

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID’S REQUEST FOR INTERPRETATION OF RIPUC NG-GAS NO. 101 :
: **DOCKET NO. 4999**
:

DECISION & JUDGMENT

I. Introduction

On December 23, 2019, the Narragansett Electric Company d/b/a National Grid (National Grid or Company) filed with the Public Utilities Commission (PUC or Commission) a Petition seeking a Declaratory Judgment, pursuant to R.I. Gen. Laws §§39-30-2 and 42-35-8, and Rhode Island Public Utilities Commission Rule 810-RICR-00-00-1.11 (c).¹ The Company sought confirmation of its interpretation of its tariff, RIPUC NG-GAS No.101, as follows: (1) that the gas tariff does not provide a right for a customer to convert a capacity exempt FT-1 Transportation Service to a capacity assigned account; (2) that the gas tariff does not provide a right for a customer to increase its capacity assignment account because a customer is decreasing load served by a capacity exempt account; (3) that the gas tariff authorizes the Company to increase the amount of capacity assigned to a capacity assigned account, so long as the Company’s analysis of the request for additional gas load concludes that the Company has sufficient capacity available to provide the assignment without jeopardizing safe and reliable service for all customers; and (4) that under the facts and circumstances regarding the International Packaging Corporation’s (InterPak) request, the gas tariff permits the Company to provide an additional capacity assignment to InterPak’s capacity

¹ All filings in this docket are available at the Public Utilities Commission offices located at 89 Jefferson Boulevard, Warwick, Rhode Island or at <http://www.ripuc.ri.gov/eventsactions/docket/4999page.html>.

assigned account to serve the additional capacity requested, so long as the Company's analysis concludes that the Company has sufficient capacity available to do so.²

On March 16, 2020, both the Division of Public Utilities and Carriers (Division) and InterPak filed position statements.³ On April 22, 2020, the PUC heard oral argument from the parties.⁴ At an Open Meeting on April 28, 2020, the Commission voted unanimously to decline to issue a declaration on the Company's first three requests, finding them not ripe for determination. The Commission answered the Company's fourth request in the affirmative and ordered the Company to grant InterPak's request for an increase in capacity on its capacity assigned account.

II. Facts

InterPak is a Rhode Island manufacturer located in Pawtucket. It operates from a single interconnected building that has two separate street addresses: 517 Mineral Spring Avenue (517) and 543 Mineral Spring Avenue (543). InterPak receives gas supply at the subject property through two separate points of delivery, with separate gas lines and meters, on separate accounts. The 517 side of the building is a capacity exempt⁵ account that uses approximately 150,000 therms per year. Gas delivery at this point then runs to two boilers in the rear of the right side of its

² Although National Grid filed its petition on December 23, 2019, it did not provide notice of the filing to IntePak until January 10, 2020.

³ Division's Statement (Mar. 16, 2020); <http://www.ripuc.ri.gov/eventsactions/docket/4999-DPUC-PositionStatement%203-16-20.pdf>.

⁴ The oral argument was scheduled for March 26, 2020. Due to pandemic-related difficulties, however, it was rescheduled to April 22, 2020 and conducted remotely via Zoom. The recording is available at <https://video.ibm.com/recorded/126458936>.

⁵ See RIPUC NG-Gas 101 at Section1, Schedule B, Sheet 2, Tenth Revision. A capacity exempt account is one having gas usage that is not subject to a mandatory pipeline capacity assignment from the Company. Customers are capacity exempt if they (1) elected to retain their Capacity Exemption at a specific location as part of the 1999 revisions to the Company's Business Choice program in Docket RIPUC 2902, (2) receive delivery service on the Company's Non-Firm Sales or Non-Firm Transportation rate schedules, or (3) elected capacity exemption as a New Customer in accordance with Section 6, Transportation Terms and Conditions, Schedule C, Part 1.07.1.

building.⁶ The 543 side of the building is a capacity assigned FT-1 transportation account utilizing approximately 56,000 therms per year. Gas delivery at this point is delivered to the left side of the building via a two-inch gas line and is then transported within the building to one boiler.⁷

In the fall of 2019, John Kilmartin of InterPak sought to increase InterPak's gas intake on its capacity assigned account.⁸ Mr. Kilmartin and Terence Sobolewski, President of National Grid Rhode Island, exchanged numerous oral and email communications concerning InterPak's request to increase assigned capacity. Nevertheless, National Grid contended it could not agree that the Company's tariff permitted this request, as of right, because InterPak also maintained at the same site a capacity exempt account.

Mr. Kilmartin initially described InterPak's request as one that would change its capacity exempt designation to capacity assigned.⁹ In response to Mr. Kilmartin's email concerning changing capacity, Mr. Sobolewski referred to the idea of "shifting usage from one account to another" being potentially problematic under the Company's tariff.¹⁰ Mr. Kilmartin responded and asserted that InterPak's request to expand its capacity service had nothing to do with shifting account usage. He inquired specifically whether National Grid would investigate how InterPak could expand the existing capacity service and, if not, why not.¹¹ In a follow-up email on December 3, 2019, Mr. Kilmartin indicated that he was waiting for feedback on the question of

⁶ These boilers are identified as B-1 and B-2 on Exhibit 1 to InterPak's Position Statement (Mar.16, 2020); <http://www.ripuc.ri.gov/eventsactions/docket/4999-InterPackaging-PositionStatement%203-16-20.PDF>.

⁷ Identified as Boiler A on Exhibit 1 to InterPak's Position Statement.

⁸ See Attach. to Div. DR 1-1 (Jan. 30, 2020).

⁹ See Attach. Div. 1-1 at 11, Item 4 (b) in November 19, 2019 email from John Kilmartin to Terence Sobolewski.

¹⁰ *Id.* at 9.

¹¹ *Id.*

expanding service.¹² Mr. Sobolewski responded on December 6, 2019 and advised Mr. Kilmartin that the Company was preparing to file the within Petition.

III. National Grid's Position

National Grid submitted that its gas tariff does not: (1) provide customers with a right to convert a capacity exempt account into a capacity assigned account; (2) permit customers with a right to transfer load from an existing capacity exempt account to an existing capacity assigned account; (3) have a mechanism that permits a conversion of load from capacity exempt to capacity assigned; or (4) provide a customer with a right or a guarantee that a request for additional gas load will be granted. The Company argued that the fact a customer requesting additional gas load and an increased capacity assignment also has an existing capacity exempt account that it is offering to terminate is immaterial to the determination under the gas tariff of whether the customer can receive the additional gas load and the increased capacity assignment. The Company stated that the gas tariff authorizes the Company to increase the amount of gas capacity assigned to a capacity assigned account if the Company has sufficient capacity available to provide the requested increase without jeopardizing safe and reliable service for all customers. At the time that the Company submitted the within Petition, it had not yet concluded its analysis of gas availability. However, during discovery, the Company completed this analysis and confirmed that it was able to provide the additional capacity sought by InterPak without adversely impacting safe and reliable service for all customers.¹³

¹² *Id.* at 8.

¹³ National Grid's response to Div. 1-6; <http://www.ripuc.ri.gov/eventsactions/docket/4999-NGrid-DR-DIV1%201-30-20.pdf>.

IV. The Division of Public Utilities and Carrier's Position

The Division's memorandum indicated (1) that it learned through discovery that National Grid had determined that it had sufficient capacity to fulfill InterPak's request for increased capacity; (2) that National Grid had not specified to the Division the relevant portions of the gas tariff for which the Company sought a declaration; and (3) that it recommended that the Commission order the Company to fulfill InterPak's request to increase load on its capacity assigned account, because the Company had determined that it has sufficient capacity to increase the load.¹⁴

V. InterPak's Position

On March 16, 2020, InterPak also filed a position statement with the Commission.¹⁵ InterPak argued that there was no need for the Commission to answer National Grid's first three declaratory judgment requests because National Grid had mischaracterized InterPak's request for an increase in supply on its capacity assigned account as a "transfer" of capacity from its capacity exempt account.

InterPak explained that its plan for gas service for its structure at 517/543 Mineral Spring Avenue included the following steps: (1) National Grid would replace the existing 2' pipe running from the street with a new 4" pipe to the 543 side of the building; (2) National Grid would remove the old meter and install a new meter on the 543 side of the building for the capacity assigned service; (3) InterPak would install internal infrastructure/piping to all three of its boilers; and (4)

¹⁴ Division Memo. (Mar.16, 2020); <http://www.ripuc.ri.gov/eventsactions/docket/4999-DPUC-PositionStatement%203-16-20.pdf>.

¹⁵ InterPak's Statement (Mar. 16, 2020); <http://www.ripuc.ri.gov/eventsactions/docket/4999-InterPackaging-PositionStatement%203-16-20.PDF>.

InterPak would terminate the capacity exempt delivery point and meter on the 517 side of the building.

InterPak asserted that there was no express or implied provision in the gas tariff that prohibited InterPak from either increasing its capacity assigned service or from terminating its capacity exempt service. Moreover, InterPak argued that Section 6, Schedule C, Policy 3 of the gas tariff permits an upgrade to an existing service for the purpose of receiving gas service, including increased pipe size.¹⁶ InterPak noted that since the within Petition was filed, National Grid had determined that sufficient gas capacity existed to provide the requested capacity assignment to InterPak. Therefore, the Commission should order National Grid to provide the increased capacity assigned service.

VI. Oral Argument

The PUC heard oral argument from all the parties on April 22, 2020. In response to Commission inquiry, National Grid indicated that it filed this petition because it determined that there was a level of ambiguity as to its authority under the tariff in light of historical issues with the treatment of capacity exempt accounts.¹⁷ National Grid recounted that the issue of capacity exempt customers returning to capacity assigned service has been a “thorny” issue over several years.¹⁸ The Company was concerned that were it to grant InterPak’s request absent Commission’s guidance, that might be construed by other customers as some form of precedent to return from capacity exempt service to capacity assigned service.¹⁹ The Company wanted it clarified that granting InterPak’s request would not be construed as converting InterPak’s capacity exempt

¹⁶ InterPak’s Statement at 2.

¹⁷ Hr’g Tr. at 10, 12 (Apr. 22, 2020).

¹⁸ *Id.* at 13.

¹⁹ *Id.*

account into a capacity assigned account because the increase in the capacity assigned account is directly tied to the decrease in the capacity exempt account.²⁰ National Grid made clear that it did not believe that granting InterPak's request would be improper, it simply wanted clarification from the Commission prior to doing so.

InterPak expressed dismay that its request to increase its take on the capacity assigned service was rebuffed by the Company as not being within the "spirit" of the tariff, when National Grid couldn't identify any specific tariff provision that would be violated.²¹ InterPak asserted that once National Grid determined that it had the capacity to grant the requested increase in service, it should have granted InterPak's request.²² InterPak further argued that the sole, simple issue before the Commission was limited to whether National Grid should grant InterPak's request for increased capacity once National Grid had determined that it had the available capacity. InterPak posited that the Commission need not answer National Grid's first three requests because they were overbroad for the facts presented.²³

The Division argued that the sole matter before the Commission concerned a capacity assigned transportation customer that had requested to increase load on its capacity assigned account. The Division submitted that National Grid's concern that InterPak's request might be viewed by another customer as a conversion, or transfer of load, from Interpak's capacity exempt account to its capacity assigned account, was without merit and need not be addressed by the Commission in order to resolve InterPak's request for increased capacity.²⁴ The Division noted

²⁰ *Id.* at 13-14.

²¹ *Id.* at 16.

²² *Id.* at 17.

²³ *Id.* at 20-21.

²⁴ *Id.* at 21-22.

that the tariff does not address transfers or conversions of gas load from capacity exempt accounts to capacity assigned accounts. Rather, the tariff requires that capacity assignments be reviewed annually each November 1; that any change in the customer's required capacity be reflected in a revised capacity release with the marketer, effective the following November 1; that capacity assignments are subject to annual adjustments that permit National Grid to refuse to supply service of loads of unusual characteristics that might adversely affect the quality of service supplied to other customers, the public safety, or the safety of the company's personnel; and allows a customer to change its customer account from one rate classification to another.²⁵

The Division submitted that under the foregoing tariff provisions, once National Grid determined that it could safely grant InterPak's request without sacrificing the quality of service to other customers, the Company should have granted InterPak's request.

VII. Commission's Findings

At its Open Meeting on April 28, 2020, the Commission determined that National Grid's first two requests were not ripe for consideration because the facts asserted did not correspond to InterPak's request to National Grid. InterPak has clearly requested that it be permitted to increase supply on its capacity assigned account. InterPak also expressed its intention to discontinue its capacity exempt account in the future. The Commission found that InterPak's request was not a request to convert a capacity exempt FT-1 Transportation Service to a capacity assigned account, nor a request to increase its capacity assignment account by a corresponding decrease in load on a capacity exempt account. The Commission also determined that there was no dispute to be resolved under the Company's third request because all parties agreed that the gas tariff authorizes

²⁵ *Id.* at 22-23.

the Company to increase the amount of capacity assigned to a capacity assigned account, so long as the Company's analysis of the request for additional gas load concludes that the Company has the sufficient capacity available to provide the assignment without jeopardizing safe and reliable service for all customers. Finally, the Commission determined that under the unique facts and circumstances concerning InterPak's request, the gas tariff permits the Company to provide an additional capacity assignment to InterPak's capacity assigned account to serve the additional capacity requested, because the Company's analysis concluded that the Company had sufficient capacity available. The Commission ordered the Company to grant InterPak's request for increased capacity

Accordingly, it is hereby

(23884) ORDERED:

1. The Narragansett Electric Company d/b/a National Grid's request for a declaratory judgment "that the Gas Tariff does not provide a right for a customer to convert a capacity exempt FT-1 Transportation Service to a capacity assigned account" is denied as not relevant to the facts presented and not ripe for a declaratory judgment.
2. The Narragansett Electric Company d/b/a National Grid's request for a declaratory judgment "that the Gas Tariff does not provide a right for a customer to increase its capacity assignment account because a customer is decreasing load served by a capacity exempt account" is denied as not relevant to the facts presented and not ripe for a declaratory judgment.
3. The Narragansett Electric Company d/b/a National Grid's request for a declaratory judgment "that the Gas Tariff authorizes the Company to increase the amount of capacity assigned to a capacity assigned account, so long as the Company's analysis of the request

for additional gas load concludes that the Company has the sufficient capacity available to provide the assignment without jeopardizing safe and reliable service for all customers.” is denied as these facts are not disputed and the matter is not ripe for a declaratory judgment.

4. The Narragansett Electric Company d/b/a National Grid’s request for a declaratory judgment “that under the facts and circumstances regarding the International Packaging Corporation’s (InterPak) request, the Gas Tariff permits the Company to provide an additional capacity assignment to InterPak’s Capacity Assigned Account to serve the additional capacity requested, so long as the Company’s analysis concludes that the Company has sufficient capacity available to do so” is granted:
5. The Narragansett Electric Company d/b/a National Grid is ordered to grant International Packaging Corporation’s request for an increase in capacity for its capacity assigned account for its property located on Mineral Spring Avenue.
6. The Narragansett Electric Company d/b/a National Grid’s requests for confidential treatment for Attachment Div. 1-1 and Attachment Div. 1-7 are granted.

EFFECTIVE APRIL 28, 2020, IN WARWICK, RHODE ISLAND, PURSUANT TO AN OPEN MEETING DECISION ON APRIL 28, 2020. WRITTEN ORDER ISSUED AUGUST 19, 2020.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran, Chairperson



Marion Gold, Commissioner



Abigail Anthony, Commissioner

NOTICE OF RIGHT OF APPEAL

Pursuant to R.I. Gen. Laws §39-5-1, any person aggrieved by a decision or order of the PUC may, within seven (7) days from the date of the order, petition the Rhode Island Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision of order.

