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August 18, 2025

Ellen Golde, Division Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: The Narragansett Electric Company d/b/a Rhode Island Energy Petition for Approval of Amendment to Firm Natural Gas Transportation Service Agreement with Manchester Street, L.L.C. – Docket No. D-25-14

Dear Ms. Golde:

On behalf of The Narragansett Electric Company d/b/a Rhode Island Energy (the "Company"), enclosed for filing is the Company's Memorandum in Response to Hearing Officer Question Regarding Jurisdiction in the above-referenced proceeding.

Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

Very truly yours,

Robert J. Humm

Enclosure

cc: Leo Wold, Esq., Division Hearing Officer
Margaret Hogan, Esq., Division
Gregory Schultz, Esq., Division Advocacy Section
John Bell, Division Advocacy Section
Jennifer Brooks Hutchinson, Esq., Rhode Island Energy
Celia O'Brien, Esq., Rhode Island Energy
Joanne Scanlon, Rhode Island Energy

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

The Narragansett Electric Company d/b/a Rhode Island Energy's Petition for Approval of Amendment to Firm Natural Gas Transportation Service Agreement with Manchester Street, L.L.C.	)	Docket No. D-25-14

MEMORANDUM OF THE NARRAGANSETT ELECTRIC COMPANY D/B/A RHODE ISLAND ENERGY IN RESPONSE TO HEARING OFFICER QUESTION REGARDING JURISDICTION

The Narragansett Electric Company d/b/a Rhode Island Energy (the "Company" or "Rhode Island Energy") submits this memorandum in response to the question issued by the Hearing Officer in the above-captioned proceeding regarding the jurisdiction of the Division of Public Utilities and Carriers ("Division") over the Company's Petition for Approval of Amendment to Firm Natural Gas Transportation Service Agreement with Manchester Street, L.L.C. ("Petition").

I. INTRODUCTION

During a procedural conference held on July 21, 2025, the Hearing Officer requested that the parties file a memorandum on the following question:

> Whether the Division or the Rhode Island Public Utilities Commission (the "Commission") has the subject matter jurisdiction and authority to review and approve special rates pursuant to R.I. Gen. Laws § 39-2-5(2).

The Division and the Commission obtain their authority and subject matter jurisdiction from statutes enacted by the General Assembly. The General Assembly has vested both the Commission and the Division with the authority to supervise, regulate, and make orders governing the conduct of public utilities. R.I. Gen. Laws § 39-1-1(c). By statute, the Division

exercises authority and jurisdiction *not specifically assigned* to the Commission. Under R.I. Gen. Laws § 39-2-5(2), the General Assembly has *specifically assigned* to the Division the jurisdiction to review and approve special rates upon finding that those rates are just and reasonable, or required in the interest of the public, and not unjustly discriminatory. This assignment of jurisdiction and authority to the Division is unqualified. Therefore, the Division, and not the Commission, has the jurisdiction and authority to review and approve special rates pursuant to R.I. Gen. Laws § 39-2-5(2).

Accordingly, this Petition for approval of a special contract under R.I. Gen. Laws § 39-2-5(2) is properly before the Division and must be reviewed and adjudicated by the Division.

II. BACKGROUND

On February 4, 2015, the Company (then known as The Narragansett Electric Company d/b/a National Grid) filed a petition with the Division for approval of a Firm Natural Gas Transportation Service Agreement (the "Original Agreement") between the Company and Manchester Street, L.L.C. (the "Customer"). The Division docketed the petition for approval as Docket No. D-15-04.

After its review of the Original Agreement, the Division's Advocacy Section found that the Original Agreement "provides revenues in excess of the cost of service, is reasonable, provides benefits such as additional margin to [the Company's] distribution customers, and will not impose additional costs or risks to customers." Docket No. D-15-04, Order No. 21936, at 2. The Advocacy Section recommended approval of the Original Agreement because its terms were "reasonable . . . and in the best interest" of the Company and its customers. Id. at 1-2. On June 12, 2015, the Division approved the Original Agreement pursuant to R.I. Gen. Laws § 39-2-5(2). Id. at 2.

On June 15, 2015, the Company and the Customer entered into Amendment No. 1 to the Original Agreement to replace references to the Commission with the Division.

On June 6, 2025, the Company filed the Petition with the Division for approval of an amendment ("Amendment No. 2") and an extension of Original Agreement, as amended, pursuant to R.I. Gen. Laws § 39-2-5(2) and 815-RICR-00-00-1.13(A). The Division docketed this matter as Docket No. D-25-14.

On July 21, 2025, the Division held a prehearing conference on the Company's Petition. At the prehearing conference, the Hearing Officer queried whether the Division has jurisdiction over the Petition and discussed two Supreme Court of Rhode Island cases that may have some bearing on the Division's jurisdiction under R.I. Gen. Laws § 39-2-5(2): In re A & R Marine Corp., 199 A.3d 533 (R.I. 2019) ("A&R Marine") and O'Neil v. Interstate Nav. Co., 565 A.2d 530 (R.I. 1989) ("O'Neil"). The Hearing Officer asked the parties to submit legal memoranda on the question of whether the Division has jurisdiction to hear the Petition pursuant to R.I. Gen. Laws § 39-2-5(2).

III. SUMMARY OF APPLICABLE LAW

A. Jurisdictional Boundaries and Limitations

The Division and the Commission derive their authority and subject matter jurisdiction from statutes enacted by the Rhode Island General Assembly. In re Advisory Opinion to Governor, 627 A.2d 1246, 1248 (R.I. 1993) ("It is a well-established principle of administrative law that agencies are a product of the enabling legislation that creates them. Agency action is only valid, therefore, when the agency acts within the parameters of the statutes that define their powers."); Little v. Conflict of Int. Comm'n, 121 R.I. 232, 236 (1979) ("Administrative agencies . . . are statutory creations possessing no inherent common-law powers."). Title 39 of the Rhode

Island General Laws is the enabling legislation, which created both the Commission and the Division and sets forth all the requirements applicable to utilities, over whom the Commission and the Division have respective authority. R.I. Gen. Laws § 39-1-1(c) vests *both* agencies with the authority to "supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy, communication, and transportation services and water supplies for the purpose of increasing and maintaining the efficiency of the companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls, and charges by providing full, fair, and adequate administrative procedures and remedies, and by securing a judicial review to any party aggrieved by such an administrative proceeding or ruling." R.I. Gen. Laws § 39-1-3 further defines the two agencies along with the jurisdiction, powers, and authority of each. The pertinent language for the Commission reads:

> The commission shall serve as a quasi-judicial tribunal with jurisdiction, powers, and duties to implement and enforce the standards of conduct under § 39-1-27.6 and to hold investigations and hearings involving the rates, tariffs, tolls, and charges, and the sufficiency and reasonableness of facilities and accommodations of railroad, gas, electric distribution, water, telephone, telegraph, and pipeline public utilities . . .

R.I. Gen. Laws § 39-1-3.

The Division is defined through its Administrator as follows:

> The administrator shall be a person who is not a commissioner and who shall exercise the jurisdiction, supervision, powers, and duties *not specifically assigned to the commission*, including the execution of all laws relating to public utilities and carriers and all regulations and orders of the commission governing the conduct and charges of public utilities and who shall perform other duties and have powers as are hereinafter set forth.

Id. (emphasis added).

When Title 39 created the Commission and the Division in 1969, the chair of the Commission held the dual function of being both the chair of the Commission and the Administrator of the Division simultaneously. Narragansett Elec. Co. v. Harsch, 117 R.I. 395, 400-402 (1977). In 1996, the Legislature amended Title 39 to separate the Commission and Division, leaving in place much of the 1969 regulatory provisions and dual structure, but creating a separate position for the Administrator. 1996 Rhode Island Laws Ch. 96-316 (96–H 8124).

The Rhode Island Supreme Court has examined the jurisdictional boundaries of the Division and the Commission and concluded that the Division is legally and functionally separate from the Commission. In re Kent County Water Auth. Change Rate Schedules, 996 A.2d 123, 125 (R.I. 2010). The Court explained that the Division exercises powers not specifically assigned to the Commission and those powers include implementing the policies of the state in regulating public utilities to achieve, among other things, the ultimate policy goals of providing adequate, efficient, and economical energy services at just and reasonable rates. Id. at 126. Thus, R.I. Gen. Laws § 39-1-3 and Rhode Island Supreme Court precedent make clear that the Division exercises the jurisdiction, supervision, powers, and duties not specifically assigned to the Commission. It follows, therefore, that any jurisdiction, supervision, powers, and duties that are *specifically assigned* to the Division *are not specifically assigned* to the Commission. As discussed below, the authority and jurisdiction to review and approve special rates, such as firm natural gas transportation agreements with customers, *are specifically assigned* to the Division and not to the Commission.

B. Jurisdiction Pursuant to R.I. Gen. Laws § 39-2-5

Chapter 2 of Title 39 of Rhode Island General Laws prohibits a public utility from engaging in unjust rate discrimination or giving unreasonable preferences or prejudices. See R.I.

Gen. Laws §§ 39-2-2, 39-2-3, and 39-2-4 (collectively, the "anti-discrimination provisions"). There is, however, an exception to the anti-discrimination provisions, and that exception has two prerequisites. First, a public utility must request a special rate. Second, the Division may grant approval for the special rate upon finding that the special rate is just and reasonable or required in the interests of the public and not unjustly discriminatory. These prerequisites are set forth in R.I. Gen. Laws § 39-2-5(2), which provides as follows (emphasis added):

> With the *approval of the division*, any *public utility* may give free transportation or service, upon such conditions as the public utility may impose, or grant *special rates* therefor to the state, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, in cases *where the same shall seem to the division just and reasonable, or required in the interests of the public, and not unjustly discriminatory*.

Thus, by statute, the General Assembly has assigned the Division the authority and jurisdiction to approve special rates upon a finding that those rates are just and reasonable, or required in the interests of the public, and not unjustly discriminatory.

The Division has asserted its jurisdiction and exercised its authority under R.I. Gen. Laws § 39-2-5(2) to review and approve special rates in several cases, over a period of several years. For example, in Docket No. 15-MC-108, the Division asserted its jurisdiction under R.I. Gen. Laws § 39-2-5(2) to review and approve a separate tariff structure for all moves conducted by D. N. Van Lines, Inc. for the United States Military. Docket No. 15-MC-108, Order No. 21969 (July 2, 2015). In Docket No. D-09-58, the Division asserted its jurisdiction under R.I. Gen. Laws § 39-2-5(2) to review and approve a Master Service Agreement between Verizon-New England and the State of Rhode Island. Docket No. D-09-58, Order No. 19706 (July 17, 2009). In Docket No. D-94-13, the Division asserted its jurisdiction under R.I. Gen. Laws § 39-2-5(2) to review and approve a firm natural gas service agreement between the Providence Gas Company

and Arkwright, Inc. Docket No. D-94-13, Order No. 14566 (November 1, 1994). In addition, in Docket No. D-15-04, the Division approved the Original Agreement that the Company now seeks to amend in this proceeding by its Petition. Docket No. D-15-04, Order No. 21936 (June 12, 2015).

Recently, the Division had occasion to opine on the bounds of its jurisdiction and characterized it as follows:

> The General Assembly vested in the "division of public utilities and carriers the exclusive power and authority to supervise, regulate and make orders governing the conduct of" public utilities. R.I.G.L. § 39-1-1(c). The Rhode Island Supreme Court has characterized comparable Commission authority as a "broad mandate" and "plenary" authority. *In Re: Island Hi-Speed Ferry, LLC*, 746 A.2d 1240, 1244 (R.I. 2000). Since the General Assembly created the modern-day Commission from powers then possessed by the then existing Division or Administrator, R.I.G.L. § 42-14.3-1, the Division's authority under Title 39, [Chapter 1 to 5], is plenary as well.

Docket No. D-22-6, Order No. 24461, at 3-4 (September 6, 2022). Regarding its authority under R.I. Gen. Laws § 39-2-5(2), the Division asserted that:

> The very purpose of R.I.G.L. § 39-2-5(2) is to ensure that the anti-discrimination statutes do not supersede a principal function of the Division, namely, to investigate and determine under Title 39, Chapter 4, which "acts" or "practices" of a utility are "unreasonable" and "unjust." The statute accomplishes this aim by vesting the Division with plenary authority to require any public utility to give "free service" to any "special class or classes of persons" when the provision of such service in the discretion of the Division is "just and reasonable . . . and not unjustly discriminatory."

Id.

For the reasons discussed in the section that follows, the Company agrees with the Division's assessment in Docket No. D-22-6 that the General Assembly has granted the Division plenary authority to review and approve special rates under R.I. Gen. Laws § 39-2-5(2).

IV. DISCUSSION

A. The Clear and Unambiguous Language of R.I. Gen. Laws § 39-2-5(2) grants the Division Plenary Authority and Exclusive Jurisdiction to Review and Approve Special Rates

When the language of a statute is clear and unambiguous, as is the case with R.I. Gen. Laws § 39-2-5(2), the Division must interpret the statute literally and give the words of the statute their plain and ordinary meanings. State v. Bryant, 670 A.2d 776, 779 (R.I. 1996); State v. Patriarca, 71 R.I. 151, 155 (1945). The courts will reject an agency interpretation of a statute that is contrary to the plain language of the statute. Tanner v. Town Council of Town of E. Greenwich, 880 A.2d 784, 792–93 (R.I. 2005); Rossi v. Employees' Ret. Sys., 895 A.2d 106, 113 (R.I. 2006).

The plain language of R.I. Gen. Laws § 39-2-5(2) indicates that the General Assembly has granted the "*division*" subject matter jurisdiction to grant "*approval*" of "*special rates*" proposed by a public utility "*to any special class or classes of persons*" upon a finding by the Division that such special rates are "just and reasonable, or required in the interests of the public, and not unjustly discriminatory." The General Assembly's grant of jurisdiction under R.I. Gen. Laws § 39-2-5(2) is unqualified, and, therefore, the Division's authority to review and approve special rates is plenary.

The General Assembly has defined the key terms in R.I. Gen. Laws § 39-2-5(2) as follows:

- The term "division" is defined by statute as the Division of Public Utilities and Carriers. R.I. Gen. Laws § 39-1-2(a)(11).
- The term "public utility" includes every company that is an electric distribution company and every company owning, leasing, maintaining, managing, or controlling any plant or equipment, or any part of any plant or equipment, within Rhode Island for manufacturing, producing, transmitting, distributing, delivering, or furnishing natural gas, directly or indirectly, to or for the public. R.I. Gen. Laws § 39-1-2(a)(20).

The plain meaning of the word "approve" is to "give formal sanction to" and "to consent to officially." Black's Law Dictionary 118 (9th ed. 2009); The American Heritage College Dictionary 67 (3d ed. 1993). "Special rates" and a "special class or classes of persons," when read in the context of the statute and giving the word "special" its plain and ordinary meaning,[1] means a customer whose unique characteristics or attributes justify a departure from standard tariffed rates.

Applying the plain meaning of R.I. Gen. Laws § 39-2-5(2) to the Petition, the first prerequisite is met on the facts of this case; i.e., a public utility has requested the Division's approval of a special rate for a special class or classes of persons. The Company is a "public utility" because it controls plant and equipment for the purpose of distributing, delivering, and furnishing natural gas to the public. The Customer is a "special class . . . of person" and "special rates" are warranted because the Customer's unique characteristics and attributes justify a departure from standard tariffed rates. Specifically, as explained in the Petition, it would not be economical for the Customer to dispatch the Manchester Street Gate Station in the commercial energy markets under the Company's transportation service tariff applicable to all commercial and industrial customers. Therefore, it is necessary for the Company and the Customer to continue to vary from the Company's transportation service tariff because of the proximity of the Manchester Street Gate Station to the Algonquin pipeline and the fact that the Company's facilities over which the gas is transported are dedicated to the Manchester Street Gate Station and are not integrated into the Company's overall distribution system for service to all firm customers. Petition at 5. Accordingly, the Company has proposed a special rate that allows the Customer to economically dispatch the plant while permitting the Company to recover its costs

[1] "Arranged for a particular occasion or purpose." The American Heritage College Dictionary 67 (3d ed. 1993).

to operate and maintain the facilities used by the Customer and needed to deliver gas to the Customer to operate the Manchester Street Station. Id. at 6.

With the first prerequisite met, the plain meaning of R.I. Gen. Laws § 39-2-5(2) requires a review by the Division, and only the Division, to determine whether the proposed special rate is just and reasonable, or required in the interests of the public, and not unjustly discriminatory. If the Division makes that finding, it is authorized to approve the special rate proposed by the Company for this Customer.

B. The Cases the Hearing Officer Has Asked the Parties to Examine Do Not Change the Conclusion that the Division Has Exclusive Jurisdiction to Review and Approve Special Rates

As noted above, the Hearing Officer directed the parties' attention to two cases (A&R Marine and O'Neil) that may have some bearing on the question of the Division's jurisdiction pursuant to R.I. Gen. Laws § 39-2-5(2). The Company has reviewed these cases, and, for the reasons discussed below, they do not change the conclusion that the Division has exclusive jurisdiction to review and approve special rates.

1. In re A & R Marine Corp.

On November 6, 2025, A & R Marine Corp. filed with the Commission a request to increase its rates. A&R Marine at 535. The Town of Portsmouth intervened in the case and requested discounted ferry rates for municipal employees and vehicles using the ferry for essential governmental services, and A & R Marine Corp. moved to dismiss the Town's request. Id. at 535. The Commission dismissed the Town's request, finding that A & R Marine Corp. had not affirmatively proposed, on its own initiative, a discounted ferry rate for the Town, which is a prerequisite for review and approval of special rates under R.I. Gen. Laws § 39-2-5(2). Id. at 536. The Commission also noted that "the Division had not performed an analysis of whether

the [discounted] rate would fall within the parameters of the statute's exception to the anti-discrimination provisions . . ." Id. at 537.

The Court affirmed the Commission's decision and agreed that R.I. Gen. Laws § 39-2-5(2) grants public utilities, and only public utilities, the discretion to propose special rates. Id. at 539-40. Therefore, the Court did not need to reach the question of which agency has the subject matter jurisdiction to approve special rates, because no special rate was properly presented by a public utility for agency review. See A&R Marine at 540 ("[W]e simply need go no further than the plain and ordinary meaning of the clear an unambiguous statutory language before us."), id. ("According to § 39-2-5(2), it would have been necessary that a discounted ferry rate for the Town be proposed by A & R Marine, and that plainly did not happen."). Therefore, A&R Marine stands for the proposition that only public utilities can propose special rates, and neither the Division nor the Commission can impose special rates on public utilities. This holding does not change the conclusion that the Division has exclusive jurisdiction to review and approve special rates pursuant to R.I. Gen. Laws § 39-2-5(2).

2. O'Neil v. Interstate Navigation Company

The Town of New Shoreham and Attorney General James E. O'Neil filed petitions for certiorari seeking review of an order of the Commission, dismissing the application for a rate change filed by Interstate Navigation Company ("Interstate"), a ferry service operator. O'Neil at 531. According to the Commission, it did not have subject-matter jurisdiction over the rate-change applications of ferries, but the Division had "residual" jurisdiction to hear the case. Id. at 531-32.

The Rhode Island Supreme Court analyzed Title 39, which established the Commission and Division, and defines their respective functions, to determine which agency had jurisdiction

to hear Interstate's rate-change application. Id. The Court concluded that the Legislature had delegated some of the Commission's ratemaking authority to the Division, including power over air carriers, motor carriers of property, motor passenger carriers, and taxi cabs and limited public motor vehicles. Id. at 533.[2] The Court concluded, however, that the "delegation of rate-making authority is not absolute [and] it is limited to those [powers] specifically enumerated by the Legislature." Id. Therefore, because the Legislature did not specifically delegate ratemaking authority over ferries to the Division, the Commission had jurisdiction to hear Interstate's rate-change application. Id.

Although O'Neil does not directly analyze R.I. Gen. Laws § 39-2-5(2), it sets forth an important principle that supports the conclusion that the Division has exclusive jurisdiction over special rates. Specifically, the Court explained that the Legislature had delegated some ratemaking authority to the Division, and the scope of that delegation was limited to the authority specifically enumerated by the Legislature. In R.I. Gen. Laws § 39-2-5(2), the General Assembly has specifically and unequivocally delegated rate-making authority over special rates to the Division. Therefore, applying the principle set forth in O'Neil, the Division has subject matter jurisdiction to hear petitions for the approval of special rates, including the Company's Petition in this docket.

[2] In this passage, the Court provided examples of entities over which the Division has ratemaking authority by delegation from the Legislature. It would be a misreading of the Court's holding to conclude that the Legislature has delegated authority to the Division over ***only*** those entities specifically listed by the Court in this passage (i.e., air carriers, motor carriers of property, motor passenger carriers, and taxi cabs and limited public motor vehicles). The Court's use of the verb "include" indicates that it was introducing examples and not an exhaustive list. Moreover, the Court further explained that the scope of an agency's authority is defined by those powers specifically enumerated by the Legislature, which includes ***any*** delegation of ratemaking authority by the Legislature, not only those examples listed by the Court. As discussed herein, the Division has the authority and jurisdiction to review and approve the special rates requested by a public utility provided by virtue of the specific delegations of authority set forth in R.I. Gen. Laws §§ 39-2-5(2) and 39-1-1(c).

V. CONCLUSION

For the foregoing reasons, the Division has the exclusive jurisdiction to review and approve special rates proposed by public utilities. The Company's Petition falls squarely within that jurisdiction, because the Company is a public utility and it has proposed a special rate for a special class of customer whose unique circumstances and attributes warrant a departure from the standard tariffed rate.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC COMPANY D/B/A RHODE ISLAND ENERGY

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