP  
100 Westminster Street, Suite 1500  
Providence, RI 02903  
(401) 274-2000  
(401) 277-9600 (Fax)  
aramos@hinckleyallen.com  
atugan@hinckleyallen.com

Dated: May 24, 2019

Certificate of Service

I hereby certify that any materials accompanying this certificate were electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.

/s/ Andrew S. Tugan  
Andrew S. Tugan

May 24, 2019  
Date

**Docket No. D-19-04 City of East Providence - Streetlighting Petition  
Service List as of 4/1/2019**

<b>Name/Address</b>	<b>E-mail</b>	<b>Phone</b>
<b>City of East Providence</b> Dylan Conley, Esq. Law Office of William J. Conley, Jr. 123 Dyer Street, 2nd Floor Providence, RI 02903	<u>dconley@wjclaw.com;</u>	401-415-9835
	<u>mmarcello@cityofeastprov.com;</u>	
	<u>Mayor@cityofeastprov.com;</u>	
<b>National Grid</b> Adam M. Ramos, Esq. Andrew S. Tugan, Esq. Hinckley, Allen & Snyder LLP 100 Westminster St., Suite 1500 Providence, RI 02903-2319	<u>Aramos@hinckleyallen.com;</u>	401-274-2000
	<u>atugan@hinckleyallen.com;</u>	
Jennifer Hutchinson, Esq. National Grid 280 Melrose St. Providence, RI 02907	<u>Jennifer.Hutchinson@nationalgrid.com</u>	401-784-7415
	;	
	<u>Joanne.scanlon@nationalgrid.com;</u> <u>Celia.obrien@nationalgrid.com;</u>	
<b>Division of Public Utilities &amp; Carriers</b> Christy Hetherington, Esq.	<u>John.bell@dpuc.ri.gov;</u>	401-784-4775
	<u>Joseph.shilling@dpuc.ri.gov;</u>	
	<u>Leo.wold@dpuc.ri.gov;</u>	
	<u>Thomas.kogut@dpuc.ri.gov;</u>	
	<u>Christy.hetherington@dpuc.ri.gov ;</u>	
	<u>dmacrae@riag.ri.gov;</u>	
<b>Original &amp; 4 copies to be filed w/:</b> Luly E. Massaro, Clerk Division of Public Utilities and Carriers 89 Jefferson Blvd. Warwick, RI 02888	<u>Luly.massaro@puc.ri.gov;</u>	401-780-2107
	<u>John.spirito@dpuc.ri.gov;</u>	
Seth Handy, Esq.	<u>seth@handylawllc.com;</u>	
Jeff Broadhead,	<u>jb@wcrpc.org;</u>	