STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: COMPLAINT OF SCOTT POLLARD :
REGARDING LINE EXTENSION RATES : DOCKET NO. 3643

REPORT AND ORDER

I. Summary/Travel of the Case

Scott Pollard filed a complaint with the Division of Public Utilities and Carriers ("Division"), which was transferred to the Public Utilities Commission ("Commission"), regarding the reasonableness of Narragansett Electric Company's ("Narragansett" or "Company") rates for extension of power lines. This matter arose from Mr. Pollard's request to Narragansett for line extension to the location of his future home construction on Tray Hollow Road in Foster, Rhode Island. On November 1, 2004, Mr. Pollard filed an Amended Petition raising five issues. Two of the five issues were constitutional arguments under both the State of Rhode Island and United States Constitutions. On November 12, 2004, Narragansett filed a Motion to Dismiss, summarizing its Tariff pages and arguing that the Commission has jurisdiction over the setting of Narragansett's rates, tolls and charges and that because the Commission approved the Line Extension Policy through a hearing process, Narragansett was conducting its business under Tariffs that have been found to be just and reasonable. On November 19, 2004, Mr. Pollard filed a Memorandum in Opposition ("Opposition"), a Motion/Notice to Depose, a Motion to Compel installation of lines, and a Request for Discovery. On November 22, 2004, Narragansett filed an Opposition to the Motion to Depose.

On November 23, 2004, at its Open Meeting, the Commission dismissed four of the five issues. The Commission opined that there was no State action upon which to

base the constitutional claims. The Commission found that the third allegation by Mr. Pollard was factually inaccurate on its face. The Commission found that the fifth issue alleging that Narragansett does not have the authority to charge for extending distribution lines over a town road had no legal basis.

With regard to the remaining issue alleging discriminatory treatment by Narragansett in violation of its Terms and Conditions as well as State law, the Commission ordered Narragansett to provide evidence of the terms of any line extensions performed on Tray Hollow Road prior to Mr. Pollard's request. The purpose of the order was to determine whether investigation is warranted or whether the remaining allegation should also be dismissed.

On December 14, 2004, Narragansett filed a response to the Commission's November 23, 2004 data request. The Commission determined that the response appeared to indicate that Narragansett may have failed to charge two customers under Policy 2. Therefore, the Commission, through this Order, transfers Narragansett's Response to the Commission's Data Request to the Division for the appropriate inquiry under the regulatory enforcement statute, R.I.G.L. § 39-2-8, which provides for civil penalties in the event a public utility violates any provision of Title 39, Chapters 1-5.[1]

Addressing Mr. Pollard's Motion to Compel Installation of Power Lines, the Commission denied the Motion, finding that because the Line Extension Policy has been approved by the Commission, Mr. Pollard is required to pay in accordance with the Policy. The Commission noted that even if there ultimately is a finding of discrimination, such a finding would not allow Mr. Pollard to avoid paying fees applied in accordance with the Policy; it would only trigger R.I.G.L. §§ 39-2-2 or 39-2-3 (if a

[1] Narragansett's Data Response is attached hereto as Appendix A.

utility is found guilty of a misdemeanor, namely not charging the tariffed rates or discriminatory application of rates the utility would be fined) or R.I.G.L. § 39-2-8, cited above.

The Commission initially stayed Mr. Pollard's Motion to Depose as being premature. On December 17, 2004, the Commission dismissed Mr. Pollard's Complaint, thus denying his Motion to Depose under the instant docket.

II. Facts Not in Dispute

Mr. Pollard is the property owner of lot 48 plat 6 on Tray Hollow Road in Foster, Rhode Island. Utility poles are in place along the road. However, the utility poles and service terminate at a point where service cannot be provided to Mr. Pollard without extending the lines and adding more poles. According to Mr. Pollard, Verizon Communications of Rhode Island and Narragansett sent engineers to the area who determined that seven additional utility poles would need to be placed along the road and four additional poles to cross Mr. Pollard's property from the road to the point of future home construction. Mr. Pollard indicated that his bill is approximately $1,800.00 from Verizon and $13,102.69 from Narragansett. Mr. Pollard's complaint arose from the fact that Narragansett charged him for placement of utility poles along Tray Hollow Road.

Narragansett has a Line Extension Policy 1 (formerly Line Extension Policy B) ("Policy 1") which is applied to all individual residential customers who request a distribution line be extended to serve such customer's home whether over private property, along a common way or along a public way. It does not contain different terms depending on the type of area where the lines are to be extended. Policy 1 was approved by the Commission on September 28, 2004 and superseded Line Extension Policy B,

approved by the Commission on March 14, 2000. Mr. Pollard would be charged the same amount under both policies.

III. Analysis and Findings

A. Line Extension Policy 1

Narragansett's Policy 1 states, "when an individual residential customer ("Customer") requests that a distribution line be extended to service such customers' home whether over private property, along common way or along a public way, the terms of this policy shall apply." Policy 1 provides for the extension of two poles and two spans of overhead distribution line at no charge. Requirements in excess of two spans are charged per feet of distribution line plus tax at the current cost per foot. The current cost per foot is $8.80. If the charges are in excess of $1,500.00, the customer may pay over sixty (60) months plus interest at the customer deposit rate. In the event another Customer is supplied service from the facilities constructed under Policy 1 within five years from the date the first payment is received by the Company from the original Customer, the Company will require the new Customer(s) to pay a prorated share of the balance and credit that share against the original Customer's payment. In addition, a credit of two poles and two spans per new Customer will be applied against the remaining balance. In the event the Customer transfers his or her property, the Customer can either pay off the balance at the time of transfer or have the New Occupant sign an agreement with the Company to pay the remaining balance that would have been owed by the original Customer. Finally, Customers under Policy 1 are required to sign a Line

Extension Agreement prior to construction.[2] The calculation of Narragansett's charges to Mr. Pollard, as set forth in his Opposition, appears to be consistent with Policy 1.

B. Amended Complaint and Opposition to Motion to Dismiss

Mr. Pollard presented five allegations or issues for Commission consideration in his Amended Petition and subsequent Opposition which are set forth verbatim as follows:

(1) Policy B seeks to take private property ($13,000.00+) for public use (power on a public road) and is thus, on its face unconstitutional as a violation of Article 1 Section 16. (Amended Petition at 1)
Policy 1 (formally [sic] known as Policy B) seeks to take private property (See bill from Narragansett) for public use (power on a public road) without just compensation and is thus, on its face unconstitutional as a violation of fifth and fourteenth amendments and RI Constitution Article 1, Section 16. (Opposition at 2.)

(2) Policy B seeks to place a burden of the people of the state (power on a public road) on a single property owner for the "good of the whole" and as such, is on its face unconstitutional as a violation of Article 1, Section 2. (Amended Petition at 1 and Opposition at 2 – the Opposition sites Policy 1)

(3) Policy B is unjust, unreasonable and illegal as discriminatory by including a charge to an individual of over $13,000.00 dollars [sic] for extending overhead distribution lines on a town road where if it was a private road the charge would be $3,500.00 +/- dollars [sic] less. (Conversation with Narragansett Employee.) (See R.I.G.L. § 39-2-3). (Amended Petition at 1)
Policy 1 is unjust, unreasonable and illegal as discriminatory by including a charge to an individual of over $13,000.00 dollars [sic] for extending overhead distribution lines on a town road where if such extension was a private road the charge would be $3,500.00 +/- dollars [sic] less. (Conversation with Narragansett Employee.) (See R.I.G.L. § 39-2-3). (Opposition at 2)

(4) Policy B is unjust, unreasonable and illegal as preferential as the extension of overhead distribution lines on town roads has not been applied equally and evenly to all individuals seeking such services from said. (Conversations with a [sic] Tray Hollow Rd Neighbors and a Narragansett employee). (Amended Petition at 1)
Policy 1 is unjust, unreasonable and illegal as preferential as the extension of overhead distribution lines on town roads has not been applied equally and evenly to all individuals seeking such services from said. (Conversations with Tray Hollow Rd Neighbors and a Narragansett employee). (Opposition at 2)

[2] Policy 1 and the Line Extension Agreement are attached hereto as Appendix B and incorporated by reference.

(5) Policy B is illegal, unjust, unreasonable, insufficient, preferential, and unjustly discriminatory as it seeks to charge an individual of over $13,000.00 dollars [sic] for extending overhead distribution lines on a town road where it is not specifically given the authority to do so, as they are in the case of tree trimming and blasting (See Policy B(3)). (Amended Petition at 1-2 and Opposition at 2-3 – the Opposition sites Policy 1 and Policy 1(3).

For ease of reference, each of Mr. Pollard's issues and arguments will be designated by their number as delineated above.

C. Issues One and Two

Mr. Pollard's constitutional arguments are based on the premise that by approving Narragansett's Line Extension Policies as part of its regulatory oversight, such action by the Commission raises Narragansett to the level of an agent of the State of Rhode Island. In other words, according to Mr. Pollard, whenever Narragansett, a publicly traded company, charges approved rates to its customers, it is a state actor for purposes of the fifth and fourteenth amendments of the United States and State of Rhode Island Constitutions.[3]

A review of both State of Rhode Island and federal case law suggest that Mr. Pollard's argument is flawed. For example, in the case of Taglianetti v. New England Telephone and Telegraph Company, a case where the telephone company terminated service to a customer in accordance with its regulations on file and approved by the Division, the Rhode Island Supreme Court stated that "the fact that the regulations are

[3] Opposition at 3, stating, "Thus, although Narragansett is a publicly traded company, it is clearly an agent of the State of Rhode Island when it exercises any charges to its customers." Id. (emphasis added). Mr. Pollard cites to Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). The Commission can only presume that Mr. Pollard is relying on the proposition that a property owner must be compensated for a taking in the event a regulation denies him all economic use of his property. However, in this case, unlike the Lucas case, Mr. Pollard has not been denied any use of his property because of Narragansett's Policy 1. There is no regulation prohibiting Mr. Pollard from obtaining electric distribution service as long as he pays for such line extension that is necessary.

filed with the division of public utilities and approved by the administrator does not transform them into acts of the state."[4]

Similarly, in Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), a case where the electric company terminated service to a customer for nonpayment of service, the petitioner argued that because the electric company had been granted monopoly status and had filed a tariff with the public service commission of New York, the action by the electric company constituted state action for purposes of a 42 U.S.C. § 1983 claim. In its opinion, the United States Supreme Court noted that the electric company "is subject to extensive regulation by the commission. Under a provision of its general tariff filed with the commission, it has the right to discontinue service to any customer on reasonable notice of nonpayment of bills."[5] The Court stated:

> Here the action complained of was taken by a utility company which is privately owned and operated, but which in many particulars of its business is subject to extensive state regulation. The mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the fourteenth amendment. Nor does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so.[6]

The Court indicated that state action might exist if the respondent was exercising an action traditionally associated with the state, such as eminent domain. However, the Court noted that Pennsylvania courts had rejected the contention that the furnishing of utility services is either a state function or municipal duty. The Court did not take issue with this position.[7]

---

[4] Taglianetti v. New England Telephone and Telegraph Co., 81 R.I. 351, 358 (1954). The Division of Public Utilities and Carriers' Administrator formerly served as the Chairman of the Public Utilities Commission.
[5] Jackson v. Metropolitan Edison Co., 419 U.S. 345, 346 (1974).
[6] Jackson, 419 U.S. at 350.
[7] Id. at 352-53.

Finally, the Court specifically "reject[ed] the notion that [the utility's] termination is state action because the state has 'specifically authorized and approved' the termination practice," a practice that became effective when not specifically rejected by the Commission.[8] The Court noted that regulated companies are often required to seek commission approval for practices that would be freely allowed in private industry. However, the Court stated, "[a]pproval by a state utility commission of such a request from a regulated utility, where the commission has not put its own weight on the side of the proposed practice by ordering it, does not transmute a practice initiated by the utility and approved by the commission into 'state action.'"[9]

The Supreme Court's holding in Jackson v. Metropolitan Edison Co. is still good law.[10] For example, in Jemzura v. Public Service Commission, the United States District Court for the Northern District of New York found that where the Public Service Commission had allowed an electric utility to refuse to provide electrical service to a property owner where it would have had to pay for an easement through other property owners' private property there was no state action.[11] Although the Court notes that the state action test where regulated companies are involved is a case specific analysis, the facts in Mr. Pollard's case do not rise to the level of state action.

---

[8] Id. at 354-55. The Court distinguished this case from an instance in which the District of Columbia Public Utilities Commission, on its own motion, opened an investigation and ultimately required a regulated transportation company to provide piped music on public buses. See id. at 356-57 (distinguishing approval of a company proposed business practice from a commission order resulting from a sua sponte initiated investigation).

[9] Id. at 357.

[10] See Spickler v. Lee, 208 F. Supp. 2nd 68 (D.M.E. 2002) (affirmed 63 Fed. Appx. 2 unpublished opinion) (holding at the District Court level that no state action existed where the Maine Public Utilities Commission did not take action to prevent the electric utility from breaching its private contract with a customer to install overhead electric lines free of charge).

[11] Jemzura v. Public Service Commission et al., 971 F. Supp 702 (N.D.N.Y. 2002), quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

The purpose of Policy 1 is to allow Narragansett to recover its costs from extending a distribution line to the benefit of a specific customer or customers. Under Policy 1, Narragansett is not engaged in an activity (line extension) that is traditionally a role of the state. It is a regulated, publicly traded company entering into a business transaction (contract for services) with a private individual for the purpose of serving that private individual with electricity. Approving the mechanism and rates for this transaction does not make Narragansett's actions rise to the level of a state actor. Simply put, Narragansett's charge for a line extension is not state action.

Mr. Pollard also cites R.I.G.L. § 39-1-31, which provides the Commission with jurisdiction to issue a company a certificate authorizing the company to proceed with condemnation of land, right of way, easement, or other interest in property it proposes to acquire through eminent domain as further support for his contention that Narragansett is a state actor in the present situation. Under the facts of Mr. Pollard's case, the Commission has not exercised this jurisdiction, nor has Narragansett made a petition under R.I.G.L. § 39-1-31 to condemn property owned by Mr. Pollard. Therefore, the Commission believes that Mr. Pollard's arguments do not provide a basis for this Commission or for the courts to find state action. However, even assuming state action was found to exist, Policy 1 does not constitute a taking of private property for public use without just compensation.

Again, even if there were state action, what Narragansett has done is ask Mr. Pollard to pay for the extension of distribution lines on Tray Hollow Road to his home (after a credit for the two free poles and spans of line). This extension is a direct benefit to Mr. Pollard and no one else on Tray Hollow Road or on Narragansett's distribution

system. It is irrelevant whether or not the line traverses a public or private way. Mr. Pollard is still seeking an extension of lines for the purposes of receiving utility service on his property. If other property owners existed to share in the extension for their own benefit, Mr. Pollard would be required to pay only his share of the costs. Likewise, if other property owners request line extensions, Mr. Pollard's costs will be reduced by the other property owners' proportionate share of the remaining costs. However, because at the time of the filing, he had made a request for a line extension for his sole benefit, he was asked to pay the entire cost, minus the two free poles and spans of line. Simply because the line traverses a public road does not transform Mr. Pollard's situation from a contract for services to a taking of private property for public use without just compensation.

Mr. Pollard has argued that this payment for services is actually a taking of his private property, (his money) for a public use (the extension of a distribution line) because it traverses a public road for a certain amount of feet. However, Mr. Pollard's money will be used to provide a service and equipment that will provide electrical usage to his home. These distribution lines will be used for no other person unless another property owner comes forth to tap into these lines. If that property owner appears in the next five years, the period over which Mr. Pollard may pay for the extension, that property owner will share in the costs for his or her benefit. A bill for services to be rendered is not a taking of private property without just compensation.

Mr. Pollard discusses Narragansett's argument in its Motion to Dismiss that the Commission has approved Policy 1, giving it the force and effect of statute.[12] He claims that the Policy is not beyond the reach of passing constitutional muster. The Commission

[12] See Motion to Dismiss at 3-5.

agrees. However, as stated above, the Commission believes that there is no state action upon which to base a constitutional claim and furthermore, even if there were, Mr. Pollard is not being denied his property or even the use of his property; he is being asked to pay for a service for which he may contract.

Mr. Pollard proceeded to argue:

> [i]f the Constitution of either the United States or the State of Rhode Island is being violated by Policy 1 and the Commission granted Narragansett's motion to dismiss without a full hearing on the matter, the Commission would be ceding its right to issue it's opinion before this matter is brought to the Rhode Island Supreme Court and ultimately the United States Supreme Court.[13]

The Commission has not ceded its opportunity to review Narragansett's Policy 1 in the context of Mr. Pollard's complaints. Policy 1 has been approved by the Commission in some form since at least 1979, when the Commission reviewed Narragansett's Line Extension Policies in a separate docket. Furthermore, Mr. Pollard had the opportunity to challenge Policy 1 before the Commission and the Rhode Island Supreme Court earlier this year when the Commission was considering Narragansett's Distribution Rate Plan. The concept of charging specific customers for the extension of distribution lines for their specific use has dated back for over forty years.[14] The Commission has the responsibility of setting cost based rates for rate classes for equipment and services that benefit the entire class. The purpose of these policies is to charge costs identifiable to a customer or small group of customers to the cost causer(s). Therefore, the Commission has not ceded its right to issue its opinion on whether or not Policy 1 is reasonable and nondiscriminatory. By this Order, the Commission issues its opinion regarding the constitutionality of Policy 1.

[13] Opposition at 5.
[14] As far as Commission research shows, there has been a line extension policy of some sort in effect since 1963.

Again, even if there were state action, which the Commission has already opined there is not, with regard to Mr. Pollard's claim under Article 1, Section 2 of the Rhode Island Constitution, the Commission notes that Mr. Pollard is not being treated differently from any other residential customer seeking electrical service that requires an extension of lines. Furthermore, Mr. Pollard is being charged for a service that will specifically benefit his property. The lines are not already there, just waiting for him to connect. The extension of lines is an extraordinary cost that is not appropriate to be borne by all ratepayers. Extension of a distribution line that serves a discrete number of people does not become a burden of the people of the state simply because it extends along a public road. Just because the State may be able to deem an area blighted and take the land by eminent domain does not mean that it is in any way required to provide a free connection to utilities under the constitutions of the United States or the State of Rhode Island. [15]

D. Issue Three

With regard to Issue Three, Mr. Pollard argues that Policy 1 must be declared unlawful because its application to a single residential home totals in excess of

[15] Mr. Pollard also argues that because there is no electrical service to his future home, his property is in a blighted and substandard area, and just compensation is required for the extension of lines along Tray Hollow Road. He appears to argue that because the line extends along a public road, there is some inherent value to the public. The line will be extended for his benefit. The Commission found that the case cited, Romeo v. Cranston Redevelopment Agency, 254 A.2d 426 (R.I. 1969) was not applicable to this situation and did not persuade the Commission in its deliberations. In Romeo, plaintiff property owners sought an injunction against the Cranston Redevelopment Agency, a public body, and the City of Cranston to keep them from proceeding with an urban renewal project that had been approved by the Cranston City Council. The project proposed the acquisition by the Redevelopment Agency of a 14 ½ acre tract of land, encompassing 145 parcels. These parcels of land would be acquired by negotiation or eminent domain. The Redevelopment Agency would construct roads and provide for the installation of utilities. The plaintiffs' home and other land parcels were in the project area. They challenged the City Council's approval of the plan and the enabling legislation of the Redevelopment Agency and argued that their land was not in a substandard and blighted area. The Rhode Island Supreme Court upheld the enabling legislation as constitutional. Romeo, 254 A.2d 426. The Commission is not clear what compensation Mr. Pollard is seeking by his statement that "Tray Hollow Road is a substandard area and when property is taken to improve that area for public use, such as in extending power lines on a public road, it requires just compensation." Opposition at 4.

$13,000.00. Therefore, his argument is that, because the amount is higher than he believes he should pay, the whole Policy should be declared unlawful and unreasonable. The charge for pole extensions is $8.80 per foot. Mr. Pollard requires an extension in excess of 1700 feet (approximately 3/10 of a mile), requiring eleven poles. After crediting his two free poles and spans of line, and adding tax, his charge for 1405 feet of line is $13,102.69.[16] Crediting of two poles and spans of lines and charging $8.80 per foot for extension of distribution lines is in a Commission approved tariff, thus having been found to be just and reasonable.

With regard to Mr. Pollard's claim that Policy 1 would result in a lower charge if the extension was along a private road as opposed to a public way, after a review of Policy 1 on its face, the Commission finds no merit to Mr. Pollard's argument. Policy 1 applies regardless of whether the extension is along a public or private road. Any conversation Mr. Pollard had with an unidentified Narragansett Employee to the contrary is irrelevant to whether or not Policy 1 itself, on its face, is discriminatory.

E. Issue Four

With regard to Mr. Pollard's allegations that Narragansett has applied its Line Extension Policy inconsistently to customers having property on the same road as Mr. Pollard's property, the Commission requested further information from Narragansett to determine whether or not Narragansett had violated R.I.G.L. §§ 39-2-2 or 39-2-3.

Narragansett filed a response to the Commission's November 23, 2004 data request. It appears that Narragansett may have failed to charge two customers under its Line Extension Policy. The Commission is forwarding the Data Response to the Division

[16] In calculating the amount due, Narragansett subtracted the amount contributed by Verizon-Rhode Island and then added taxes.

for potential enforcement of R.I.G.L. § 39-2-8 because although the statute appears to provide for concurrent jurisdiction, in this case where current rates will not be affected, it is appropriate to transfer jurisdiction to the Division as the enforcement arm of the Commission. The Commission is only transferring the discrimination inquiry that is referenced in this section of the Order and not the remainder of Mr. Pollard's claims, which have been dismissed by the Commission.

Furthermore, while a criminal enforcement agency in the State may choose to further investigate this failure under R.I.G.L. § 39-2-2 and/or 39-2-3 to determine whether or not Narragansett is guilty of a misdemeanor, or if the Division finds a violation of R.I.G.L. § 39-2-8, Mr. Pollard must still pay for his line extension under the Narragansett Line Extension Policy. Therefore, the Commission dismisses the discrimination claim as to Mr. Pollard, finding that while he is welcome to bring evidence to the Commission or Division when he believes discrimination has occurred, this is a regulatory enforcement matter under R.I.G.L. § 39-2-8, the outcome of which will not affect Mr. Pollard's rights or obligations as a ratepayer.

F. Issue Five

With regard to Mr. Pollard's argument that Narragansett is not specifically authorized to charge for extending distribution lines along a town road unlike tree trimming and blasting, as cited in Policy 1(3), which states, "Tree trimming and blasting requirements along public ways and common ways are the responsibility of the Company, but the Company may bill the cost of such tree trimming and blasting to the Customer."

Mr. Pollard is addressing a Policy that has been approved by the Commission as a part of a comprehensive Distribution Rate Plan, which was submitted by Narragansett in conjunction with other parties to Commission Docket No. 3617.[17] Policy 1 is a continuation of prior line extension policies submitted by Narragansett and previously allowed by the Commission. By approving Narragansett's Policy 1 which applies to line extensions along private property, along common ways or public ways, as long as Narragansett has the necessary easements from the City or Town (in the case of public ways), it has the authority to extend the lines along the public way and charge the Customer for whom the extension is being performed. Narragansett has had this authority for over forty years through various line extension policies. Therefore, the Commission finds Mr. Pollard's argument unpersuasive and dismisses his claim.

G. Motion to Depose

With regard to Mr. Pollard's Motion to Depose Narragansett personnel, the Commission is denying it as moot in light of the Commission closing the docket. Any claim of a violation of the two criminal discrimination statutes, R.I.G.L. §§ 39-2-2 and 39-2-3 or of the civil discrimination statute R.I.G.L. § 39-2-8 is a matter for the appropriate criminal enforcement or regulatory agency to investigate and is not a claim from which Mr. Pollard can obtain relief, personally.

Accordingly, it is hereby

(18101) ORDERED:

1. Mr. Pollard's Complaint is hereby denied and dismissed.

[17] Commission Docket No. 3617 was a publicly noticed docket with four public hearings, which included significant public comment and participation, which was submitted on June 28, 2004 for Commission consideration. On September 28, 2004, the Commission approved an amended Distribution Rate Plan, setting distribution rates through 2009. The filing included Narragansett's Terms and Conditions and related Tariffs. Mr. Pollard could have raised his pending claims in that docket had he so chose.

2. Mr. Pollard's Motion/Notice to Depose is hereby denied and quashed.

3. Mr. Pollard's Motion to Compel Construction is hereby denied and dismissed.

4. The Public Utilities Commission hereby transfers Narragansett Electric Company's Response to the Commission's Data Request issued November 23, 2004 to the Division of Public Utilities and Carriers for the appropriate inquiry under R.I.G.L. § 39-2-8.

EFFECTIVE AT WARWICK, RHODE ISLAND ON DECEMBER 17, 2004 PURSUANT TO OPEN MEETING DECISIONS ON NOVEMBER 23, 2004 AND DECEMBER 17, 2004. WRITTEN ORDER ISSUED DECEMBER 22, 2004.

PUBLIC UTILITIES COMMISSION

_____

Elia Germani, Chairman

_____

Robert B. Holbrook, Commissioner

NOTICE OF RIGHT OF APPEAL: PURSUANT TO R.I.G.L. § 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN (7) DAYS FROM THE DATE OF THE DECISION OR ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.

THE NARRAGANSETT ELECTRIC COMPANY
R.I.P.U.C. Docket No. 3643
In re: Complaint Regarding Line Extension Rates
Response to Commission Record Request
Issued on: November 23, 2004

Commission Record Request

Request:

Did Narragansett Electric charge any of the four customers with electric service on Tray Hollow Road a fee under its residential line extension policy?

Response:

No. According to the research we have gathered, it appears that none of the four customers with electric service on Tray Hollow Road ever paid a fee under the Company's line extension policy. In 1999, three customers building homes on Tray Hollow Road requested electric service from Narragansett (Lots 14B-1, 14B-2, and 14B-3 on the attached plot plan). At the same time a fourth home was being developed on Tray Hollow Road (Lot 14B-4), which sought electric service from the Company in 2000.

When the Company designed the line in 1999, it determined that the four homes being developed would be best served from ten poles in the public way. These poles would also be used to serve the buildable lots adjacent to and across the street from the homes being built (see Lots 28A, 18, 18A, and 17).

Under the Company's residential line extension policy, each customer applying for electric service is entitled to two poles and two pole spans at no cost. It appears that because the total number of poles and pole spans did not exceed the allowance of 16 poles and pole spans that would have resulted under the residential line extension policy for eight anticipated services (i.e., the four initial requests, plus the four adjacent parcels), Narragansett did not assess a line extension charge in connection with the initial service requests. Nevertheless, strictly construing the line extension policy, Narragansett should have charged two of the four customers a fee for the line extension. It is not clear in our records why no such charge was made. However, given the development on the road at the time, it was our understanding that these poles would clearly serve the adjacent buildable lots.

It should also be noted that a decision was likely made by field personnel of either the Company and/or Verizon (as Foster is a telephone company pole setting area), that rather than dead end the line at pole 10, additional poles should be installed for engineering purposes. Thus, the last three poles currently on Tray Hollow Road are not serving any customers.

Prepared by or under the supervision of:
Kevin Rennick

Submitted on: December 14, 2004

THE NARRAGANSETT ELECTRIC COMPANY

POLICY 1

LINE EXTENSION POLICY FOR INDIVIDUAL RESIDENTIAL CUSTOMERS

When an individual residential customer ("Customer") requests that a distribution line be extended to serve such customer's home whether over private property, along common way or along a public way, the terms of this policy shall apply.

1. Installation of Overhead Distribution Line

The Narragansett Electric Company ("Company") will provide a regular overhead 120/240 volts, single phase, 3 wire service up to a capacity limit of 50 kVA for the Customer. The Company will determine the route of the distribution line in consultation with the Customer.

2. Distance of Overhead Distribution Line Allowed Without Charge

The Company will provide up to two poles and two spans of overhead distribution line needed to serve the Customer plus a service drop (that does not require a carrier pole) to the Customer's home free of charge.

3. Overhead Installation Charge

If more than two poles and two spans of overhead distribution line are required to serve the Customer's home, the Customer will pay an "Overhead Installation Charge", as determined below.

The Overhead Installation Charge will be equal to the number of feet of distribution line (beyond two poles and two spans) required to serve the Customer's home, multiplied by the "Overhead Cost Per Foot" (as defined in section 9 below), plus the applicable tax contribution factor.

All responsibility on private property for blasting and/or tree trimming and removal remains with the Customer.

Tree trimming and blasting requirements along public ways and common ways are the responsibility of the Company, but the Company may bill the cost of such tree trimming and blasting to the Customer.

4. Payment Terms

If the Overhead Installation Charge is less the $1,500, the Customer will be required to pay the entire amount before the start of construction.

If the Overhead Installation Charge is $1,500 or greater, the Customer will have the option to either pay the entire amount before the start of construction, or pay the amount within a period of (5) years in sixty (60) equal monthly payments, plus interest at the rate of interest applicable to Narragansett Electric's customer deposit accounts.

5. More Than One Customer

Where overhead service is requested by more than one Customer for the same line, the Overhead Installation Charge will be prorated among those Customers, based on the amount of line attributable to each Customer. (The calculation of the Overhead Installation Charge shall allow for a credit equal to the Overhead Cost Per Foot of two poles and two spans for each Customer).

6. Customer Added After Initial Construction

If a new Customer (or group of customers) is supplied service from facilities constructed under this policy, and if such service begins within five (5) years from the date of the first payment received by the Company from the original Customer or group of Customers, the Company will require such new Customer(s) to make prorated contribution to payment of the balance of the Overhead Installation Charge. Any contribution received from a new Customer will be used to proportionately reduce the balance owed by the initial Customers(s). In addition, a credit of two poles and two spans per customer will be applied against the remaining balance. However, no refunds will be paid if the credit exceeds the balance.

7. Change of Customer

The Customer must agree, as a condition for the line extension monthly payment terms, that if he/she sells, leases or otherwise transfers control and use of the home to another individual ("New Occupant"), and such New Occupant opens a new account with the Company, the Customer will obtain an agreement from such New Occupant to pay the remaining balance as prescribed in the agreement of the Overhead Installation Charge that would have been owed by the Customer at that location. Otherwise, the Customer will remain personally liable for the balance owed.

The Company reserves the right to place a lien on the property until such time that the obligation is fulfilled.

8. Underground Lines

If the Customer requests an underground distribution line in lieu of the standard overhead line, the Company will give reasonable consideration to the request. If the Company believes that there are technical complications, safety issues, engineering concerns, or other reasonable concerns regarding the feasibility and/or maintenance of an underground system in the given circumstances, the Company may decline to provide underground service.

If the Company agrees to an underground service, the Company will estimate the cost of providing the underground line to the home, using a predetermined underground cost per foot ("Underground Cost Per Foot"). The Customer will be required to pay an "Underground Charge" equal to:

(A) the total cost of installing the underground line; minus

(B) an amount equal to the Overhead Cost Per Foot of two poles and two spans; plus

(C) the applicable tax contribution factor.

The Underground Charge must be paid before the start of construction (even if it exceeds $1,500) and it is nonrefundable if the underground line is built.

The Customer will be responsible for removal of ledge, trenching, backfilling in accordance with the Company's construction standards and/or the "Information & Requirements for Electric Service" as published by the Company from time to time, and shall comply with codes and requirements of legally constituted authorities having jurisdiction. In addition, the Customer will be responsible for the installation and ownership of the underground secondary service to the home as served from the Company's distribution line.

The Company will also require the Customer to install, in accordance with the Company's specifications, the underground conduits, foundations, risers, manholes, and hand holes supplied by the Company.

9. Current Per Foot Costs

The "Cost Per Foot" for underground and overhead construction used under this policy shall be the same as used under the Company's "Line Extension Policy for Residential Developments".

10. Tree Trimming

The Customer will be responsible for all necessary tree trimming on private property. Tree trimming along public ways and common ways will remain the responsibility of the Company but may cause additional charges to be billed to the Customer.

11. Line Extension Agreement

The Company will require the Customer to sign a Line Extension Agreement setting forth the terms of this policy and any other terms that the Company deems are reasonably necessary in connection with the installation line to the Customer's home, provided that such terms are not inconsistent with the terms expressed in this policy.

12. Temporary Service

This policy shall not apply to lines constructed for temporary service, unless the Company, in its sole discretion, deems it appropriate in the given circumstances of each case.

13. Winter Moratorium on Underground Construction

From the period of December 15 to April 1, the Company may decline, in its sole discretion, to install any underground facilities.

14. Easements

The Company will, as a condition on the installation of the service, require the Customer to provide the Company with an easement (drafted by the Company) for all facilities located on private property.

Effective: November 1, 2004