STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES

IN RE: THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID STANDARD OFFER SERVICE RATE	)	**DOCKET NO. ____**

MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STAY CONSIDERATION OF RIPURRA PETITION

Introduction

On July 7, 2006, an organization calling itself the "Rhode Island Public Utility Regulatory Reform Alliance" ("RIPURRA") filed a petition with the Public Utilities Commission ("Commission"), only a day after it filed papers with the Secretary of State's office to establish its existence.[1] The Petition makes allegations that misinterpret the law regarding utility ratemaking, misunderstand the role of the Division of Public Utilities and Carriers ("Division") in a ratemaking proceeding, misconstrue the Open Meeting process, and misstate numerous facts. The Petition also seeks remedies that are inappropriate, improper, and inconsistent with the law. For the reasons described more fully below, National Grid objects to the Petition and moves to dismiss it.[2] In the alternative, the Company moves the Commission to stay consideration of the Petition until Docket No. 3739 is closed.

[1] See RIPURRA Petition & Motion to Intervene, Petition & Motion for Relief From Order, Petition & Motion for Re-Opening and Reconsideration, Petition & Motion and Complaint for Rate Reduction, Petition & Motion for Interim Relief ("Petition"), filed on July 7, 2006.

[2] The Narragansett Electric Company is doing business in Rhode Island as "National Grid." References herein to "National Grid" or "Company" refer to the legal corporate entity "The Narragansett Electric Company."

At the outset, the Company finds the purported factual account of Docket No. 3739, as alleged in the Petition, to be astonishing in its creativity, as there has been nothing unusual about the process in this case. Rather, while the historically high fuel prices and nearly unprecedented wild swings in natural gas and oil indices have been unusual, what is before the Commission in Docket No. 3739 from a procedural perspective is not. The Commission has an open Standard Offer Service rate proceeding before it, and National Grid will be making a supplemental rate reduction filing at the end of this month in that open docket. The Commission is waiting for this updated rate filing by the Company, which it will then act upon.

Procedurally, what has taken place to date is as follows:

- On March 31, 2006, the Company filed with the Commission for a Standard Offer rate reduction, seeking to reduce the effective Standard Offer Service rate from 10 cents to 9.4 cents per kWh effective May 1, 2006. The filing complied with Section 39-3-11 notice requirements. The Commission then docketed this filing as Docket No. 3739.

- Given the significant fluctuation and dramatic increase in fuel prices, the Company updated its filing on April 21, 2006, and amended its request for the Commission to approve a Standard Offer Service rate of 9.7 cents, rather than the previously filed request of 9.4 cents.

- On April 25, 2006, the Division, after having performed some analyses, recommended that the Commission defer any action on the Standard Offer Service price at that time due to volatility in the fuel markets which affects the cost of standard offer service under some of the wholesale contracts.[3] See Memo from D. R. Stearns to L. Massaro (4/25/06).

- On April 26, 2006, at a validly noticed Open Meeting, the Commission temporarily suspended the rate change filed by the Company. Given the market fluctuations and the Division's recommendation, the Commission directed the Company to provide updated data at the end of the month. The Commission did not identify the length of the suspension. As such,

[3] The Petition alleges that the Division's actions were improper "ex parte" communications. This allegation is ridiculous, and will be discussed further, infra.

by law, the rate is suspended until the Commission takes action, but for no longer than six months. See R.I.G.L. § 39-3-11.

- On May 31, 2006, the Company filed to withdraw the request for a rate reduction, and maintain the Standard Offer Service rate at the Commission-approved rate of 10 cents per kWh for a short while longer to obtain more fuel market data.

- On June 16, 2006, the Division recommended that the rate be reduced to 9.6 cents per kWh effective July 1. On that same date, the Company replied, noting that if the Commission were to make a rate change, it preferred that it be on September 1.

- At the Commission's next validly noticed Open Meeting, held on June 22, 2006, the Chairman "expressed concern with the continued volatility in the market and supported deferring a decision until September and that the Commission continue to monitor the energy market." At this Open Meeting, the Commission unanimously agreed to continue the suspension of the rate filing.[4] See Open Meeting Minutes (6/22/06).

- On July 11, 2006, the Company filed its monthly Standard Offer Service reconciliation report indicating that it expects to propose a reduction in the Standard Offer Service rate to be effective September 1, 2006, provided that there are no major hurricanes or other national or global events that materially affect fuel prices.

Accordingly, the Commission is waiting for an updated filing from National Grid in Docket No. 3739, which remains an open docket during the validly established suspension period.

Notwithstanding the transparent legitimacy of the process, RIPURRA's Petition has effectively alleged a fictionalized account of what has transpired by taking the basic facts and sprinkling it with unfounded conclusions that are not supported by the law. As such, it is inaccurate, out of place, and should be dismissed by the Commission in its entirety. In the alternative, the Company requests that the Commission stay consideration until Docket No. 3739 is closed.

[4] There was no need for the Commission to take an additional vote at this Open Meeting because the suspension was already in effect.

Discussion

National Grid opposes and objects to the Petition on numerous grounds, not the least of which is the apparent misunderstanding on the part of RIPURRA as to how the Standard Offer Service tariff and reconciliation provisions operate. As the Commission is well-aware, the Company's wholesale Standard Offer supply contracts with wholesale suppliers contain two components -- a fixed base price for the purchase of the commodity, as well as a fuel index adjustment provision.[5] The fuel index adjustment provision increases the price per kWh of wholesale power supplied to National Grid in the event fuel prices increase above certain levels. See, e.g., Order No. 18509, at 1 (Jan. 24, 2006).

The Commission has stated:

> To the extent that the total cost of the wholesale power supply to NGrid, including fuel charges, exceeds retail Standard Offer Service ("SOS") and Last Resort Service ("LRS") revenues, the under-collection is recoverable, with interest, from NGrid's customers through the annual reconciliation provisions of NGrid's Standard Offer Adjustment Provision. Likewise, to the extent NGrid collects more than its total cost of providing SOS, the ratepayers are entitled to recoup the benefit, with interest.

Id. at 1-2 (emphasis added). As noted by the Commission, the Standard Offer ratemaking mechanism embedded in the filed tariff includes a provision that fully reconciles costs and revenues, with any balance earning interest. Thus, by the operation of the pre-existing tariff, any over-collections are accounted for and effectively refunded, with interest, when the Standard Offer Service rate is re-set. Customers are fully compensated and made whole in instances of over-collections.

[5] Some contracts do not contain a fuel index. But most of the standard offer load is covered by contracts that do contain fuel index provisions.

In setting the Standard Offer Service rate at 10.0 cents per kWh effective January 1, 2006, after notice and an evidentiary hearing, the Commission acknowledged that it could not anticipate the time during which the rate will be in effect, as the Company will be collecting a portion of its projected fuel costs and a portion of its deferred costs. The Commission required the Company to monitor its expenses, revenues, and deferrals and to consider filing for a rate change if the under-collection, or over collection, reaches $23 million. Id. at 17. When the operation of these Standard Offer Service reconciliation provisions are taken into account, it renders superfluous RIPURRA's request for "refunds."

I. The Commission Should Dismiss the Petition because the Company's Upcoming Rate Filing will Render the Petition Moot

The Petition seeks an immediate reduction of the Standard Offer Service rate. This request will be rendered moot by a supplemental filing by National Grid in Docket No. 3739. The Company has indicated in correspondence with the Commission that it will be making a supplemental filing for a rate reduction effective September 1, 2006. See June 16, 2006 filing with Commission; July 11, 2006 Standard Offer Reconciliation Report.

Specifically, the Company's monthly reconciliation report filed on July 11, 2006 indicates that it expects to propose a reduction in the Standard Offer Service rate to be effective September 1, 2006, provided that there are no major hurricanes or other national or global events that materially affect fuel prices. The Company has stated that it plans to review fuel prices at the end of July, as the Company typically does on a monthly basis. Assuming no material changes in fuel price forecasts, National Grid anticipates making a

filing by July 31, 2006 to reduce the Standard Offer Service rate, effective September 1, 2006. The proposed rate will be based on the fuel data available at the end of the month.[6]

Given this anticipated rate reduction filing, the Petition has no merit. When the Company files to reduce the Standard Offer Service rate in Docket No. 3739, as was planned long before this Petition was filed by RIPURRA, the first request for relief will be rendered moot because the filing is exactly the relief that the Petition purports to request – a decrease in the Standard Offer Service rate, reflecting lower anticipated fuel index costs.[7]

The Petition contains two other rate-related requests for relief, which are unsuitable. First, the Petition seeks the Commission to order rate refunds in an amount equal to the difference between the 10 cents per kWh and 9.4 cents from January 1, 2006 through the effective date of the rate reduction. Second, the Petition requests that the Commission order additional rate refunds in amounts justified by the actual rate over-recoveries after hearings. Petition, at 14.

As described above, given the fully reconciling adjustment provision, the Petition's request for refunds is an inappropriate remedy for any over-collection by the Company. When the Commission takes action on the Company's filing re-setting the Standard Offer Service rate, it also will be addressing any over-collection. For these

[6] In the July 11, 2006 Standard Offer Reconciliation Report, the Company estimates an over-collection of approximately $14 million by the end of June. By the end of July, the Company estimates that the over-collection will be approximately $19 million. These amounts are still below the Commission's designated amount of $23 million that would trigger consideration of a rate change. Nevertheless, the Company believes a rate reduction would be appropriate.

[7] While the Petition includes a request for a specific rate, it is axiomatic that any rate change that is established must be supported by substantial evidence. The Petition contains absolutely no evidence to support a reduction of the Standard Offer to the rates specified in the Petition, other than citing now outdated information that had been previously provided to the Commission. The rate change needs to be based on current data, not stale information from last March.

reasons, the Commission should dismiss the Petition. Alternatively, the Commission should stay the Petition until it has an opportunity to review and rule on the Company's upcoming rate reduction filing in Docket No. 3739. By the very provisions of the Standard Offer reconciliation tariff, customers are made whole, with interest, when there is an over-recovery of costs and the Commission approves a new rate.

II. The Commission Should Dismiss the Petition because There Have Been No Procedural or Administrative Violations

The Petition also requests the Commission reopen Docket No. 3739, issue effective notice to the public and schedule hearings within ten (10) days of such notice, grant the petitioners intervenor status, and incorporate the data, record, and findings of Docket No. 3706 into Docket No. 3739. These requests stem from misguided allegations of due process violations by the Commission based on its procedural and administrative treatment of the Company's rate filing in Docket No. 3739. They are wholly without merit and should be dismissed.

First, the Petition alleges a violation of the notice provisions of R.I.G.L. § 39-3-11. The notice provision of Section 39-3-11 states in pertinent part:

> No change shall be made in rates . . . by any public utility . . . except after thirty (30) days notice to the commission and to the public published as provided in § 39-3-10, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates . . . will go into effect.

What is clear from the wording of this statutory language is that the requirement for notice is imposed on the public utility and the prohibition is against the public utility changing its rates without providing the appropriate notice. Therefore, the statutory provision is only violated when there has been an actual change in the rate without the

notice provision being followed. Here, not only did National Grid comply with these provisions in its March 31 filing, but there was never a rate change that followed it. As such, there can be no violation of the statute. By definition, there has been no violation here because National Grid's Standard Offer Service rate has not been changed since the Commission's last order that put the current rate into effect.[8] Thus, the claim of notice violation must be summarily dismissed.

Second, the Petition makes other mistaken claims of notice and hearing violations. R.I.G.L. § 39-3-12 makes clear that the Commission may, "in its discretion and for good cause shown," waive the hearing and the notice requirements of R.I.G.L. § 39-3-11. Historically, the Commission's general practice has been to approve and implement an uncontested rate reduction without a hearing and on less than the 30-day notice required by R.I.G.L. § 39-3-11, pursuant to the discretion afforded to the Commission by R.I.G.L. § 39-3-12.[9] See Order No. 16909, at ftnte 10 (Feb. 5, 2002). At the outset of this case, the Commission was exercising its discretion from Section 39-3-12 to determine whether it would implement the uncontested rate reduction filing without a hearing and on less than the 30-day notice requirement.

[8] The Petition's allegation of notice violation is the equivalent of filing a tort action in court against a driver of a car when no accident has actually happened. There is no cause of action without the accident. Similarly, in this case, there can be no violation absent a rate change.

[9] In one instance, New England Gas Company filed a rate reduction on December 3, 2001 for effect December 15, 2001. On December 12, 2001, the Division filed a memorandum in support of the gas company's proposed reductions. At open meeting on December 13, 2001, the Commission considered the evidence presented, which was endorsed by the Division, and approved the reductions as just and reasonable and in the best interest of the ratepayers. Order No. 16909 (Feb. 5, 2002). The Commission found that "good cause" existed for the Commission to approve the proposed rate reductions without 30 days notice and a hearing so that lower rates for customers could be implemented as soon as possible. Id.

But less than 30-days later, at a validly noticed open meeting, the Commission voted to suspend the rate decrease filed by the Company.[10] The Commission did not identify the length of the suspension. Accordingly, by law, the rate is suspended for a maximum of six months. See R.I.G.L. § 39-3-11. At the Commission's next validly noticed open meeting, held on June 22, 2006, the Commission unanimously decided to continue the suspension of the rate filing. See Open Meeting Minutes (6/22/06).

During the suspension period, the Commission can properly investigate and hold hearings. See Providence Gas Co. v. Public Utilities Comm'n, 352 A.2d 630, 633 (1976). In interpreting R.I.G.L. § 39-3-11, the Court has stated:

> In essence, this statute provides that no change shall be made in any utility rate, toll or charge until 30 days after notice of the proposed change has been given to the Commission. Once the commission is notified of the proposal's pendency, it is required to hold a public hearing and to make an investigation as to the proposal's "propriety." ***The Commission can suspend the effective date of a proposed change for an additional period of up to six months. During this interval, the investigation and the hearing can begin.*** If the hearing and/or the investigation have not been completed at the expiration of 6 months, the commission can further extend the suspension period for an additional 3 months. Once the hearing is completed, the Commission is required to issue an appropriate order within the next 90 days.

Id. (emphasis added) Thus, despite the Petition's allegations, there is no legal requirement for the Commission to hold a hearing immediately following the initial filing. The Commission appropriately suspended the rate within thirty days of the initial filing. Once the Company amends its filing with updated rate information by the end of July for a rate reduction to be effective September 1, 2006, the Commission can either

[10] The Commission fully complied with the provisions of the Open Meetings Laws during its April 26 and June 22 open meetings. See R.I.G.L. § 42-46-1, et seq. The Commission provided notice in accordance with R.I.G.L. § 42-46-6 and the meetings were performed in an open and public manner in accordance with R.I.G.L. § 42-46-1.

approve the reduction pursuant to Section 39-3-12 or notice a public hearing to consider the rate change.

Based on the above-described series of events, the Petition's procedural requests for relief are not appropriate. First, there is no need for the Commission to "reopen" an already open docket. As has been described herein, Docket No. 3739 is an open docket. The rate filing has been suspended, and the docket has not been closed by the Commission. Accordingly, this request for relief should be denied.

Next, after the Commission receives the Company's supplemental rate reduction filing at the end of the month, the Commission can, if it deems appropriate, hold a public hearing and allow for motions to intervene at that time. It is not ripe now.[11]

Finally, there is no need for the Commission to formally "incorporate the data, record, and findings of Docket 3706 into Docket 3739." See Petition, at 9. The Commission can rely on its orders in previous dockets as precedent, as it has done on numerous occasions.

III. The Commission Should Dismiss the Petition because the Division is an Appropriate Party to the Proceeding

The third set of requests for relief contained in the Petition relate to review of the filing by the Division in the proceeding. Specifically, RIPURRA "petitions and moves the Commission to conduct a complete review and investigation of the division with respect to its conduct and actions with respect to National Grid's Rate Reduction

[11] National Grid objects to RIPURRA's request for intervention status and is simultaneously filing with the Commission an objection to RIPURRA's intervention in Docket No. 3739. RIPURRA is a newly-formed group without any stated goals or purpose. It filed for incorporation with the State one day prior to filing its Petition with the Commission. There is nothing unique to this group that is not otherwise represented by the Attorney General or Division in Docket 3739.

Proposal and all related matters tied to Docket 3739." Petition, at 11. RIPURRA also requests that the Division's Memorandum of April 25, 2006 be dismissed and excluded from the record, and that the "Commission require the Division to retain and employ independent experts and data in the course of any further matters presented under Docket 3739." Id. As RIPURRA clearly doesn't understand the role of the Division in rate proceedings, these prayers have no merit, and these motions should be dismissed in their entirety.

Before addressing this allegation on the merits, it is worth noting that RIPURRA's request to have the Commission open an investigation against the Division is rather strange. There is absolutely no statutory or jurisdictional basis for such an unprecedented administrative proceeding to take place. There is nothing in Title 39 or anywhere in Rhode Island law that would empower the Commission to investigate its sister agency and issue an order compelling it to do anything. Thus, the prayers for relief are completely out of place. But, most important, the allegations made in the Petition are baseless, even without regard to whether the Commission could actually open a case as requested. The Petition merely reflects the fact that RIPURRA is unfamiliar with the law, as will be addressed below.

In a case that is ironically captioned Narragansett Electric Company v. Harsch, 368 A.2d 1194, 1199 (1977), the Supreme Court clearly delineates the role of the Commission from the role of the Division and the Division Administrator. The Court stated, "the General Assembly intended by its enactment to segregate the judicial and administrative attributes of ratemaking and utilities regulation and to vest them separately

in the commission and the administrator (or division)." Id. With regard to the Commission, the Court stated:

> The commission is clothed with the 'powers of a court of record' in determining and adjudicating matters within its jurisdiction (§ 39-1-7). It is further empowered to make orders and render judgments and to enforce the same by suitable process (§ 39-1-7). The commission is defined at one point in the statute as an 'impartial, independent body' which renders decisions affecting both the public interest and private rights based upon the law and the evidence (§ 39-1-11). The commission is permitted, in much the same manner as a trial justice in the courts, to conduct prehearing conferences and issue prehearing orders which control the conduct of the rate case (§ 39-1-12).

Id. at 1199-1200.

In contrast to the judicial powers enjoyed by the Commission, the Court defined the general and administrative powers conveyed to the Division Administrator and the Division as set forth in chapter 3 of Title 39 of the Rhode Island General Laws. Id. at 1200. Specifically, Section 39-1-11 requires that the Commission's adjudications be based upon the law and upon the evidence as 'presented before it by the division and by the parties in interest.' Id. The Legislature perceived that, in matters brought for hearing before the Commission, the Division would assume a role not unlike that of a party in interest. Id. As the Supreme Court stated in the Narragansett v. Harsch case:

> Thus, it seems manifest that, in pursuit of the public interest set forth in § 39-1-1, the Legislature has conceived a system whereby the Division of Public Utilities and Carriers, in addition to its broad regulatory powers, appears on behalf of the public to present evidence and to make arguments before the commission.
>
> Id. at 1200.

As this excerpt from the decision makes clear, the Division is a party, not a quasi-judicial entity, in Commission proceedings. Thus, the allegations contained in the Petition that

the Division was engaged in "ex parte" conversations with a participant in a pending administrative or regulatory matter before the Commission are plainly wrong.

The Petition cites to "GLRI Section 45-35-13" as support for its "ex parte" allegations. We presume that it intended to cite to R.I.G.L. § 42-35-13, which provides that:

> Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render an order or to make findings of fact and conclusions of law in a contested case shall not, directly or indirectly, in connection with any issue of fact, communicate with any person or party, nor, in connection with any issue of law, with any party or his or her representative, except upon notice and opportunity for all parties to participate." (Emphasis added).

Docket No. 3739 is a matter before the Commission, and not the Division. The Division is not assigned to render an order or to make findings of fact and conclusions of law with regard to the Standard Offer Service rate. Rather, the Division is a party to the case, as provided in the statutory framework and explained by the Rhode Island Supreme Court.

Moreover, the Commission's Rules of Practice and Procedure define "ex parte" as "direct or indirect communication outside of a hearing, in connection with any issue of fact or law in a pending proceeding, except upon notice and opportunity for all parties to participate, between any party or representative and any Commissioner." Procedural Rule 1.1(k). The Rules further provide that "no person who is a party to or a participant in any proceeding pending before the Commission, or the person's counsel, employee, agent, or any other individual acting on the person's behalf, shall communicate ex parte with any Commissioner about or in any way related to the proceeding, and no Commissioner shall request or entertain any such ex parte communications." Procedural

Rule 1.2(h).[12] These rules clearly apply to the Commission as decision-maker, and not to Division, which is a party in the proceeding. Thus, all of the statements, allegations, and requests for relief contained on pages 9-11 of the Petition should be dismissed.

In sum, the Petition grossly misunderstands the role of the Division in Commission proceedings, as well as the relationship and authority of the two sister agencies. For these reasons, the requests for relief pertaining to the Division must be dismissed.

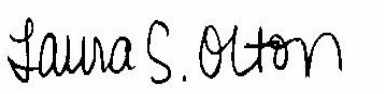
Conclusion

For all of the foregoing reasons, the Commission should dismiss the RIPURRA Petition. In the alternative, the Commission should stay consideration of the RIPURRA Petition until Docket 3739 is closed.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC COMPANY, d/b/a NATIONAL GRID

By its Attorney,



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Dated: July 20, 2006

[12] The ex parte communications prohibitions contained above do not apply to a communication from a party or participant or counsel, agent or other individual acting on the person's behalf, if the communication relates solely to general matters of procedure or scheduling and is directed to the Clerk or the Commission Counsel. Commission Procedural Rule 1.2(h)(2).

Certificate of Service

I hereby certify that a copy of the cover letter and accompanying material(s) have been hand-delivered or sent via U.S. mail to the individuals listed below.

Joanne M. Scanlon
National Grid

July 20, 2006
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