STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS
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July 16, 2014

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

Re: Rules And Regulations Governing The Termination Of Residential Electric And Natural Gas Service – PUC Docket No. 4450

Dear Ms. Massaro:

Enclosed for filing with the Commission, please find an original and nine (9) copies of the Rhode Island Division of Public Utilities and Carriers' second set of comments regarding the Rhode Island Public Utilities Commission's proposed Rules and Regulations Governing the Termination of Residential Electric and Natural Gas Service in Commission Docket No. 4450.

I am forwarding you an electronic copy of the Division's comments; I would very much appreciate if you could forward those comments to the latest version of the service list.

Division of Public Utilities and Carriers
By its attorneys,

William K. Lueker

William K. Lueker, Esq. (R.I. Bar # 6334)
Deputy Chief of Legal Services

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

RULES AND REGULATIONS GOVERNING THE TERMINATION OF RESIDENTIAL ELECTRIC AND NATURAL GAS SERVICE	))))	**Docket No. 4450**

COMMENTS OF THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS

--Second Set--

The Rhode Island Division of Public Utilities and Carriers ("Division") submits the following additional Comments regarding the Rhode Island Public Utilities Commission's ("Commission") proposed *Rules and Regulations Governing the Termination of Residential Electric and Natural Gas Service* ("*Rules*") noticed for hearing on November 21, 2013, and for submission of written comments by the close of business on November 27, 2013. We note that the time for submitting comments as set out in the original hearing notice has long since passed, but in view of the fact that the Commission has continued accepting such comments from the public, and announced in Open Meeting that it plans to schedule additional hearings for the purpose of soliciting additional input on the proposed *Rules*, we believe these additional comments will not be considered untimely.

Preface

First of all, the Division would like to reiterate that it strongly supports the Public Utilities Commission's decision to revise its current rules and regulations regarding the termination of residential public utility services ("*Termination Rules*") with a view toward bringing those Commission rules more closely in line with the Commission's existing statutory authority. We would also like to state that we continue to support our original Comments, submitted to the Commission this past November, proposing a number of minor changes to the Commission's original draft.

Our purpose in submitting these Comments is not to suggest further modifications to the Commission's draft *Rules*, but rather to address generally some of the concerns and proposals put forward by others since this rule-making proceeding began in November of 2013.

Second Set of Division Comments on the Commission's Proposed *Rules*

1. The Number of Rhode Islander's Unable To Pay Their Gas And Electric Bills Is Not Growing By Tens Of Thousands Each Year; Most Rhode Islanders In All Rate Classes Do Pay Their Bills In A Timely Fashion.

A number of witnesses alluded to the "fact" that fifteen to twenty thousand National Grid customers each year have their accounts terminated for non-payment, hoping that the Commission will infer from that "fact" that each year another fifteen to twenty thousand Rhode Islanders are consigned to a life without heat or light. They are, at best, being a bit disingenuous. For

example, for all National Grid and Pascoag Utility District residential customers in calendar year 2013:

Utility	Total Customers	Total Shut-Off For Non-Pay	% Of Total Customers Shut-Off	Total Shut-Off Restored	% Of All Shut-Off Customers Restored
National Grid					
Gas	227,147	8,801		5,453	61.96%
Electric	425,773	10,233	2.40%	7,459	72.89%
Totals	652,920	19,034	2.92%	12,912	67.84%
Pascoag					
Electric	4,001	231	5.32%	202	87.45%
Totals	4,001	231	5.32%	202	87.45%
Combined Totals	656,921	19,265	2.93%	13,114	68.07%

If we look at just Protected Customers[1] for these utilities in calendar year 2013, the figures are as follows:

Utility	Total Customers	Total Shut-Off For Non-Pay	% Of Total Customers Shut-Off	Total Shut-Off Restored	% Of All Shut-Off Customers Restored
National Grid					
Gas	227,147	2,331	1.03%	1,376	59.03%
Electric	425,773	3,465	0.81%	2,661	76.80%
Totals	652,920	5,796	0.89%	4,037	69.65%
Pascoag					
Electric	4,001	4	0.10%	4	100.00%
Totals	4,001	4	0.10%	4	100.00%
Combined Totals	656,921	5,800	0.88%	4,041	69.67%

Put simply, more than two-thirds of all utility customers shut off for non-payment in 2013 (13,114 out of 19,265) were able to come up with sufficient down payment to get their services restored in short order. (One has to wonder whether many of those customers could have made their utility payments right along, without building up a past-due balance.)

Still, that does leave 6,151 customers in calendar year 2013 who did not have their gas and electric services restored after being terminated for non-

[1] Again, under the Commission's current *Termination Rules*, a residential customer who is elderly, handicapped, seriously ill, receiving unemployment compensation, receiving Federal heating assistance or qualifies as having financial hardship, is considered to be a Protected Customer. Thus, under the current *Termination Rules*, the elderly, handicapped and seriously ill are afforded Protected Customer status *regardless of their ability to pay their utility bills.*

payment. That does not, however, mean that there were now 6,151 new Rhode Island residences existing without light or heat or both. Of the 6,151 accounts that were not restored, many – probably most – may have in fact been restored under new names.[2] Many others belonged to individuals who simply moved, either to another Rhode Island residence that may already have been receiving services, or perhaps to a new state entirely.[3] Only a relatively few accounts belonged to individuals who remained in place and were unable to find the down payment required to have their services restored.

It is difficult to find hard data as to how many of the terminated accounts were not reinstated simply because the customer of record could not afford to have his/her services restored. The best we can do is to look to how many customers utilized the existing *Termination Rules* to request an Informal Review by the Division. In 2013, a total of 674 customers requested an Informal Review. Of those, 235 customers (35%) failed to appear for the Informal Review, suggesting that those customers were not seriously interested in coming up with a payment plan they could afford, but instead were seeking

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[2] Here are just a few examples we have seen: (1) college student opens gas/electric account in August, stops paying almost immediately, retains services through moratorium/end of school year, opens new account in roommate's name following school year and repeats; (2) one resident of a dwelling has the electric account, a second resident has the gas account, and both get termination notices, so they exchange responsibility for the gas and electric accounts; (3) a customer gets notice of termination for non-payment and has a family member open a new account in the family member's name (we have seen accounts opened in the name of very young children); a customer gets notice of termination for non-payment and opens a new account in someone else's name (identity theft); (4) a customer gets notice of termination for non-payment and has a significant other open a new account in the significant other's name.

[3] Here are just a couple of examples we have seen: (1) an individual plans to retire to another state within a few months and stops paying his/her utility bills, leaving the balance behind after moving; (2) an individual plans to change jobs and move to a different utility service area within a few months and stops paying his/her utility bills, leaving the balance behind after moving.

only to delay their termination. Arguably, then, only 439 customers out of the 6,151 customers whose services were terminated and not reinstated in 2013 actually needed the assistance of the Division to address their utility service terminations.

Still, 439 customers sitting in the dark without heat is too many – but we do not believe that is a good number either. Under the *Termination Rules*, a customer may appeal the Informal Review Decision to a Formal Hearing. In 2013, the Division held 127 Formal Hearings. Of those, the customer failed to appear at 63 of the proceedings, or 49.6%. Arguably, then, only 64 customers out of 6,151 terminated for non-payment in 2013 actually took advantage of the full gamut of administrative review provided them by the current *Termination Rules*.

As of July 7, 2014, 42 of the 127 customers (33%) who sought a Formal Hearing in 2013 had either paid off their past-due balance or were still compliant with their payment plans, 24 (19%) defaulted on their payment plans and were terminated, 14 (11%) had defaulted on their payment plans and were pending termination, 43 (34%) had left their accounts with a past-due balance remaining, and 4 (3%) filed for bankruptcy before completing their payment plans or eliminating their past-due balances (their service remains on).

In other words, of the 6,151 customers whose services were terminated in 2013 for non-payment of their utility bills, we can only say for sure that just 127 fully utilized procedures established by the *Termination Rules*, and of those, only 24 customers have since lost their services due to defaulting on

their payment plans (though another 14 are pending termination as a result of defaulting).

The available data simply does not support the claim that thousands of Rhode Islanders are living without light or heat because they cannot pay their utility bills.

2. Commission And Division Joint Hearings Are Not Appropriate.

A few individuals and organizations have expressed concerns regarding the possibility that the Commission's current utility termination procedures will be rescinded before the Division has promulgated its own rules, creating uncertainty as to the utility termination process in the interim.[4] They urge that the two agencies essentially combine their rule-making proceedings so that everything will be accomplished at once. As the American Civil Liberties Union of Rhode Island put it in its comments, "at the very least, these proposed regulations [the Commission's proposed *Rules*] should be considered only once the DPUC has put on the table its own proposal."

The Division could not disagree more.

First of all, the Division has gone on the record in this proceeding to state that it will continue to follow the procedures outlined in the Commission's existing *Termination Rules* until the Division's own rules can be promulgated and become effective; the Division's own statutory authority is sufficient to support this undertaking. Given that, there can be no uncertainty as to what

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[4] *See* Ratepayer Advisory Board letter dated November 25, 2013; Comments of National Consumer Law Center on Behalf of George Wiley Center fax dated November 27, 2013; written testimony submitted by American Civil Liberties Union of Rhode Island, undated.

procedures will apply during the period of time between the effective date of the Commission's revised rules, and the effective date of any new Division rules.

Further, the rule-making process itself, with its public notice and hearing requirements, insure that the rate-paying public will know well in advance of the effective date of any new Division rules what the procedures adopted by those rules will be. There will be no period of time during which the public will be in doubt as to the applicable procedural rules regarding the termination of residential utility services for non-payment of bills (all other types of termination processes, for all other types of reasons, are already governed by existing Division rules and public utility terms and conditions of service).

More to the point, perhaps, is that the uncertainties that many have expressed in this rule-making proceeding all surround the procedural safeguards to be adopted regarding the termination process itself – i.e., what reasonable methods of debt collection will be put in place. That particular responsibility has been statutorily assigned to the Division, and can only be addressed by the Division. Accordingly, when the Division goes on record (as it has in this matter) as saying it will not change from the existing procedures until it has completed its own rule-making process, then the public can no longer claim to be "uncertain" as to the procedures the Division will be following prior to promulgating its own implementing rules. The Division will continue to follow the existing *Termination Rules* for purposes of assigning the appropriate termination plan (which is the only issue governed by the existing

Termination Rules) until after it has complied with the law (including appropriate public notice and public hearings) and promulgated its own new set of rules. Holding additional Commission hearings, whether or not the Division participates jointly, will not change this.[5]

Second, the Commission's draft *Rules* themselves, as noted in paragraph 1.0 thereof, have been prepared in furtherance of very specific statutory grants of authority, and are intended to serve the purpose of implementing those "statutory requirements that public utilities which distribute electricity or supply natural gas to residential customers must follow prior to the termination of utility service." (Paragraph 2.0 of the draft *Rules*.) The draft *Rules* then go on at length to provide direction to gas and electric public utilities, and to the Division, as to the appropriate standards to apply in a number of very specific circumstances with respect to terminating those utility services for residential customers for non-payment of bills. (Paragraphs 3.0 *et seq.* of the draft *Rules*.)

Until the Commission's draft *Rules* are finalized, approved and promulgated, the Division simply cannot draft and promulgate its own implementing rules![6] Put another way, we cannot implement Commission

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[5] Administrator Ahern assured the members of the Ratepayer Advisory Board during its January 24, 2014, meeting that the Division would continue to follow the procedures set out in the Commission's current *Termination Rules* until the Division had completed its own rule-making procedures and promulgated its own new Division rules regarding fair debt collection practices and termination of utility services for non-payment of bills implementing any new rules the Commission might adopt. He also pointed out to the members of the Ratepayer Advisory Board at that meeting that any new *Rules* adopted by the Commission until after the beginning of the next utility termination moratorium.

[6] This is no different than expecting a regulatory agency (such as the Commission) to draft, hold hearings on, and promulgate rules based on proposed legislation pending in the General

rules which do not yet exist, and which might in fact be modified substantively many times before the Commission finally adopts its new rules. It would not be administratively efficient for the Division to notice draft rules of its own based on its best guess as to what the Commission might eventually adopt, and could only lead to public confusion as the Division has to release multiple versions of new draft rules that conform to the latest iterations of the Commission's drafts.

Third, it does not make sense for the two agencies to try to set up joint hearings for the same reason. How can we conduct hearings on rules when we cannot yet know what we are implementing? Clearly, the Division cannot draft, give notice of, or promulgate rules implementing Commission rules until the Commission has approved and promulgated those rules, nor should the Commission be placed in the position of having to debate the specific language of its own draft *Rules* implementing its own statutorily granted authority with the Division during some type of joint hearing process.

Fourth, if the Commission and Division did hold joint hearings, and issue joint rules[7], to whom would an aggrieved person appeal the joint rules? Under R.I.G.L. § 39-5-1, "any person aggrieved by ***a decision or order*** of the commission may ... petition the ***supreme court*** for a writ of certiorari...", but any person aggrieved by ***a final decision or order*** of the administrator [i.e.,

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Assembly. We doubt that anyone would seriously expect an agency to issue rules based on a legislative proposal that might never be enacted.

[7] In 1985, when the previous iteration of the *Termination Rules* was issued jointly by the Commission and the Division, the two agencies were still effectively one (the Chairman and Administrator was one and the same person). By 2002, when the current rules were promulgated by the Commission acting alone, the two agencies had become completely independent of each other, explaining why they were not issued jointly.

the Division] may appeal therefrom to the ***superior*** court pursuant to the provisions of § 42-35-15." Thus, while any "decision or order" of the Commission including, presumably, preliminary procedural decisions made by the chairperson from the bench during a hearing (or Open Meeting) can be directly appealed to the Supreme Court, aggrieved parties must wait to challenge Division decisions until the final Report and Order has been issued, and then only to the Superior Court. What happens if the Commission's chairperson and the Division's hearing officer agree to something during the course of a hearing? Can it be appealed immediately to the Supreme Court, or must an aggrieved party wait until the Division's Report and Order is issued? While the various attorneys representing those aggrieved parties might benefit from the additional legal issues suggested by this, it is hard to imagine that the aggrieved parties themselves, the ratepaying public as a whole, or anyone else, would benefit from this unnecessary confusion.

For the foregoing reasons, the Division must decline to enter into a joint rule-making process with the Commission.

3. Concerns About What Constitute Reasonable Debt Collection Practices Cannot Be Addressed Appropriately In Commission Hearings.

Many of the speakers who offered comment during the Commission's hearing on the draft *Rules*, as well as some of the suggestions submitted in writing, were really more concerned about the eventual reasonable debt collection practices that may be adopted by the Division when it does its own set of rules than by anything the Commission has actually proposed in its draft

Rules. As you know, the law specifically charges the Division with defining what constitutes reasonable methods of debt collection to be used by public utilities prior to terminating any customer's services for outstanding indebtedness. Among those reasonable methods of debt collection would be the number and type of termination notices, the terms of payment plans, and determination of what constitutes a default on a payment plan.

Given that it is the Division, not the Commission, that must address what constitutes reasonable methods of debt collection, it would seem to be unnecessary for the Commission to schedule additional hearings aimed at obtaining public input on what is, in all essential aspects, a Division responsibility. Indeed, scheduling additional Commission hearings for that purpose would result only in unnecessarily delaying the Division's rule-making, and further delaying the public's very real interest in providing its input on this issue to the Division, the agency actually charged with defining reasonable methods of debt collection.

For this reason, the Division very respectfully requests that the Commission revisit its December 16, 2013, decision to conduct additional hearings on its draft *Rules*. At a minimum, in the alternative, the Division would urge the Commission to schedule and notice its proposed additional hearings as soon as possible.

4. Proposals to Issue Rules Inconsistent With Existing Law Should Be Summarily Denied, and Do Not Require Additional Hearings or Written Public Comments.

Commission Counsel explained that the draft *Rules* were intended to bring the Commission's existing *Termination Rules* into conformity with the Commission's existing statutory authority. This is an entirely reasonable and rational goal, and one which we would urge the Commission to hold fast to. In fact, individuals or groups who ask that the Commission promulgate rules in excess of the Commission's authority which favor those individual's or group's particular constituency over the general body of ratepayers are, arguably, in violation of R.I.G.L. § 39-2-4 which makes a knowing solicitation of "any rebate, concession, or discrimination in respect to any service" whereby that "service shall, by any device whatsoever or otherwise, be rendered free, or at a less rate than that named in the published schedules and tariffs in force, ... or whereby any service or advantage is received" other than conferred by Title 39, a misdemeanor. The Commission should not, expressly or implicitly, encourage anyone to request any special advantages for a limited constituency that is not authorized by the law.

Several of the recommendations received from the public, however, requested that the Commission modify its draft *Rules* to adopt provisions inconsistent with the governing statutes. For example, Parts III and IV of the National Consumer Law Center comments, made on behalf of the George Wiley Center, appears to be urging the Commission to structure rules that in effect adopt a plan whereby low income customers who cannot pay all their utility bills as a result of their low income should still be allowed to retain utility service regardless of the fact that the services are being used but not paid for

(perhaps along the line of a percentage of income plan – a proposal that would first require the General Assembly to provide some type of funding source – i.e., raise and/or reallocate taxes). Aside from failing to address who would pay for the services that these customers are continuing to receive but not paying for, and aside from failing to address what checks and balances could be implemented to ensure that only those who qualify for participation are actually allowed to participate, this line of argument completely ignores the statutory prohibition of discriminatory pricing, unreasonable preferences, and acceptance of unlawful rebates or advantages set out in R.I.G.L. §§ 39-2-2, 39-2-3 and 39-2-4 (although there are some exceptions to the anti-discrimination provisions set out in R.I.G.L. § 39-2-5, none go as far as the National Consumer Law Center would prefer, and many of the exceptions require Division – not Commission – approval.)

The Senior Agenda Coalition of Rhode Island similarly asks that the age for which seniors qualify for additional protection against shut-off remain age 62. The statute, however, specifies that the qualifying age is age 65. We believe the Commission's existing *Termination Rules*, by establishing a lower qualifying age than that set by the General Assembly, exceeds the Commission's statutory authority and impermissibly imposes greater restrictions on the public utilities' rights to pursue collection activities than has been granted to those utilities by the General Assembly. The Commission's draft *Rules*, which are consistent with the law on this point, should be adopted by the Commission. Equally important, we believe, is that age in and of itself

should not be allowed to qualify someone for additional protections from termination – the real issue should always be whether or not a customer qualifies for assistance on the basis of low income (i.e., eligibility for LIHEAP assistance). A customer who can afford to pay, regardless of that customer's age or physical status, should not be protected from termination when that customer fails to pay (the draft *Rules* already properly take this point into account), although some additional notice of pending termination for the elderly or disabled/seriously ill might be appropriate (as it is now).

Professor John Colby, in his November 22, 2013, letter to the Commission, argues that missing two consecutive payments under the Henry Shelton Act Arrearage Forgiveness Plan should not be grounds for a default. However, that criterion is established in the law, and is not subject to Commission modification. *See* R.I.G.L. § 39-2-1(d)(2)(iii). This is not an appropriate subject for additional Commission hearings, as it is something that is beyond the Commission's power to address.

In her letter dated December 18, 2013, Ms. Deborah DeBare, Executive Director, Rhode Island Coalition Against Domestic Violence, expresses concern of the impact on her constituency of removing "Marital Dispute" provisions currently found in Part III, Section 3(D), of the existing *Termination Rules*. However, there is no statutory authority of which we are aware, in Title 39 of the Rhode Island General Laws or elsewhere, that authorizes the Commission to apportion financial responsibilities between spouses involved in a marital dispute. Indeed, public utility case law in this state would hold that the

spouses are jointly and severally liable for the utility expenses of the marital home. *See generally In Re Renee Derby vs. National Grid-Electric*, Division Report and Order number 20281 dated and effective February 8, 2011, in Division Docket No. D-10-141 at 6-11, 24-27 [discussing the applicability of *Narragansett Electric Company v. Carbone*, 898 A.2d 87, 99-100 (R.I. 2006), in the case of marital disputes]. More to the point, marital disputes of all kinds (including apportioning the financial obligations of the spouses) are covered by Title 16 (Domestic Relations) of the Rhode Island General Laws, and fall within the purview of this state's Family Court (the justices of which might object to ceding any portion of their jurisdiction to the Commission or Division).

5. Continuing Delay Of The Commission's Rule-Making Proceedings Is Not In The Public Interest.

Several individuals and organizations have asked that the Commission delay this rule-making process until additional input can be received via additional public hearings across the state.[8] (*See* Kathleen Connell, State Director, AARP Rhode Island, letter dated November 25, 2013, asking that the Commission delay action on the draft *Rules* "until further input can be gathered;" Elizabeth Morancy, Chair, Ratepayers Advisory Board, letter dated November 25, 2013, asking that there be a "'Comprehensive Hearing' on all parts of the Commission's Proposed Termination Rules and Regulations" as

[8] Indeed, although the Commission had scheduled a vote on whether or not to approve its draft *Rules* in its published agenda for the Open Meeting on December 20, 2013, no such vote was held; instead, without open public discussion or any vote on the matter, the Chairperson simply announced during the December 20, 2013, Open Meeting that there would be no decision on the draft *Rules* that day and that additional hearings would be scheduled. To date, no such additional hearings have been publicly noticed.

well as on the Division's undrafted implementing rules; Kenneth L. Ryan, DMD, letter dated November 25, 2013, asking for "more open meetings, particularly in my South County Area, to allow further discussion and thought;" John J. Colby, Ph.D., letter of November 22, 2013, asking the Commission "to schedule hearings in several regions in the state" so that the Commissioners "can make more reasoned decisions about termination rules after obtaining broad regional input from RI citizens;" Ms. Elizabeth Reardon email of December 4, 2013, stating that she believes the Commission needs to "make more of an effort to make available to the public your proposed regulations and your thinking about them" and urging the Commission "to have hearings all across the State at times that working people can attend;" Board of Directors, The George Wiley Center, letter of December 18, 2013, asking that the Commission's rule-making "process be opened up to the public to allow for proper input as well as slowed down" and that the Commission "hold hearings around the state before you vote ... at various times so working people may attend and they should be in multiple languages;" Mr. William F. Flynn, Jr., MSW, Executive Director, Senior Agenda Coalition of RI, letter of December 18, 2013, asks the Commission to hold additional hearings for the purpose of hearing from low-income seniors who are struggling to make ends meet; Mr. Mario Bueno, Executive Director, Progreso Latino, letter of December 20, 2013, asked the Commission to hold "hearings across the state and in the evening so that working families may attend;" The Honrable Donald R. Grebien, Mayor, City of Pawtucket, letter dated December 19, 2013, "requesting that a series of hearings be held by

RIPUC in communities around the state ... and at evening hours to allow people who work during the day to attend, throughout 2014 to allow for thorough public discussion and input on this vital issue;" Benjamin Evans, Esq., National Lawyers Guild, Rhode Island Chapter, letter of December 19, 2013, "asking the Commission to postpone the rule changes until accessible hearings can be held;" Ms. Karen Pace, Community Organizer, Intern, Childhood Lead Action Project, email of December 19, 2013, urging the Commission "to consider community involvement and allow for a more inclusive democratic process by extending public hearings to other cities and towns in Rhode Island."

Each of the organizations or individuals making these requests have two things in common: (1) they are making the request on behalf of one or more special interests; and, (2) they seek to delay the rule-making process largely for the sake of delay alone. The Commission's stated purpose in proposing these draft *Rules* was simply to replace an existing set of rules which in many areas exceeded the Commission's statutory authority with a set of rules limited to those specific areas in which the Commission had clear authority. None of the requests for additional hearings to be held are concerned at all with the specifics of the draft *Rules* in those areas over which the Commission has authority, but instead are largely concerned with changes in the rules defining what constitutes reasonable debt collection practices, something over which the Division – not the Commission – has statutory authority. (Several did address concerns over that fact that the Commission had added a "financial

need" component to establishing eligibility for protected status and protection from termination during the moratorium, but it is patently reasonable to require those who cannot demonstrate financial hardship to pay their bills regardless of their age or physical status.) Protecting special interests at the expense of the general body of rate-payers, however, no matter how emotionally appealing those interests may be, is not in the best interest of the general body of ratepayers.

The General Assembly has established a very clear public policy with respect to public utilities regulation:

> It is hereby declared to be the policy of the state to provide fair regulation of public utilities ... ***in the interest of the public***, to ***promote*** availability of adequate, efficient and ***economical energy*** ... services ... to the inhabitants of the state, to provide ***just and reasonable rates and charges*** for such services and supplies, ***without unjust discrimination***, ***undue preferences or advantages***, or unfair or destructive competitive practices ...

R.I.G.L. § 39-1-1(b) (***emphasis*** supplied). Protecting a customer, even an elderly or disabled customer, *who is financially able to pay for their utility services*, from having those services terminated for non-payment of their utility bills is clearly affording those customers "undue preferences or advantages" and as such is clearly contrary to state utility regulatory policy. Your draft *Rules*, by requiring a financial hardship component, is clearly consistent with state utility regulatory policy.

The General Assembly, however, did not stop there with its state policy pronouncements. It goes on to provide:

> To this end, there is hereby ***vested in the public utilities commission*** and the division of public utilities and carriers the

> exclusive ***power and authority to*** supervise, ***regulate***, and make orders governing the conduct of companies offering to the public in intrastate commerce ***energy*** ... ***services*** ... ***for the purpose of increasing*** and maintaining ***the efficiency of the companies, according desirable safeguards*** and convenience to their employees and ***to the public, and protecting*** them and ***the public against improper and unreasonable rates***, tolls and charges by providing full, fair, and adequate administrative procedures and remedies, and by securing a judicial review to any party aggrieved by such an administrative proceeding or ruling.

R.I.G.L. § 39-1-1(c) (***emphasis*** supplied). Clearly, then, the Commission (and the Division) is charged with protecting the ***public*** against improper and unreasonable rates, and with improving the efficiency of the public utility. In this case, affording special interest groups protections from termination of service (which means protection from paying for goods and services they have already received and are continuing to receive) cannot be viewed as being in the ***public*** interest as those unpaid bills must then be paid by other customers of the utility driving all utility rates ever upward (to the tune of more than $130,000,000.00 over the past five years, as we noted in our first set of comments), and further increases the utility's rates by increasing its collection costs (which is passed on to all ratepayers as well).[9]

[9] A similar point can be made with regard to the many recommendations to extend the current utility termination moratorium – in one case to at least 10 months out of 12 every year. Those recommendations are aimed solely at helping individuals to avoid ever having to pay for the services they have already received. The current *Termination Rules*, as well as the proposed *Rules*, are supposed to be intended to assist people to find a manageable way to pay for the services they have already received. These rules, and the legislative mandates behind them, are diametrically opposed to all of these various proposals intended to help individuals avoid paying. One can only wonder how such delay and avoidance tactics would be viewed if we were talking about rent, car payments, grocery bills, or insurance (among many other examples) rather than utility bills. How many of those other types of merchants and business men could keep their doors open if they were forced to labor under the type of restrictions being urged upon the Commission with respect to paying utility bills?

Many of those submitting comments on this issue have noted that the Rhode Island economy is struggling now, with unemployment at the highest levels in the nation. They offer this to buttress their argument that this is not the time to require people to pay for their utility services. What they do not note, what they hope that the Commission will overlook, is that the policy they are trying to advance will only further weaken our state's economy and contribute to ever higher levels of unemployment.

With the sole exception of the tiny Block Island Power Company, none of our electric or gas public utilities manufacture their own commodities. That is, none of them generate electricity and none of them capture natural gas; they all buy those commodities and must pay their suppliers if they, in turn, are going to continue delivering those commodities to their customers in this state. That means when a utility customer does not pay his or her bill, the cost of the electricity or natural gas consumed by that customer must be paid for by someone else – i.e., by that customer's friends and neighbors in the form of higher gas and electric bills. One or two customers who fail to pay their bills has only a negligible impact on everyone else's rates, but the impact of ten or twenty ***thousand*** customers is hardly trivial.[10]

The real impact, however, is not seen in the monthly residential customers' bills, because their monthly consumption on a *per capita* basis is

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[10] Remember, we are speaking of well over $130,000,000.00 in bad debt allowance over just the past five years. While this figure includes commercial and industrial accounts as well as residential, the bulk of this amount relates directly to standard residential customers. All of this bad debt is folded directly into all of our utility bills – which means it had to be made up out of the pockets of our friends, neighbors and employers as well as out of our own ratepaying pockets.

simply not that great. The real impact is seen in the commercial and industrial customers' bills because they consume more kilowatt hours and more dekatherms, and because they already subsidize residential customers to some extent. A big industrial account could end up paying thousands, even tens of thousands, of dollars extra every month to make up for all of those unpaid (mostly residential standard customer) bills. When that happens, those industrial and commercial customers, major employers all, are going to have to cut their costs somehow, frequently be reducing their work force and in extreme cases, perhaps, by relocating their entire operation to a state with lower utility costs. Either way, Rhode Islanders lose jobs and job opportunities, and those Rhode Islanders may not be able to pay their utility bills either, contributing to the whole cycle of upward pressure on utility bills for all Rhode Islanders (or, at least, for those who cannot relocate). The Rhode Island economy will never be able to turn around if we simply allow the utility companies' bad debt allowances to grow unchecked, as many people have urged the Commission to do.

6. The Current *Termination Rules* Must Be Simplified; The Commission's Draft *Rules* Will Allow This.

The sole goal of the administrative procedures set out in the Commission's existing *Termination Rules* is to ensure that a residential customer is offered an appropriate payment plan prior to having his or her gas and/or electric services terminated for non-payment. That should be a simple and straightforward process: Identify how much is owed, identify what the

average current bill amount is, and structure a payment plan that allows the past-due balance to be eliminated over a reasonable period of time while paying for current usage on a going forward basis. One would not think that it should require a company review, an informal review by the Division, and then a formal hearing by the Division, to accomplish such a simple goal in a reasonable amount of time but, given the complexity of the existing *Termination Rules*, one would be wrong.

The first determination that must be made is whether or not a particular customer is a standard customer, or a protected customer. That means that the utility, Division Informal Review Officer, or Division Hearing Officer, each must first determine whether a particular customer is:

1. Unemployed as demonstrated through verification by DLT that the person is currently receiving unemployment compensation;
2. Elderly (all residents age 62 or older);
3. Handicapped [at least one resident has (a) a physical or mental impairment that is (b) material rather than slight, (c) substantially limiting one or more major life activities and (d) would ordinarily prove a serious hindrance to obtaining employment, and (e) is relatively permanent in that it is seldom fully corrected by medical replacement, therapy or surgical means];
4. Recipient of LIHEAP (Low Income Heating Assistance Program funds);
5. Seriously ill [has an illness that (a) is life-threatening (b) or that will cause irreversible adverse consequences to human health (c) or that has a significant potential to become life-threatening (d) or to cause irreversible adverse consequences to human health];
6. Living in a residence where there is domiciled a person under the age of two (2) years **and** there is financial hardship; or,
7. Experiencing financial hardship (which occurs when all persons residing in the customer's household have a **combined** gross income equal to or less than seventy-five percent of the Rhode Island median income as calculated by the U.S. Bureau of Census and as adjusted for household size.

Only after having determined whether or not a customer falls within any of the foregoing categories may the utility, Informal Review Officer, or Hearing Officer determine whether the customer is a standard customer or a protected customer, and thus whether the customer is eligible to participate in standard customer or protected customer payment plans.

The Commission's current *Termination Rules* establish a total of eighteen (18) potential payment plans:

1) Protected Customer – Step P-1A (Pre-Termination)
2) Protected Customer – Step P-1B (Post-Termination)
3) Protected Customer – Step P-1C (Pre-Termination)
4) Protected Customer – Step P-1C (Post-Termination)
5) Protected Customer – Step P-2 (Pre-Termination)
6) Protected Customer – Step P-3 (25% down)
7) Protected Customer – Step P-4 (35% down)
8) Protected Customer – Step P-5 (50% down)
9) Protected Customer – Disenrolled from Step P-5 (up to 100% down)
10) LIHEAP Eligible Customer – Henry Shelton Act Arrearage Forgiveness Payment Plan (10 % down plus 1/36th of 40% of the remainder over 36 months)
11) Protected Customer – Special Circumstances Plan [Rule VI(7)]
12) Standard Customer – Step S-1A (Pre-Termination)
13) Standard Customer – Step S-1B (Pre-Termination)
14) Standard Customer – Step S-2 (Pre-Termination)
15) Standard Customer – Step S-3 (Post-Termination) (60% down)
16) Standard Customer – Disenrolled from Step S-3 (Pre-Termination) (60% down)
17) Standard Customer – Step S-4 (Disenrolled from Step S-3 payment plan and service terminated) (100% down)
18) Standard Customer – Special Circumstances Plan [Rule VI(7)]

In addition to the foregoing eighteen plans, for the past few years the Commission has authorized three emergency payment plans each winter that any residential customer of National Grid whose utility service had been terminated by National Grid for non-payment, or who had a termination date scheduled, would be entitled to (assuming certain criteria were met):

19) Any NGRID Customer – 20% of the balance (less than $1,000.00 owed)
20) Any NGRID Customer – 15% of the balance ($1,000.00 - $2,499.99 owed)
21) Any NGRID Customer – 10% of the balance ($2,500.00 or more owed)

This process is simply too complex when the only real question should be whether or not a customer can pay for his or her current usage while eliminating any past-due balances. Indeed, its very complexity makes it increasingly unlikely that any customer experiencing financial difficulty over a period of time will be able to come up with sufficient funds to satisfy the increasingly high down payment requirements.[11] Its complexity also creates doubts in the minds of most customers as to whether or not they are being afforded the appropriate payment plan. The simple fact is, if a customer cannot pay for his or her current usage, **no payment plan is going to work**. If a customer's past-due balance has grown too large (and the current system of multiple progressive payment plans actually encourages this) to allow manageable combined (current and past-due balance) monthly payments, **no payment plan is going to work**. This process must be simplified and shortened so that customers will have a better chance to keep their utility bills to a manageable level.

[11] As recently as 2008, a past-due balance of more than $1,500.00 was still the exception rather than the rule in most Division formal hearings. We now find that residential customers are appearing for formal hearings with balances in excess of $3,000.00 as a matter of routine, and we have seen numerous residential customers now with balances – for a single utility, mind you – in the tens of thousands of dollars. In fact, several residential customers have been able to run up a balance in excess of $20,000.00, and one at least had a balance of around $40,000.00 before finally being terminated (most of the really large balances seem to involve multiple periods of infant protection). In virtually every case, the customer has a history of repeatedly defaulting on payment plans, negotiating a new payment plan, then defaulting again when the moratorium begins. With multiple payment plan steps to choose from, and given the length of the administrative processes in place, it is easy to move up the ladder without ever having to actually make significant payments and without ever having one's services terminated. And it is the ratepayers as a whole (many of whom are themselves struggling financially) that have to pay for all of this bad debt through higher utility bills.

Conclusion

Once again, the Division fully supports the Commission's decision to promulgate new *Rules* (subject only to our proposed amendments in our first set of Comments). We believe the Commission should reconsider its earlier Open Meeting Decision to conduct additional hearings for the purpose of obtaining additional public comment, given that no such comment has been submitted to the Commission in written form for more than six months. These *Rules* are too important to be further delayed, and we urge the Commission to revisit its decision to table these *Rules* pending further hearings.

STATE OF RHODE ISLAND,
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Dated: July 16, 2014