Jennifer Brooks Hutchinson
Senior Counsel
Rhode Island

May 24, 2011

VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: The Narragansett Electric Company, d/b/a National Grid
Tariff Advice Filing to Amend R.I.P.U.C. NG-GAS No. 101.
Docket No. _____

Dear Ms. Massaro:

Pursuant to Commission Rule 1.9(c), enclosed please find ten (10) copies of National Grid's[1] tariff advice filing to request approval of the Company's gas tariff, entitled General Terms and Conditions, RIPUC NG-GAS No. 101, Section 1, Schedule A, Sheets 4 and 5, Third Revision and the Definitions contained in Section 1, Schedule B, Sheet 1, Fifth Revision, effective June 27, 2011. This tariff would supersede the Company's General Terms and Conditions, RIPUC NG-GAS No. 101, Schedule A, Sheet 4, Second Revision and the Definitions contained in Schedule B, Sheet 1, Fourth Revision. The appropriate tariff pages marked to identify the additions to the tariff currently in effect are contained in this filing as Attachment 1. A clean copy of the amended document is attached as Attachment 2. In addition to the tariff and supporting explanatory information, the Company is enclosing a draft notice that will be published in *The Providence Journal* to notify the public of the filing in accordance with Commission Rule 1.9 (d)(2). This draft public notice of the filing is attached as Attachment 3. The Company will publish this notice after receiving a docket number for this filing from the Commission.

Specifically, National Grid seeks to add a new section 3.1, Billing Termination ("Soft-Off") to its General Terms and Conditions and to amend the Definitions section of its gas tariff to reflect the inclusion of the Company's current Soft-Off policy. This filing seeks to formalize the Company's existing policy that had been informally established with the Consumer Section of the Division of Public Utilities and Carriers ("Division") in 2010, and is being made in order to comply with the Division's recent Order in Docket No. D-10-110 (January 5, 2011). In its Order, the Division directed the Company to, within six (6) months of the Order, obtain Commission approval to modify its "*Terms and Conditions of Service*" to specifically provide for its Soft-Off

[1] The Narragansett Electric Company d/b/a National Grid (hereinafter referred to as "National Grid" or the "Company").

policy and to specify a) that there be prior notice of the Soft-Off policy and affirmative acceptance of an account by landlords, (b) the specific time limit and consumption limit for service under the Soft-Off policy; and (c) that bills are to be sent to a landlord's billing address or other address as directed by a landlord. National Grid is making similar changes to its electric tariff pursuant to a separate tariff advice filing. A copy of the Division's Order is attached as Attachment 4.

The Company's Soft-Off policy applies to the termination of an account by the Company for billing purposes where there is no new customer of record and the actual flow of gas to the premise is not disconnected. To be eligible for a Soft-Off termination, a customer's account must meet the following criteria:

- Residential gas accounts are eligible. Some small commercial customer gas accounts are also eligible.
- Meter must have an electronic receiver/transmitter (ERT)
- The account can not be subject to shut off for non-payment.
- The account can have no more than $300 in arrears, except if the customer is requesting new service at another premise
- There are no other open orders to shut the meter off.

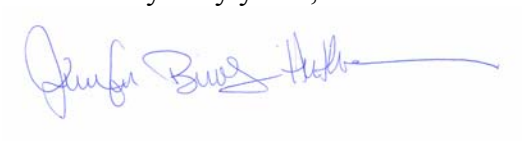
The Company recognizes that under appropriate circumstances, a policy that permits the Company to continue to provide gas service to a premise or location after a termination request has been received could provide significant cost savings for the Company and would also benefit customers as such a policy eliminates the need for the Company to make two trips to a premise--the first to disconnect the service and the second to turn the service back on.

A detailed cost-benefit analysis of the Company's Soft-Off policy that demonstrates the cost-effectiveness of the policy for the Company and its customers is attached to this filing as Attachment 5. As shown on that attachment, the costs to the Company to send a truck and technician to a premise is approximately $62.00 ($41.00 per meter on and $21.00 per meter off) where the technician can gain access to the premise. When a technician is dispatched but cannot gain access to the premise, the Company's approximate cost for the technician's time to make the additional unproductive trip is $17.00 per meter on and meter off. In some instances, several trips to a premise to either turn off service or turn on service may be required. Thus, the cost to terminate a customer and then to subsequently resume service at that location is significantly more than the estimated monthly cost of $12.15 for 13ccf of gas,[2] which is the consumption limit for a particular location, above which the Company would physically terminate gas service to that location under the proposed tariff. In addition to these cost savings, customers and landlords derive significant benefits from the Soft-Off policy. For example, a new customer of record does not need to wait for the Company to turn the meter on and can begin service immediately at a particular location. In addition, landlords are able to maintain gas service to their rental properties, which can avoid frozen pipes during the winter months.

[2] Based on the current per therm cost of gas ((13 ccf x $1.028 = 13.364 therms) x 0.9091= $12.15).

Thank you for your attention to this transmittal. If you have any questions regarding this filing, please feel free to contact me at 401-784-7288.

Very truly yours,



Jennifer Brooks Hutchinson

Enclosures

cc: Steve Scialabba
Jim Lanni

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DEFINITIONS

Service Quality Performance Fund:	Deferred account containing accumulated Service Quality adjustments.
Soft-Off	The termination of an account by the Company for billing purposes where there is no new customer of record and the actual flow of gas to the premise is not disconnected.
Supplier Costs:	Costs associated with the entitlement and purchase of natural gas.
Therm:	An amount of gas having a thermal content of 100,000 Btus.
Transportation Imbalance Revenues:	Revenues associated with daily and monthly imbalances for transportation customers, as included in the Company's Terms and Conditions of Firm Transportation.
Transporting Pipeline:	The party(s) engaged in the business of rendering transportation service of natural gas in interstate commerce subject to the jurisdiction of the Federal Energy Regulatory Commission, which are transporting gas for Marketer to a Point of Receipt of the Company.
Upstream Storage Costs:	Costs associated with the entitlement, injection, withdrawal and storage of natural gas upstream of the city-gate.
Working Capital:	Amounts required to finance the Company's activities prior to the receipt of revenue.

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DEFINITIONS¶

GENERAL TERMS AND CONDITIONS

The Company shall undertake to furnish service to the customer for use only for his/her own purposes and only on the premises occupied through ownership or lease by the customer, except as provided below. In cases where the customer is a condominium association or the owner or manager of a commercial or residential rental property with over six (6) units, the customer may allocate the Company charges for gas service to other gas users on the premises through any reasonable means, including properly installed submetering. In such situations where the customer is allocating the Company charges for service to others, the burden is on the customer, when requested by the Company, to demonstrate that the allocated charges are no greater than the customer's bill from the Company. When allocating such charges, the customer may separately include reasonable administrative fees. Natural gas sold by the Company to authorized natural gas vehicle filling stations may be remetered or submetered by the customer for resale to another or others.

On an annual basis the Company may notify all customers that if they are the owners of property and their tenants move out, the owner must provide written notification in advance that he/she wants gas left on at that premises in his/her name. If the Company does not receive advance written notice, the service may be terminated, and the Company will not be liable for any damages to the premises resulting from the termination of gas service.

3.1 BILLING TERMINATION ("Soft-Off')

Where a Residential customer or Small Commercial and Industrial customer has requested termination of service and an estimated or actual final meter reading is recorded, the Company may utilize a "Soft-Off" termination where the meter has an electronic receiver/transmitter device and the account is not subject to a shut-off order or request.

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DEFINITIONS¶

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In the event of a termination of an account at a property involving a landlord or property owner where the landlord/property owner has previously provided the Company a signed agreement, the Company may record the landlord/property owner as the customer of record for that account.

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In addition, if the Company obtains oral or written acceptance or a signed agreement from a landlord/property owner, the Company may establish that landlord/property owner as the customer of record.

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In the absence of a new customer of record and the Company obtaining reasonable access, if consumption at a location where a Soft-Off has been implemented exceeds 13ccf, the Company will send notification to the location indicating that service shall be physically terminated if an account is not established. If no response is received or if the Company can not gain access, additional attempts will be made to locate and contact the landlord/owner. In cases where the account has not exceeded 13ccf and, if after 90 days, the account is still in the "Soft-Off" status, the Company will send notification to the location indicating that the service may be physically terminated if an account is not established.

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GENERAL TERMS AND CONDITIONS

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Legal Notice
National Grid Tariff Advice Request
R.I.P.U.C. Docket No. _____

Pursuant to Rhode Island General Laws §39-3-11 and Rule 1.9(c) of the Rules of Practice and Procedure of the Rhode Island Public Utilities Commission ("Commission"), The Narragansett Electric Company, d/b/a National Grid ("Company"), hereby gives notice that on May 24, 2011, the Company filed by Tariff Advice a request to approve the Company's gas tariff entitled General Terms and Conditions, R.I.P.U.C. NG-GAS No. 101, Section 1, Schedule A, Sheets 4 and 5, Third Revision and the Definitions contained in Section 1, Schedule B, Sheet 1, Fifth Revision to become effective June 27, 2011. This tariff would supersede the Company's General Terms and Conditions, R.I.P.U.C. NG-GAS 101, Schedule A, Sheet 4, Second Revision and the Definitions contained in Schedule B, Sheet 1, Fourth Revision.

Specifically, the Company is proposing to add Section 3.1, Billing Termination ("Soft-Off") to its General Terms and Conditions and to amend the Definitions to reflect inclusion of the Company's current Soft-Off policy. This filing seeks to formalize the Company's existing policy that had been informally established with the Consumer Section of the Division of Public Utilities and Carriers ("Division") in 2010, and is being made in order to comply with the Division's recent Order in Docket No. D-10-110 (January 5, 2011). The Company's Soft-Off policy applies to the termination of an account by the Company for billing purposes where there is no new customer of record and the actual flow of gas to the premise is not disconnected. A detailed description of the proposed changes and supporting documentation are included in the Company's application, which is on file for examination at the offices of the Public Utilities Commission, 89 Jefferson Boulevard, Warwick, Rhode Island. The Commission is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must contact the Clerk of the Commission seventy-two hours in advance of the hearing.

National Grid

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888

IN RE: Sharon Bell-Mayewski Complaint Regarding National Grid's Gas Billing Practices And Procedures	)))	**Docket D-10-110**

Hearing Date: October 25, 2010[1]

REPORT AND ORDER

Introduction

On August 14, 2010, Ms. Sharon Bell-Mayewski and her husband, Leo Mayewski (collectively "Complainants" or "Mayewskis") filed a complaint with the Division of Public Utilities and Carriers ("Division") regarding the manner in which they were billed for gas consumption at a rental property owned by them at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island. The gas provider for this property is the Narragansett Electric Company d/b/a National Grid—Gas referred to hereafter as "National Grid" or "the Respondent."

All public utility billing disputes fall generally under the provisions of R.I.G.L. Title 39, primarily chapters 1-4. R.I.G.L. § 39-3-33 requires that the Administrator of the Division "shall make such reasonable rules as will aid in the administration and enforcement of chapters 1 – 5 of this title." Such rules have been promulgated with respect to each of regulated public utility services covered by Title 39. Commercial billing disputes involving charges for natural gas are governed by the Division's *Rules and Regulations Prescribing Standards for Gas Utilities, Master Meter Systems and Jurisdictional Propane Systems* (the "*Gas Rules*"). In addition, all gas and electric public utilities are required by law (R.I.G.L. § 39-3-11) to have their tariffs, and any changes thereto, approved by the Rhode Island Public Utilities Commission, with the

[1] Although the record was closed on this date, the parties requested leave to submit written arguments. This request was granted. The last set of arguments was filed by National Grid on November 23, 2010.

approved tariffs kept on file here at the Division as well as at the public utility's own business office, and the tariffs are required to be available for public inspection at those locations. Most public utilities, and certainly all gas public utilities, have appended to, and incorporated in, their published tariffs "*Terms and Conditions of Service*" that may also be relevant in billing disputes, including commercial billing disputes such as this one.

In response to the Mayewskis' complaint, the Division scheduled and conducted a duly noticed public hearing on the matter on October 25, 2010, in Hearing Room B at the Division's offices located at 89 Jefferson Boulevard in Warwick, Rhode Island. The following persons entered appearances:

Appearances:

For the Complainants:	Sharon Bell-Mayewski, *pro se* Leo Mayewski, *pro se*
For National Grid:	John McCoy, Esq.
For the Advocacy Section:	Leo Wold, Esq.

Issue

The issue presented with respect to the property at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, is whether or not the Mayewskis were being properly billed for the gas being used at that location between the end of October 2009 (the Mayewskis' tenant called National Grid to cancel gas service on October 23, 2009, and National Grid issued a "soft closure" order for that account on October 26, 2009) and March 2010 (when National Grid first sent a letter, dated March 10, 2010, to the Mayewskis demanding payment of $350.91 for gas consumed at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, for the billing period October 27, 2009, through February 26, 2010).[2]

[2] Complainant Exhibits 4A, 4B.

Applicable Law

This issue is governed by the Division's *Rules And Regulations Prescribing Standards For Gas Utilities, Master Meter Systems And Jurisdictional Propane Systems* ("*Gas Rules*"), effective October 5, 2006.

The *Gas Rules* provide, in pertinent part:

B. DEFINITIONS

...

11. **Discontinued** means that gas service is no longer provided ***to the customer*** and the prevention of gas flow is usually performed by a locking device (valve) located in the service line or in the meter assembly.

...

16. **Inactive** means a service line where gas service ***to the customer*** has been discontinued but the service has not been abandoned.

...

C. SERVICE PROVISIONS

...

2. **Information to Customers**

a. Each LDC ["Local Distribution Company"] shall, ***upon request***, provide ***its customers*** such information and reasonable assistance ***as will help them to select*** the best use of service at the most advantageous rate. However, the ultimate ***responsibility for the selection*** of the best use ***of service*** at the most advantageous rate ***will rest with the customer***.

b. Each LDC shall, ***upon request***, explain to ***its customers*** the method of reading meters.

...

5. **Meter Reading and Bill Forms**

a. ...In cases where the dial readings of a meter must be multiplied by a constant to obtain the cubic feet or other unit consumed, the proper constant to be applied shall be clearly marked on ***the customer's meter*** and ***the customer's bill***....

...

c. Bills ***shall be rendered at regular intervals*** and shall show the date of the current meter reading and the amount or quantity of service for the billing period.

d. Each LDC shall keep an accurate account of all charges ***for service billed each customer*** and shall maintain records showing information from which each bill rendered may be readily computed.

...

8. **Discontinuance of Service**

> a. Discontinuance of Service ***by the Customer***
>
> ***A customer*** must give reasonable notice of his/her intention to discontinue service in accordance with the provisions of the applicable rate ***or terms and conditions of service*** and shall be responsible for all charges until expiration of such notice period. ***The customer*** will be given a confirmation number at the time of the termination of service call. For purposes of this rule, "reasonable notice" is defined as no less than five (5) business days.

(***Emphasis*** supplied.) Collectively, these rules, particularly Rules C2a and C2b, make it clear the gas utility must provide enough information to a potential customer to allow that customer to make an informed decision as to what type of gas service the customer should select. In other words, the utility/customer relationship is not created unless the customer makes an affirmative decision to accept a particular type of gas service. Once the customer makes that decision and gas service is initiated, the gas utility must present its customer with regular monthly bills that set out in detail the total charges and how those charges were calculated.

National Grid itself has promulgated "*Terms and Conditions of Service*" that set out in detail how a potential customer goes about becoming an actual customer. Paragraph 3.0 of Schedule A, Section 1, of the Narragansett Electric Company d/b/a National Grid, RIPUC NG-Gas No. 101, effective December 1, 2008, provides, in pertinent part:

GENERAL TERMS AND CONDITIONS

3.0 OBTAINING SERVICE FROM THE COMPANY:

> The Company ***shall furnish service to applicants*** under the filed rates and in accordance with these Terms and Conditions and the rules and regulations of the RIPUC and RIDPUC. The furnishing of service ***and acceptance by the customer constitutes a contract*** under these provisions. The Company may require at least one person on behalf of all parties who will receive service to sign an application or contract....
>
> The Company may accept oral or written application for residential service. Residential service may commence upon receipt by the Company or oral

> application, except that the Company reserves the right to require residential customers to show identification and proof of residency before commencing service....Non-residential service may commence upon oral application for an interim period pending the receipt of a duly executed written application and security deposit.
>
> ...
>
> A ***customer shall be and remain the customer of record*** and shall be liable for service taken ***until such time as the customer requests termination of service*** and a final meter reading is recorded by the Company. The bill rendered by the Company based on such final meter reading shall be payable upon receipt. Such meter reading and final bill shall not be unduly delayed by the Company. In the event that the customer of record fails to give notice of termination of service to the Company or fails to provide access to the meter, the customer of record shall continue to be liable for service taken until the Company either disconnects the meter ***or a new party becomes a customer of the Company by taking service at such service location***. Failure to make application for service shall not relieve a party from the obligation to apply and/or pay for service previously used.
>
> The Company shall undertake to furnish service to the customer for use only for his/her own purposes and only on the premises occupied through ownership or lease by the customer, except as provided below. In cases where the customer is a condominium association or the owner or manager of a commercial or residential rental property with over six (6) units, the customer may allocate the Company charges for gas service to other gas users on the premises through any reasonable means, including properly installed submetering....
>
> On an annual basis the Company may notify all customers that if they are the owners of property and their tenants move out, ***the owner must provide written notification in advance that he/she wants gas left on at that premises in his/her name. If the Company does not receive advance written notice, the service may be terminated***, and the Company will not be liable for any damage to the premises resulting from the termination of gas service.

(***Emphasis*** supplied.) As with the Division's *Gas Rules*, National Grid's Terms and Conditions of service clearly require that a person ***apply for service*** in order to become a customer. That is, an affirmative action is required by an individual in order to become a customer of National Grid. In the case of rental property, if the property owner wants to have gas service transferred to his/her name after a tenant moves out, then "***the owner must provide written notification in advance that he/she wants gas left on at that premises in his/her name***" or risk having the

service turned off. The clear inference to be drawn from the National Grid's own "*Terms and Conditions of Service*" is that if the property owner (landlord) does not ask in writing to have the gas service left on after the landlord's tenant vacates his rental property, ***the property owner will not be a customer***.

Facts

The parties are in agreement as to most of the salient facts.[3] The property at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, is currently owned, and has been owned for many years, by the Complainants, Sharon Bell-Mayewski, and her husband, Leo Mayewski. The apartment is one of several apartments owned at that address by the Mayewskis, all of which are rental properties. The Mayewskis' last tenant before the dispute arose, Ms. Stephanie Conca, notified National Grid on October 23, 2009, to have her gas service turned off, and National Grid issued a "soft closure" order on October 29, 2009, with respect to the apartment.[4] Initially, gas consumption remained within bounds for a soft closure, but in December 2009 and January 2010 consumption rose to 62 ccf and 64 ccf, respectively, suggesting that more gas was being consumed than could be explained by simply a pilot light being on. Nevertheless, National Grid apparently failed to comply with its policy, which would have required direct notification to the landlord after the December usage, failed again by not notifying the landlord following the January bill, and in fact did not notify the landlord (the Mayewskis) until March 2010, by which

[3] This point is made clear by the general factual agreement reflected in the written position statements submitted by all three parties, and amply supported by the testimony of the witnesses, and the documentary evidence. The only real factual bone of contention remaining is whether or not the Mayewskis knew, or should have known, that the gas was still on in this apartment.

[4] Under the "soft closure" scenario, National Grid stops billing the previous account holder without actually securing the gas supply to the meter. Instead, so long as gas consumption on the meter remains below 13 ccf per month, National Grid will not seek to bill anyone for consumption; if gas consumption rises above 13 ccf per month, National Grid is supposed to contact the landlord to establish whether or not the landlord or a new tenant should receive bills (or whether the landlord wants a "hard closure" where the gas supply is physically secured). *See* testimony of Ms. Maddox and the November 23, 2010, letter from National Grid's counsel.

time the bill had reached $350.91.[5] However, Mr. Mayewski admitted that he was in this apartment at least three times between the end of October 2009 and when he and his wife received the first bill in March 2010. The parties agree that the Mayewskis have a letter on file with National Grid requesting "soft closure" with respect to electric services at the various Mayewski rental properties, but that there is no similar letter on file with respect to gas services.[6]

Both National Grid and the Advocacy Section argue that the Mayewskis must have known that the gas was still on at this apartment. As the Advocacy Section puts it (and National Grid has adopted the Advocacy Section's summation on this point):

> Shortly after the former tenant vacated the premises in late October 2009, Mr. Mayewski inspected the premises. According to his testimony at hearing, he did not inspect the gas heater (with the lit pilot) or the stove (also with a lit pilot), nor did he turn on the water to determine if it was warm or hot. Later, when he returned to inspect the premises around Christmas time, Mr. Mayewski testified the apartment was cold and he could see his breath, but again, he did not inspect any of the gas appliances or hot water tank.
>
> This testimony does not strike the Advocacy Section as particularly credible. The evidence reflected that gas consumed at the premises in December of 2009 and January of 2010 was 62 and 64 ccf, respectfully [sic]. This consumption was almost triple the amount consumed in November, 2009 (21 ccf), and was consistent with the provision of heat to the premises, not merely lit pilots [sic] lights of the heater, stove and water tank.

See Leo J. Wold, Assistant Attorney General, letter dated November 5, 2010, on behalf of the Advocacy Section at 2; *see also* John P. McCoy, Bengston & Jestings, LLP, letter dated November 23, 2010, on behalf of National Grid at 1-2.

The Complainant, however, offers a contrary view of the record in her summation:

> The property was inspected when the tenant vacated the apartment in order for us to ensure that the apartment was clean, all belongings removed, no

[5] Complainant Exhibits 4A, 4B. A second bill was presented to the Mayewskis on March 23, 2010, for the billing period February 26, 2010, to March 23, 2010. This covers the period from the end of the first billing period to the date on which the Mayewskis' new tenant opened an account in the tenant's name. The new bill was in the amount of $49.10 for 25 ccf used, bringing the total bill being sought by National Grid in this matter to $400.01. *See* Complainant Exhibit 4C.

[6] *See* testimony of Ms. Maddox and Ms. Mayewski, the November 23, 2010, letter from National Grid's counsel.

> damage and no repairs required. Tenants do not turn off the gas or electric service until they vacate the premises. The gas company takes several days or longer to "shut-off" the gas. So, when Leo [Mayewski] initially conducts an inspection of any apartment, 99% of the time the gas is still on in the apartment. In most cases, the tenant is moving to a new location which requires electric and gas service in their name; therefore they make sure the services are turned off in the old location. In this case, Stephanie Conca, previous tenant, 190 Park Avenue Floor 2, Woonsocket, RI called National Grid Gas on October 23, 2009 at 2:44 pm to have service turned off. National Grid issued a "soft closure" order on October 26, 2009 (documented in RIPUC Decision dated 7/14/10 Audrey Brisson).
>
> National Grid Gas never notifies the property owner when the gas service is actually "shut-off" after a tenant moves out. We have owned this property for over 20 years, every tenant terminates gas service and until October 2009, the gas company has always "shut off" the gas to the apartment. So there has never been a need for us to re-inspect the property to verify that the gas company performed the actual "shut-off."

See Sharon Bell-Mayewski letter dated November 13, 2010, at 1; *see also* testimony of Ms. Bell-Mayewski.

According to Mr. Mayewski's testimony, he went to inspect the apartment in question here within three days of his tenant moving out.[7] His inspection was intended to verify that the apartment was clean and ready to show for the next tenant (i.e., that the furniture was moved out, the refrigerator cleaned, and the walls and other fixtures in good repair); he was not checking the thermostat or heater.[8] He then returned to the apartment perhaps once or twice between October 2009 and when the next tenant came in on March 23 to make sure that no one had damaged the windows; he did no remodeling work because none was required.[9] While it was cold on the follow-up visits (probably in December and January), he did not check the faucets in the

[7] Tr. at 78. The parties agree that the tenant called National Grid to have her service terminated on October 23, 2009, and that National Grid closed her account three days later, on October 26, 2009. Thus, if the tenant vacated on October 23 and Mr. Mayewski inspected the unit "within three days," he may well have inspected it while the gas was still on in the name of the tenant. If, as Ms. Mayewski has argued, it is fairly common for National Grid to take several days to "turn off" the gas after a tenant calls to have service terminated (and the Division's *Gas Rules* gives National Grid five days to terminate gas after receiving the request to terminate), and if the Mayewskis inspect promptly after a tenant vacates, they would have no reason to see anything unusual in finding the gas service still on. That does not mean they don't expect it to be turned off very shortly thereafter.
[8] Tr. at 79.
[9] Tr. at 80.

apartment because the plumbing in that particular unit is located at the back of the building and directly above the basement laundry room. The laundry room has a gas dryer and three hot water tanks which generally give off enough heat to keep all of the pipes in this apartment from freezing; he has never had a problem with frozen pipes in this apartment.[10] Mr. Mayewski testified that he never bothers to check the gas heating systems in the units at this location because they simply do not require any maintenance. He doesn't worry about the gas pilots either, as the gas is always in the name of the tenants.[11]

Although National Grid did offer documentation to show that gas usage on this account exceeded its threshold of 13 ccf in November 2009 (21 ccf), December 2009 (62 ccf) and January 2010 (64 ccf), and argued that such "high" usage could only be explained by running the apartment's gas heater, it offered no other evidence to contradict the testimony of the Mayewskis. The Division is not persuaded that these values by themselves are enough to prove that Mr. Mayewski must have known that the gas had been left on in this unit. For all we know, the thermostat on the water heater (which was apparently in the laundry) may have been set very high while the heating unit in the apartment itself was turned off. In the absence of any real evidence that there was actually heat in that apartment, we cannot discount Mr. Mayewski's testimony to the contrary.

Both National Grid and the Advocacy Section cite *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006) for the proposition that "it is inappropriate to forgive a utility obligation when the individual has received the benefit of utility service that created that obligation, knew or should have known of the receipt of the benefit, and that it would be inequitable for the individual to retain the benefit without paying for it." *See* Leo J. Wold, Assistant Attorney

[10] Tr. at 80-81.
[11] Tr. at 82.

General, letter dated November 5, 2010, on behalf of the Advocacy Section at 2; *see also* John P. McCoy, Bengston & Jestings, LLP, letter dated November 23, 2010, on behalf of National Grid at 1-2. While we agree with the *Carbone* decision, we do not believe it is fully on point with this case.

In *Carbone*, Narragansett Electric brought claims for conversion and unjust enrichment against the homeowners, Mr. and Mrs. Carbone, alleging that the Carbones had illegally diverted electricity via an underground aluminum bypass conductor leading from the front yard of their rather large home to an "unmetered" electrical panel in their garage. The electric company had noticed that the Carbone's metered electric usage was extremely low for a home the size of theirs with such notorious energy hogs as an in-ground swimming pool, and that their usage showed surprisingly little seasonal variation. Suspicious that there was something improper going on, the electric company monitored electrical demand from the transformer at the home and compared it to that reported by the meter; they found a substantial discrepancy. Subsequent investigation confirmed that Mr. Carbone and a contractor had installed a bypass at the time the home was constructed, and that much of the home's electrical usage was supplied via an "unmetered" electrical panel located in the garage. Mrs. Carbone denied all knowledge of the arrangement, but admitted that she used all of the numerous electrical appliances in the home, many of which turned out to be supplied via the garage electrical panel. *Id.* 898 A.2d at 90-93.

While the Court found that Mrs. Carbone was not liable under a claim of conversion because she lacked the requisite knowledge of the bypass (or, at least, her knowledge was not established at trial), she could be held liable under a claim for unjust enrichment. According to the Court:

> Recovery for unjust enrichment is predicated upon the equitable principle that one shall not be permitted to enrich himself at the expense of another by

> receiving property or benefits without making compensation for them....To recover under a claim for unjust enrichment,
>
> > "a plaintiff is required to prove three elements: (1) a benefit must be conferred upon the defendant by the plaintiff, (2) there must be appreciation by the defendant of such benefit, and (3) there must be acceptance of such benefit in such circumstances that it would be inequitable for a defendant to retain the benefit without paying the value thereof."...

Id. 898 A.2d at 99 (citations omitted). The Court in *Carbone* concluded that each of these elements was satisfied. A benefit was conferred (electricity supplied) in that the Carbones were able to power at least a portion of their large home for free. The Carbones, including Mrs. Carbone (who was unaware of the unauthorized connection), "appreciated" the benefit of the electricity; Mrs. Carbone was "jointly and severally liable for unjust enrichment because she was a homemaker who paid some of the electric bills during the relevant time, and from that fact an inference properly could be made that she used the home's many appliances, some of which were powered by the unbilled electricity." *Id.* 898 A.2d at 100. Finally, and most importantly, the Court found the Carbones accepted the benefit in such circumstances that it would be inequitable for a defendant to retain the benefit without paying the value thereof, in that "it would be inherently unjust to allow defendants to have bypassed the billing meter and then deny the electric company compensation for the services so purloined. This Court has said that '[t]he most significant requirement ... is that the enrichment to the defendant must be unjust.'" *Id.* 898 A.2d at 99 (citations omitted).

Our situation here is very different from *Carbone.* First of all, in this case no clear benefit was bestowed upon the Mayewskis. Yes, gas was furnished to one of their rental units, but the Mayewskis were not living in that unit and enjoying the benefits of that gas. We cannot even conclude that the Mayewskis benefited indirectly by having a warmer rental property that

kept the water pipes from freezing since Mr. Mayewski testified that heat from the laundry room below was sufficient for that purpose and we do not know that the gas was being used in the heating unit located in the apartment (the tenant may, for example, have reset the water heater to a higher temperature before she moved out, something that would not be readily apparent).

Second, the evidence suggests that Mr. Mayewski made perhaps three brief visits to this apartment during the time in question. This is not like *Carbone*, where the court found that the fact that Mrs. Carbone used electric appliances and enjoyed the benefit of those appliances, even though she was unaware of the unmetered nature of the electricity, was enough to find that Mrs. Carbone "appreciated" the benefit conferred. The Mayewskis were not in this apartment using hot water for showers, cooking with gas, or turning up the heat to bask in its warmth (in fact, there is nothing in the record to suggest that Ms. Mayewski was ever in the apartment during the relevant time frame). There is simply no way for us to find that the Mayewskis "appreciated" any benefit, even had we been able to find such a benefit.

Finally, we cannot say that the equities fall all on the side of National Grid in this case, such that it would be unjust to allow the Mayewskis to avoid paying for the gas used from October 26, 2009, when the account was taken out of the previous tenants name and a "soft closure" effected, through March 23, 2010, when the account was apparently taken out of the Complainants' name and transferred to a new tenant. Under the "soft closure" procedure, apparently informally agreed to by National Grid and the Consumer Section of the Division, National Grid is supposed to contact the landlord when gas consumption in an empty unit exceeds 13 ccf and tell the landlord that the gas service will be secured to that unit unless the landlord agrees to pay the bill. Apparently the 13 ccf level was exceeded the first month, November 2009, yet the landlord was not contacted, a clear violation by National Grid of the soft

closure policy. The 13 ccf level was exceeded again in December 2009, yet again the landlord was not contacted, and again there was a clear violation by National Grid of its own soft closure policy. The 13 ccf level was exceeded yet again, in January 2010, and yet again the landlord was not contacted, a third clear violation by National Grid of its own soft closure policy. If the Mayewskis had been advised of the situation in November 2009 as they should have been, this issue would have been resolved at that point. We would not be faced with having to "infer" knowledge, and acceptance, of a benefit on the part of the Mayewskis as National Grid and the Advocacy Section now urge us to do. This problem was created in the first instance by multiple failures on the part of National Grid to comply with its own soft closure policy. We will not now hold the Mayewskis responsible for National Grid's explicit failures simply because National Grid thinks the Mayewskis "should have known" the gas was on and that they should have taken steps to save National Grid from its own mistakes.

Nor was National Grid's failure to comply with its own soft closure policy its only shortcoming in this case. The Division's *Gas Rules* require that bills be rendered "at regular intervals" and show the quantity of service "for the billing period." *See* section C.5.c of the *Gas Rules*. National Grid bills residential accounts such as this on a monthly basis. However, the first bill presented to the Complainant in this matter covered the period from October 2009 to March 2010, and represented at least four billing cycles or periods. In other words, National Grid failed to bill this account to the Complainant "at regular intervals," a failure that lead directly to an initial bill for $350.91 and served to deny the Mayewskis any opportunity to reduce or terminate gas consumption at an earlier point.

Finally, National Grid's own "*Terms and Conditions of Service*" were not complied with in this case. Section 3.0 of the "*General Terms And Conditions*" make it clear that one must

apply for service in order to initiate gas service from National Grid, and that acceptance of such service after it has been applied for "constitutes a contract." There was no request for service by the Mayewskis in this case, and no knowing acceptance of that service. There was, therefore, no contract.

With respect to landlords, National Grid's "*Terms and Conditions of Service*" provides that:

> On an annual basis the Company may notify all customers that if they are the owners of property and their tenants move out, ***the owner must provide written notification in advance that he/she wants gas left on at that premises in his/her name. If the Company does not receive advance written notice, the service may be terminated***, and the Company will not be liable for any damage to the premises resulting from the termination of gas service.

(Section 3.0 of the "*General Terms And Conditions*," ***emphasis*** supplied.) There is nothing in the record to show that National Grid ever sent such a notice to the Mayewskis, much less annually. Even if it did, this language makes it clear that the landlord must affirmatively request that service be continued after a tenant moves out (which the Mayewskis did not do), or risk having the service terminated. Under the circumstances, even if National Grid did notify the Mayewskis of this policy, the only reasonable inference that may be drawn from the fact that the Mayewskis did not submit a written request for continued service (i.e., for a "soft closure" only) is that they did not wish to have a "soft closure."

It is true that in March, after receiving their first bill for gas services, the Mayewskis did not immediately insist that the gas service be turned off, although they did call immediately upon receipt of the bill (March 19, 2010) to complain to National Grid.[12] However, at that point, for the first time in several months, they had potentially acceptable tenants showing an interest in renting this apartment, and in fact rented their apartment to new tenants on or about March 23,

[12] NGRID Exhibit 1 at 11.

2010, the last day for which National Grid seeks payment from the Mayewski's.[13] In other words, the Mayewskis received gas services for only four (4) days from the time they first had notice of the bill to the day that service was terminated. Even granted that the Mayewskis made an informed decision on March 19, 2010, not to demand that National Grid secure the gas service at this apartment immediately, but to leave it on for four days until the account was transferred to the name of their new tenant, is that enough acceptance of a benefit on their part to justify requiring them to pay all or part of the $400.01 that National Grid says they owe? The Division does not believe so.

National Grid sought to bill the Mayewskis $49.10 for the period from February 26, 2010, to March 23, 2010, a period of roughly twenty-five days. That means, on average, the apartment in question here was consuming less than $2.00 worth of natural gas per day during that period, or roughly $8.00 worth of natural gas from the time the Mayewskis received the first gas bill to the time the account was again pulled out of their name. We cannot believe that it would not have cost National Grid far more than $8.00 to physically secure the gas supply to these premises on March 19, 2010 (assuming they could have done so), and then physically restore gas service to the apartment on March 23, 2010. In other words, we believe that the Mayewskis' decision to forego insisting that the gas service be terminated on March 19, 2010, as they could have done, saved National Grid (and its ratepayers) money. This very minimal knowing acceptance of a benefit does not, in any sense, under these circumstances, justify requiring the Mayewskis to pay National Grid for a bill that was incurred solely due to National Grid's failure to follow its own policies.

Under the circumstances presented by this case, the Division cannot find that there was "acceptance of such benefit in such circumstances that it would be inequitable for" the

[13] Tr. at 70, 76-77; NGRID Exhibit1 at 6.

Mayewskis "to retain the benefit without paying the value thereof." The record is simply devoid of any persuasive evidence that the Mayewskis knew, or should have known, that the gas in this apartment, at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, was still on prior to the time they received the first bill, for $350.91, from National Grid on March 19, 2010. There is no doubt, however, that National Grid could have, and should have, notified the Mayewskis of the situation no later than November 2009, a notification that would have allowed the Mayewskis to have the service to this apartment secured at a meaningful time and which would have prevented the instant dispute from arising. We disapprove National Grid's request to bill the Mayewskis for any of the gas consumed in the apartment at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, from October 27, 2009, through March 23, 2010.

It is important to reiterate that if National Grid had notified the Mayewskis of this situation in November 2009 as it should have done, either the gas service would have been secured at that point or the Mayewskis would have accepted responsibility for the cost of all gas consumption. Since they were not properly notified of the situation by National Grid, the Mayewskis did not become National Grid's customers at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, for the period between October 27, 2009, and March 23, 2010. National Grid's failure to follow its own procedures in this matter has led directly to its inability to recover $400.01 for the gas consumed at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, between October 27, 2009, and March 23, 2010. National Grid's ratepayers in general bear no responsibility for this loss; it is attributable solely to National Grid's failure to comply with its own practices and procedures.

The Division finds that it is not appropriate to allow a public utility to pass along to ratepayers the costs of the utility's own failure to comply with its own practices and procedures.

If a utility was allowed to simply pass along to its ratepayers the losses caused by that utility's failure to comply with its own practices and procedures (or with applicable statutes and regulations), that utility would have no incentive to improve its compliance practices. Accordingly, we direct that National Grid assign this $400.01 loss "below the line" in its financial statements, and provide the Division with a letter, signed by an appropriate company officer, confirming that it has in fact done so. To put it more clearly, National Grid's shareholders, not its ratepayers, shall bear the loss attributable to National Grid's failure to comply with its own practices and procedures (or with applicable statutes and regulations). The Division's Accounting Section shall monitor National Grid's rate filings to ensure that this is done.

So far as the Division has been able to ascertain, National Grid's "soft closure" policy (not billing a landlord's for gas consumed in rental property after the property is vacated by a tenant as long as consumption at the property does not exceed 13 ccf per month) is without any legal standing. This policy is not addressed in National Grid's "*Terms and Conditions of Service*," nor has it been approved by the Public Utilities Commission ("Commission"), or by the Division, in any order, rule or regulation.[14] Accordingly, the Division must find that National Grid's practice of opening utility accounts in the names of landlords without prior notice to, and

[14] The record of this proceeding does indicate that National Grid has secured the informal support and approval of the Division's Consumer Section for its "soft closure" policy. However, only the Administrator of the Division has the legal authority to make binding decisions of this nature. *See* R.I.G.L. § 39-1-15. More to the point, perhaps, is that the Commission has long held that a public utility's "*Terms and Conditions of Service*" fall within its purview and must be reviewed and approved by the Commission just as are the utility's rates. *See generally In Re The Narragansett Electric Company Petition For Declaratory Judgment*, Declaratory Ruling issued July 21, 1994, in Commission Docket No. 2185; *In Re General Rate Increase Filed By Narragansett Electric Company Filed On August 1, 1983*, Commission Order number 11125 issued January 26, 1984, in Commission Docket No. 1719; *In Re General Rate Increase Filed By Narragansett Electric Company Filed On August 1, 1983*, Commission Order number 11007 issued August 30, 1983, in Commission Docket No. 1719. Clearly the "soft closure" policy is the type of utility policy the Commission has traditionally insisted on approving prior to implementation.

the agreement of, the landlords may not be allowed to continue in the absence of formal review and approval by the Commission.

However, the Division recognizes that ratepayers in general may benefit from a "soft closure" policy whereby it is cheaper for a public utility to continue providing service to a vacant property (assuming that there is only minimal consumption in that unit while vacant) than it is to send work crews to that property twice (once to physically secure a utility service, then a second time to reinstate service for a new tenant). For that reason, we have determined that it is appropriate to afford National Grid a reasonable opportunity to amend its "*Terms and Conditions of Service*" to explicitly address the "soft closure" policy and obtain the Commission's formal approval of that policy. The "soft closure" policy should include prior notice to a landlord and affirmative acceptance by the landlord before opening an account in the landlord's name. It should also incorporate a time limit as well as a monthly ccf consumption limit (we do not want to provide gas to vacant units on an open-ended uncompensated basis; after a reasonable period—no more than twelve (12) months—to establish an account in a new tenant's name, service should either be secured or the landlord should have to accept responsibility for payment). Even when the landlord agrees to have a gas or electric account put into the landlord's name after service termination is requested by a tenant, National Grid must insure that the subsequent bills are sent to the landlord's billing address or such other billing address as the landlord may direct.

We will give National Grid six (6) months from the effective date of this Report and Order to obtain Commission review and approval of a "soft closure" policy. If National Grid fails to obtain Commission approval within this time limit, the Division shall insist that National Grid's shareholders, not the general body of ratepayers, bear the cost of gas provided to vacant

units under the current policy in any situation where National Grid is unable to demonstrate that the landlord has affirmatively agreed to accept "soft closures."

Now, therefore, it is

(20327) ORDERED:

1. That National Grid failed to provide appropriate prior notice to, and obtain concurrence from, the Mayewskis with respect to National Grid's decision to continue to provide natural gas services to the Mayewskis' rental property located at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, between October 27, 2009, and March 23, 2010, and bill the Mayewskis for the natural gas used at that property during that period of time, in violation of National Grid's own practices and procedures.
2. That the Mayewskis were not customers of National Grid with respect to the gas service at their rental property located at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, between October 27, 2009, and March 23, 2010.
3. That the Mayewskis are not responsible for the $400.01 in gas charges which accrued for the 209 ccf of gas consumed at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, between October 27, 2009, and March 23, 2010.
4. That National Grid must write off the $400.01 in gas charges which accrued for the 209 ccf of gas consumed at 190 Park Avenue, Fl. 2, Woonsocket, Rhode Island, between October 27, 2009, and March 23, 2010, and record this loss as "below the line" in its financial statements; it must then provide the Division with a letter, signed by an appropriate company officer, detailing the amount being charged "below the line" and confirming that National Grid has done so within sixty (60) days of the

effective date of this Report and Order. To put it more clearly, National Grid's shareholders, not its ratepayers, shall bear the loss attributable to National Grid's failure to comply with its practices and procedures (as well as with applicable statutes and regulations). The Division's Accounting Section shall monitor National Grid's rate filings to ensure that this is done.

5. That National Grid shall not transfer a tenant gas or electric account into the name of the tenant's landlord without first notifying the landlord of its intention to do so and obtaining the prior written authorization from the landlord to transfer the account to the landlord. Even when the landlord agrees to have a gas or electric account put into the landlord's name after service termination is requested by a tenant, National Grid must insure that the subsequent bills are sent to the landlord's billing address or such other billing address as the landlord may direct.
6. That National Grid shall have six (6) months from the effective date of this Report and Order to amend its "*Terms and Conditions of Service*" to include a "soft closure" policy and obtain Commission review and approval of those amended "*Terms and Conditions of Service.*" If National Grid fails to obtain Commission approval within this time limit, the Division shall insist that National Grid's shareholders, not the general body of ratepayers, bear the cost of gas provided to vacant units under the current policy in any situation where National Grid is unable to demonstrate that the landlord has affirmatively agreed to accept "soft closures."
7. That any "soft closure" policy developed by National Grid shall include at least the following elements: (a) prior notice to a landlord and affirmative acceptance by the landlord before opening an account in the landlord's name; (b) a time limit as well as

a monthly ccf consumption limit (natural gas shall not be provided to vacant units on an open-ended uncompensated basis; after a reasonable period—no more than twelve (12) months—to establish an account in a new tenant's name, service should either be secured or the landlord should have to accept responsibility for payment); (c) National Grid must insure that the subsequent bills are sent to the landlord's billing address or such other billing address as the landlord may direct.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, JANUARY 5, 2011.

William K. Lueker, Esq.
Senior Legal Counsel
Hearing Officer

APPROVED:

Thomas F. Ahern
Administrator

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 Jefferson Boulevard
Warwick R.I. 02888
(401) 941-4500

FAX (401) 941-9248
TDD (401) 941-4500

NOTICE OF AVAILABILITY OF JUDICIAL REVIEW
(PROVIDED PURSUANT TO R.I.G.L. §42-35-12)

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers ("Division") you may seek judicial review of the Division's final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division's final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division's final decision. You may however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.

Gas Soft On and Off's

Cost Analysis Worksheet - Back-up documentation

Labor Cost - Gas Annual RI

Direct Annual Labor RI Gas Service Person	$	62,409
Burdens (65.65%)	$	40,972
Total Salary	$	103,381
Labor Per Day	$	50
Minutes per Meter On (40 minutes on job + 10 Travel time)		50.0
Minutes per Meter Off (15 minutes on job + 10 Travel time)		25.0
FY 11/12 Productive # of Meter On's		5,478
FY 11/12 Productive # of Meter Off's		14,211
Productive Meter On Jobs per day		7.5
Productive Meter Off Jobs per day		15.0
Productive Jobs per Hour Meter On		1.2
Productive Jobs per Hour Meter Off		2.4
Cost per Productive Meter On	**$**	**41**
Cost per Productive Meter Off	**$**	**21**
Total Productive Meter On and Off Cost	**$**	**62**
FY 11/12 Unproductive # of Meter On's	979	
FY 11/12 Unproductive # of Meter Off's	3,762	
Unproductive Meter On Jobs per day		18.8
Unproductive Meter Off Jobs per day		18.8
Unproductive jobs per hour Meter On		3.0
Unproductive Jobs per hour Meter Off		3.0
Cost per Unproductive Meter On	**$**	**17**
Cost per Unproductive Meter Off	**$**	**17**
Total Unproductive Meter On and Off Cost	**$**	**33**