STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID BACK-UP RATE PETITION : DOCKET NO. 4232

OBJECTION OF THE DIVISION OF PUBLIC UTILITIES AND CARRIERS TO TEC-RI'S MOTION TO DISMISS

The Energy Council of Rhode Island ("TEC-RI") has moved to dismiss the petition of the Narragansett Electric Company, d/b/a National Grid ("National Grid" or the "Company") requesting the Commission to open up a back-up rate docket. From a procedural perspective, the Division of Public Utilities and Carriers (the "Division") believes the Commission Clerk properly and correctly established the docket in accordance with the Commission's rules. The Division, moreover, believes the issue of whether tariffed charges associated with the provision of back-up electric distribution service should be eliminated can best be adjudicated in the context of a docket, separate and apart from Docket No. 4206, the pending decoupling proceeding. The Commission, therefore, should deny TEC-RI's motion to dismiss.

Travel of Proceedings

In April of 2010, the Commission issued Order No. 19665A in Docket No. 4065, the last general filing for rate relief of National Grid. In that Order, the Commission held:

> TEC-RI proposed eliminating back-up rates. The Commission finds that there was not enough evidence to determine whether the elimination of back-up rates was in the best interest of the Company and all of its customers. The Commission will open a *separate docket* to evaluate the impact of this proposal.

Order No. 19665A at 148 (emphasis added).

In June of 2010, the General Assembly enacted G.L. § 39-1-27.7.1 (hereinafter referred to as the "Decoupling Act") requiring the Company, among other things, to file a "revenue decoupling proposal" with the Commission. Pursuant to the statute, the Commission is to approve such a proposal provided it contains the features set forth in the statute and is consistent with the statute's intent and objectives.

On October 18, 2010, the Company filed its Revenue Decoupling Mechanism ("RDM") Proposal. The Commission docketed the matter as Docket No. 4206. In National Grid's RDM filing, which included the testimony of two witnesses, there was neither mention of Back-Up service nor any proposal made by National Grid regarding any change to the Back-Up tariffs. Soon after the filing was made, the Commission held a procedural conference in Docket 4206 and issued a docket schedule on November 9, via an email to the parties from the Commission clerk. That schedule called for the Division and Intervenors to file their testimony on March 17, 2011, responding to National Grid's RDM proposal, and National Grids' rebuttal testimony was scheduled for April 14, 2011. The Division filed its testimony responding to the many issues associated with the RDM mechanism proposed in National Grid's October 18 filing. TEC-RI's decoupling testimony, while ostensibly responding to National Grid's RDM proposal, primarily raised for the first time in the decoupling Docket 4206, a wholly separate issue, *i.e.*, the requested elimination of charging customers who receive back-up service from the utility, and passing those costs on to other customers. TEC-RI's attempt to utilize the decoupling docket to leverage its collateral interest in the complete elimination of back-up rates occurred despite the Commission's prior Order that this issue should be adjudicated through a separate docket. At no time after the issuance of Order No. 19965A or the enactment of the Decoupling Act did TEC-RI ever seek to modify Order No. 19665A to request that the separate docket the Commission

established to study the elimination of back-up rates be incorporated into and adjudicated in the decoupling proceeding established by virtue of the Decoupling Act. To obviate the conflict between the dictates of Order No. 19665A and TEC-RI's filing, on or about the same date (March 17, 2011), the Company filed a petition with the Commission to consider whether electric back-up rates should be continued, modified or terminated. The Clerk of the Commission promptly docketed the petition as Docket No. 4232.

On April 5, 2011, the Company sought to transfer the testimony of Mr. Ferguson in Docket No. 4206 to Docket No. 4232. TEC-RI objected to the Company's motion. On April 8, 2011, the Commission held a procedural schedule for Docket 4232, the Back-Up Rate Docket. The Commission established an aggressive procedural schedule that requires National Grid to file testimony on the Back-Up Rate issue on May 12, and all hearings to conclude by the end of June. On April 14, 2011, TEC-RI moved to dismiss the Company's petition in Docket No. 4232. The Division objects to TEC-RI's motion to dismiss, and, by its opposition, urges the Commission to effect the Company's transfer request and to maintain Docket No. 4232 as a separate and distinct proceeding from Docket No. 4206.

Discussion

Through the Testimony of Mr. Ferguson, TEC-RI advances three legal grounds for the Commission to dismiss the Company's petition in Docket No. 4232: (i) The Commission did not approve opening the docket at "open meeting;" therefore, the docket was erroneously opened, Ferguson at 1; (ii) reduced sales resulting from distributed generation (DG) must be recovered through an RDM, rather than through back-up charges, to comport with Rhode Island law,

Ferguson at 4; and (iii) TEC-RI does not possess the financial wherewithal to participate in multiple dockets, Ferguson at 6.[1]

Regarding TEC-RI's first point, Rule 1.3(d) provides that "the Clerk shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number after preliminary review." Preliminary reviews are conducted by the Clerk. If a filing does not conform to the Rules' filing requirements then the Clerk possesses the authority to refuse to docket the filing. Commission Rules of Practice and Procedure, Rule 1.3(e) (1998). The Commission, therefore, is not required to vote at open meeting in order for a matter to be docketed. That being said, the Commission did in fact vote at an open meeting to open a separate docket on the issue of whether there should be a charge for the provision of Back-Up service, and that occurred in the open meeting for Docket 4065. The first reason advanced by TEC-RI for dismissing the Company's petition is without legal or factual merit.

TEC-RI's third reason is equally without legal basis. TEC-RI concedes that the Company's initial filing in Docket No. 4206 failed to "completely address DG." Ferguson Testimony at 4. The Company filed its Rebuttal Testimony in Docket No. 4206 on April 18, 2011. The Division's Surrebuttal Testimony is due on May 6, 2011. Since the Company did not address the back-up rate/DG issue in its initial or Rebuttal filings, the Division is neither required nor has planned to address the issue in its Surrebuttal Testimony. The Division has no information as to what the Company's proposal for its Back-Up service might be, or what its

[1] TEC-RI also contends that demand charge revenues from back up rates in 2010 were "*de minimus*," and therefore, "can be easily recovered through the RDM under Docket No. 4206." That these charges can be recovered through the RDM does not bear on the complexity of the policies that must be considered by the Commission in determining whether or not to retain some or all of the existing backup rate structure. Nor does it constitute a legal basis supporting the consolidation of Docket No. 4206 with Docket No. 4232. Further, the fact that revenues are a certain level under *current* policy provides no guidance as to how changing that policy may impact revenues subsequent to a policy change.

rationale would be for any changes it may or may not propose. If the issue is injected into the proceedings in Docket No. 4206 at this late date as TEC-RI has sought to do, the Division will be severely prejudiced. The claim of savings to a litigant has never been deemed sufficient to justify consolidation where another litigant will incur prejudice. See e.g., Flinkote Co. v. Allis-Chalmers Corp. 73 F.R.D. 463, 464-65 (S.D.N.Y. 1977) (consolidation should not be granted if it would prejudice defendant). See also Malcom v. National Gypsum Co., 995 F.2d 346, 350 (2d Cir. 1993) ("considerations of convenience and economy must yield to a paramount concern for a fair and impartial trial").

Lastly, TEC-RI contends that sales lost through DG cannot be recovered through a back-up charge but rather must be recovered through the RDM. The only legal basis TEC-RI advances to support this conclusion is language in the Decoupling Act which provides that electricity and gas revenues shall be "fully decoupled" from sales. Ferguson at 4. Nowhere, however, does the Decoupling Act necessarily require the *complete* abolition of existing back-up rates, or the requirement that the utility provide a service to one group of customers, the cost of which will be recovered from another group of customers. Had the General Assembly contemplated the Act to effect such a draconian interpretation, then it would have expressly so provided. See e.g., Clark-Fitzpatrick, Inc. /Franki Foundation Co. v. Gill, 652 A.2d 440, 452 (R.I. 1994) (in construing a waiver of immunity statute, the General Assembly did not intend to deprive the state of any part of its sovereign power unless the intent to do so is clearly expressed or necessarily arises by implication from the statutory language); Downey v. Carcieri, 996 A.2d 1144, 1151 (R.I. 2010) (statute may not be construed to controvert its plain language and intent).

The Decoupling Act preserves the Commission statutory obligation under Title 39 to ensure that rates are just and reasonable. G.L. § 39-1-27.7(e). See In Re: Narragansett Bay

Comm. General Rate Filing, 808 A.2d 631, 635 (R.I. 2002) (Commission possesses duty to ensure rates are just and reasonable). Thus, the Commission retains the authority to identify and effect appropriate changes in the Company's rate structure through further regulatory proceedings occasioned by an approved decoupling plan. See Beaudoin v. Petit, 409 A.2d 536, 540 (R.I. 1979) (one statute should not be construed to nullify another). The establishment and adjudication of Docket No. 4232 (as a separate docket) to consider whether none, some or all back-up rates should be eliminated conforms to and furthers this statutorily vested function of the Commission.

Conclusion

For the foregoing reasons, the Division requests that the Commission deny TEC-RI's motion to dismiss the Company's petition in Docket No. 4232 and grant the Company's motion to transfer the Testimony of William H. Ferguson in Docket No. 4206 to Docket No. 4232.

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CERTIFICATE OF SERVICE

I certify that a copy of the within objection was forwarded by e-mail to the Service List in Docket No. 4232 on the 28th day of April, 2011.

Donna MacRae-Daigle