

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: NARRAGANSETT BAY COMMISSION : **DOCKET NO. 5014**
PETITION DECLARATORY JUDGMENT :

REPORT AND ORDER

I. Introduction

On January 21, 2020, the Narragansett Bay Commission (NBC) filed with the Public Utilities Commission (PUC or Commission) a Petition for a “declaratory order that interprets and applies statutes administered by the Rhode Island Public Utilities Commission ("PUC") and declares whether, or in what manner, certain PUC rules apply to the NBC, pursuant to R.I.G.L. § 42-35-8 and Rule 1.11 of the PUC's Rules of Practice and Procedure.” In particular, the NBC sought a declaratory judgment clarifying which of the PUC's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service apply to the NBC, and what jurisdiction the Rhode Island Division of Public Utilities and Carriers has over billing and service termination disputes between the NBC and its customers.¹

At an Open Meeting held on March 3, 2020, the Commission voted unanimously to issue a declaratory ruling that NBC is not subject to the PUC's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service, because NBC does not own or operate a water utility in the State of Rhode Island. The Commission also declined to issue a ruling interpreting the scope of jurisdiction of the Division of Public Utilities and Carriers, as a matter that is exclusively reserved to the Superior Court of the State of Rhode Island.

¹ All filings in this docket are available at the PUC offices located at 89 Jefferson Boulevard, Warwick, Rhode Island or at <http://www.ripuc.ri.gov/eventsactions/docket/5014page.html>.

II. Factual Background

NBC, a quasi-public corporation, with a principal place of business at One Service Road, Providence, Rhode Island, owns and operates the largest sewer district in the State of Rhode Island. Although NBC does not own or operate a water utility, NBC does have statutory authority to order a water supplier terminate the water supply service of any person for nonpayment of sewer user fees, charges, and assessments.

The genesis of this petition has its roots in a customer complaint regarding NBC's termination procedures. In the spring of 2019, NBC ordered one of its water suppliers to terminate water service to a customer who was in arrears on sewer use payments. The customer sought a hearing before the Division of Public Utilities and Carriers (Division) because the termination notice indicated that such hearings were available. Relying upon R.I. Gen. Laws §46-25-21.1(c), the Division denied the customer's request for a hearing, indicating that it did not have subject matter jurisdiction to resolve such disputes.²

² R.I. Gen Law § 46-25-22.1

- a) Any person aggrieved on any ground whatsoever by any sewer use fee, charge, or assessment against him or her may within three (3) years after the first day designated for the payment of the sewer use fee, charge, or assessment, or the first installment thereof, if payable in installments, file an appeal with the Narragansett Bay water quality management district commission, and within sixty (60) days after a final decision of the commission appeal, where the person has timely appealed the assessment, file a petition in the superior court for the county in which the property lies for relief from the sewer use fee, charge, or assessment, to which petition the commission shall be made a party respondent; provided, however, that all such appeals must be made no later than six (6) months after the person assessed the fee has transferred the property to a third party.
- b) For the purpose of this section, an "aggrieved person" shall be the person who has been assessed the sewer use fee, charge or assessment that is being contested. The right to contest an assessment shall be personal to the person assessed and shall not be assignable or transferable.
- c) This remedy shall be exclusive. Any person alleging an illegal, erroneous, incorrect, or void fee, charge, or assessment against him or her shall be confined to the remedies stated herein. No petition shall, before judgment, stay any proceedings for collecting the sewer use fee, charge, or assessment. The Narragansett Bay water quality management district commission may promulgate regulations to effectuate this provision and to eliminate frivolous appeals. No appeal shall be heard if the appeal is based on the rates set by the public utilities commission.

NBC included the right to a hearing before the Division on its termination notice to comply with RIGL § 46-25-22.1 (a) which requires NBC to: “abide by the rules and regulations of the public utilities commission governing water shut-offs” when terminating service.³ However, the PUC’s Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service provides: “These regulations shall apply to all individuals, partnerships, corporations, municipalities, and cooperatives which are under the jurisdiction of the Public Utilities Commission and which own or operate electric, gas, or water utilities in the State of Rhode Island.” NBC does not own or operate a water utility.

III. NBC’s Petition

NBC’s petition indicated that its two statutes and the PUC’s Rules could be interpreted in more than one way and asked the PUC to determine the correct interpretation for the NBC to follow. NBC noted that “when it comes to statutory construction, the Rhode Island Supreme Court has stated: ‘The clear preference is for the court to construe the statutes so that both may be given effect.’ *Rhode Island Higher Education Assistance Authority v. Rhode Island Conflict of Interest Commission*, 505 A.2d 427,430 (R.I.1986). [E]very attempt should be made to construe and apply them so as to avoid the inconsistency. *Asadoorian v. Warwick School Committee*. 691 A.2d 573,

³ R.I. Gen Laws §46-25-22.1

(a) Notwithstanding the provision of § [46-25-22](#), the commission is authorized to order any water supplier which services any person assessed by the commission pursuant to § [46-25-22](#) to terminate the water supply service of any person for nonpayment of sewer user fees, charges, and assessments. The commission will abide by the rules and regulations of the public utilities commission governing water shut-offs.

(b) Upon notification by the commission to terminate service, the water supplier shall within fourteen (14) days terminate said service and notify the commission that said termination has occurred. Upon notification by the commission, the water supplier shall restore the water supply in accordance with the water supplier's policy on water supply restoration.

(c) The commission shall have the authority to assess any person any fees, charges and assessments affiliated with the shut off and restoration of service.

(d) When service is provided to a residence occupied by a tenant, the tenant may, after paying the fees, charges and assessments in order to restore or prevent termination of service, deduct the amount paid from the rent due the landlord. The tenant shall provide the landlord with a copy of the receipt from the commission when making a deduction from the rent.

580 (R.1.1997)”⁴ NBC argued that in attempting to construe the two statutes - RIGL § 46-25-21.1 and RIGL § 46-25-22.1- and the PUC's Termination Rules, several reasonable conclusions can be reached. NBC asserted that it could not, on its own, decide which of these conclusions is correct, nor could it decide which of the PUC's Termination Rules apply and which do not. NBC proffered alternative interpretations in attempting to harmonize these statutes and asked the PUC to be the arbiter of these competing interpretations.⁵

IV. Commission’s Findings

Relying upon the plain language of its Rules, the PUC found that because NBC did not own or operate a water utility, then the Commission’s Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service, 810-RICR-10-00-1, were not applicable to NBC.

The Commission declined to issue a declaratory judgement to interpret or harmonize NBC’s statutes because the Commission is without subject matter jurisdiction to engage in statutory construction of NBC’s governing statutes.

⁴ NBC’s Petition at 8.

⁵ NBC argued: “One conclusion that could be reached in harmonizing the competing statutes is that RIGL § 46-25-21.1 (direct appeal to NBC/Superior Court) would control all ‘billing disputes’ between the NBC and its customers, while RIGL § 46-25-22.1 and the PUC's Termination Rules only apply to disputes regarding the NBC's compliance with the Termination Rules themselves. Under this interpretation, any ‘billing disputes,’ including whether a NBC customer owes a sewer use fee, charge, or assessment, could only be reviewed by the NBC and then the Rhode Island Superior Court. The Division would have no jurisdiction over billing disputes, including whether a sewer use, fee, charge or assessment is owed by a customer. The Division's only role would be to review whether the NBC complied with the PUC's Termination Rules (e.g. whether NBC has followed all of the notice requirements provided for in the Termination Rules). Another reasonable conclusion is that the Division has no jurisdiction to review any NBC matter, including whether the NBC followed the PUC's Termination Rules. Any appeals, be they related to billing disputes or the NBC's purported failure to follow the Termination Rules, could only be brought to the NBC and then the Superior Court pursuant to RIGL § 46-25-22.1. Under either interpretation the NBC requests that the PUC delineate which Termination Rules it must follow so that the NBC can adapt its procedures and customer notices. For instance, Section 1.5 and Appendix B of the Termination Rules require that customers be informed of their right to submit any dispute to the Division. If the PUC decides the Division can only review issues regarding the NBC's compliance with the Termination Rules, then the notice must say as much. If the PUC decides the Division has no jurisdiction to review any matter involving NBC, then NBC needs relief from this particular rule.”

Accordingly, it is hereby

(23886) ORDERED:

1. The request filed by the Narragansett Bay Commission to issue a declaratory ruling on the applicability of the Commission's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service to Narragansett Bay Commission is hereby granted. The Commission finds that its rules are not applicable to the Narragansett Bay Commission because it does not own or operate electric, gas, or water utility in the State of Rhode Island.
2. The request filed by the Narragansett Bay Commission to issue a declaratory ruling on the jurisdiction of the Division of Public Utilities and Carriers is hereby denied because the Commission does not have subject matter jurisdiction to interpret the Narragansett Bay Commission's governing statutes.

EFFECTIVE AT WARWICK, RHODE ISLAND ON MARCH 3, 2020
PURSUANT TO AN OPEN MEETING DECISION ON MARCH 3, 2020. WRITTEN
ORDER ISSUED AUGUST 27, 2020.

PUBLIC UTILITIES COMMISSION

*Margaret E. Curran, Chairperson



Marion S. Gold, Commissioner



Abigail Anthony, Commissioner

*Chairperson Curran participated in this matter but was unavailable for signature.

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 Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.