State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400
TDD (401) 453-0410

Patrick C. Lynch, Attorney General

September 22, 2005

Via First Class Mail And Electronically

Luly Massaro
Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Narragansett Electric Company Standard Offer Rate Adjustment Filing – PUC Docket No. 3689

Dear Ms. Massaro:

Enclosed for filing please find an original and nine (9) copies of the Objection Of The Attorney General To Consideration At This Time Of Narragansett Electric Company's New Standard Offer Rate Filing Of September 16, 2005, for filing in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,

William K. Lueker (R.I. Bar # 6334)
Special Assistant Attorney General
Tel. (401) 274-4400 ext. 2299
Fax (401) 222-3016

Encl.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE:	**NARRAGANSETT ELECTRIC COMPANY STANDARD OFFER RATE ADJUSTMENT FILING**	)))	**DOCKET NO. 3689**

OBJECTION OF THE ATTORNEY GENERAL TO CONSIDERATION AT THIS TIME OF NARRAGANSETT ELECTRIC COMPANY'S NEW STANDARD OFFER RATE FILING OF SEPTEMBER 16, 2005

The Attorney General objects to the Public Utilities Commission (the "Commission") considering, or acting upon, the revised rates filed by the Narragansett Electric Company ("Narragansett" or "the Company") in this docket on September 16, 2005, until the notice requirements of Rhode Island General Laws § 39-3-11(a) have been complied with. Specifically, it is the position of the Attorney General that the Company's letter of September 16, 2005, in effect withdrew the original rate filing of July 29, 2005, and replaced it with a new filing including rates that are so substantively different from the original filing as to trigger anew the notice requirements of Rhode Island General Laws § 39-3-11(a), including the 30-day public notice requirement.

The Attorney General has long taken the position that under Rhode Island law, the effect of any change in the "rates, tolls or charges" may not become effective "except after thirty (30) days notice to the Commission and to the public published as provided in § 39-3-10." Rhode Island General Laws § 39-3-11(a). This statutory requirement serves an important public policy – consumers are entitled to sufficient notice to allow them a meaningful opportunity to adjust

their consumption practices or make other arrangements so as to mitigate the cost impacts. This is particularly relevant where deregulation of the electric industry was specifically predicated on the idea that consumers should be allowed to contract directly with the supplier of their choice. While we are sensitive to the fact that holding the Company to the rates listed in its original filing might result in an undercollection until such time as its new filing can be considered, we believe that this is a compliance matter relative to what is required under Rhode Island law.

Further, the Attorney General notes that the Commission requires "each utility requesting approval of a rate change from the Commission to comply with the following procedures:

"(1) File the proposed rate change with the Commission no less than thirty (30) days prior to the proposed effective date.

"(2) Publish a notice of the proposed rate change in a newspaper of general circulation to the impacted region no later than two weeks prior to the hearing on the matter or in the alternative, send notice to ratepayers during the billing cycle immediately preceding the hearing. (See Rule 1.8(b)). The notice should comply with Commission Rule of Practice and Procedure 1.8(c). If no hearing date has been set as of the date of notice, the party may indicate that the Commission will be setting a hearing date and will publish same in the newspaper.

"(3) File a copy of the notice with a certification of the date of publication with the Commission."

See Cynthia Wilson, Rhode Island Public Utilities Commission Counsel, Memorandum of March 21, 2003, Re: Notice Requirements Regarding Rate Changes, sent to all Regulated Utilities and their Attorneys.

Of the seven hearings scheduled to consider the original rate filing in this matter, four occurred prior to the Company's new filing on September 16, 2005, and the remaining three

were all scheduled within one (1) week after the new filing. Clearly, there is no way that the new filing of Narragansett Electric can be considered in compliance with the letter of the Commission's own rules and policies and it falls far short of satisfying even rudimentary administrative due process requirements.[1]

The Attorney General is not unmindful of the holding of the Supreme Court in *Town of Narragansett v. Malachowski,* 621 A.2d 190 (R.I. 1993) that "because the commission is charged with the authority to reallocate costs among classes, no party has the right to assume that a rate-increase filing will not be subject to changes prior to implementation. *Id.* at 196. Nor is he unmindful of that Court's conclusion that:

> In an ongoing rate case, as in the present case, the fact that certain rates proposed in the initial filing are later replaced by new rates, either at the suggestion of the parties or by the commission in the exercise of its powers, does not signify the termination of the original filing and the beginning of a new filing. Consequently since the initial filing is still before the commission, the notice and hearing requirements of § 39-3-11 are not triggered. On the contrary, to construe the statute in this manner would certainly give rise to utility companies, the division, and the commission's engaging in virtually infinitely protracted and inefficient rate hearings.

Id. at 197. The difference in the instant proceeding is that we are not talking about making minor adjustments in the way a largely fixed rate increase is allocated among the various rate classes while staying within the overall revenue limits of the original filing. In this case, the Company has doubled its overall rate filing. This is a far different situation than that in *Town of Narragansett*, where "certain rates proposed in the initial filing are later replaced by new rates." In this case, we have nothing less than a whole new proposal.

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[1] It is particularly worth noting that this new filing, while ostensibly intended to afford the Division of Public Utilities and Carriers (the "Division") an opportunity to review and comment on the Company's new rate proposal prior to the evidentiary hearing, was actually filed on a Friday prior to the Monday deadline for the submission of the Division's position and testimony and four days after the deadline for Intervenors to file their position and testimony. In effect, this denied all of the parties, but particularly the intervenors (one of whom was out of state that week), any meaningful notice and opportunity to be heard – the fundamental requirements of administrative due process.

Eventually, if fuel prices remain at post-Katrina levels, Narragansett may need to seek a Standard Offer rate of 9.7¢ per kWh rather than its original proposal of 8.2 ¢ per kWh. If that is the case, and if there has been an under recovery, then the difference may have to be made up out of the pockets of consumers, and Narragansett can easily be made whole. On the other hand, if Narragansett gets that new level now, and fuel prices drop to pre-Katrina levels, Narragansett will have enjoyed an over-recovery and consumers will have to be made whole. The Attorney General suggests that it will not be so easy to make the consumers whole as it would Narragansett Electric. How can you make a company whole if it has been forced to shut its doors because it could not afford to operate any longer due to its utility bills? How do you make someone whole who has gone for several months without other necessities in order to pay their electric bill – or worse yet, has had to pass the winter months without electricity? The answer is, you can't.

As a matter of law, as a matter of equity and as a matter of fundamental fairness, the Attorney General believes that the Commission must require Narragansett Electric to comply with Rhode Island General Laws § 39-3-11(a) before the Commission considers any rate increase for Narragansett Electric in excess of 8.2¢ per kWh for Standard Offer.

PATRICK C. LYNCH
ATTORNEY GENERAL
By his attorney,

William K. Lueker (R.I. Bar # 6334)
Special Assistant Attorney General
150 South Main Street
Providence, RI 02903
Tel. (401) 274-4400 ext. 2299
Fax (401) 222-3016

September 22, 2005

CERTIFICATE OF SERVICE

I certify that a copy of the within Objection was served electronically and by regular mail, postage prepaid, to all persons listed this date on the service list for PUC Docket No. 3689 on the 22nd day of September, 2005.