

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: CITY OF EAST PROVIDENCE RHODE ISLAND
MUNICIPAL STREETLIGHTING PURCHASE

Docket No.: D-19-04

CITY OF EAST PROVIDENCE
ISSUES OF LAW

The City of East Providence submits this outline of issues of law presently before the Division of Public Utilities and Carriers in the above-referenced docket.

1. Municipal Streetlight Investment Act (“Act”) Cost to purchase. How is the cost to purchase the lights calculated under the Municipal Streetlights Investment Act?
 - a. *See* R.I. Gen Laws § 39-30-3(b) “Any municipality exercising the option to convert its lighting equipment pursuant to subsection (a) must compensate the electric distribution company for the **original cost**, less **depreciation** and less **amortization**, of any active or inactive existing public lighting equipment owned by the electric distribution company and installed in the municipality as of the date the municipality exercises its right of acquisition pursuant to subsection (a), **net of any salvage value**. [...]”

2. National Grid Calculation of Cost to Purchase. Did National Grid comply with the Act when it provided cost calculations to the City?
 - a. *See* Agreed Upon Statement of Facts Exhibits 4, 5, 6, 9.
 - b. As evident in said exhibits, National Grid has used multiple methods to calculate the cost of streetlights. Accordingly, the clear inference is that National Grid does not have the data for:
 - i. The Original Cost of each Light
 - ii. The Depreciation of each Light
 - iii. The Amortization of each Light
 - iv. The Salvage Value of each Light

Therefore, National Grid has not and can not provide the City of East Providence with the Cost to purchase the lights as set forth by the Act.

3. Timeliness under the Act. What is the remedy for failure to comply with the timeliness provisions of R.I. Gen. Laws §39-30-3(b), R.I. Gen. Laws §39-30-3(a)?

- a. See R.I. Gen. Laws §39-30-3(a), “Any city or town receiving street lighting service from an electric distribution company pursuant to an electric rate tariff providing for the use by such municipality of lighting equipment owned by the electric distribution company, at its option, upon sixty (60) days notice to the electric company and to the department [...]”
- b. See R.I. Gen. Laws § 39-30-3(b) “Any municipality exercising the option to convert its lighting equipment pursuant to subsection (a) must compensate the electric distribution company for the original cost, less depreciation and less amortization, of any active or inactive existing public lighting equipment owned by the electric distribution company and installed in the municipality as of the date the municipality exercises its right of acquisition pursuant to subsection (a), net of any salvage value. [...]”
- c. See R.I. Gen. Laws § 39-30-4, “The provisions of this chapter shall be liberally construed to give effect to the purposes thereof.”
- d. See R.I. Gen. Laws § 39-30-1(b), “Now, therefore, the purpose of this chapter is to reduce municipal street lighting costs and improve service to citizens by:
 - (1) Improving public safety with street lights that provide better illumination;
 - (2) **Reducing maintenance costs** by allowing municipalities to own the street and area lighting within their borders and to enter into regional maintenance service contracts;
 - (3) **Reducing whole-system cost** through municipal ownership and regional management and by **eliminating the current “facilities charge;”**
 - (4) Providing innovative and proven technologies for more efficient lighting; and
 - (5) Providing more responsive service for lighting repairs. **(emphasis added)**
- e. It is clear that the Act is to be liberally construed to the financial benefit of the municipality, and that the Act imposes a timeline. Any remedy for National Grid’s failure to comply with the Act should comport to the purpose of the Act, namely, the financial benefit of the municipality.

4. S-05 Tariff Rates. Does the S-05 Tariff comply with R.I. Gen. Laws §39-30-3(a)(1)?
 - a. *See* R.I. Gen Laws § 39-30-3(a)(1) “[...] The new tariff shall use existing usage calculation methods and existing rates for any currently existing lighting equipment, only setting reasonable new rates for newly adopted lighting equipment. [...]”
 - b. *See* Agreed Upon Statement of Facts, Exhibit 1.
 - c. The Tariff uses new rates instead of existing rates for lighting equipment and applies said rates at date of purchase instead of at time of conversion to energy efficient lighting.

5. Attachment Agreement and Agreement of Sale. Do the Attachment Agreement and/or Agreement of Sale comply with the Act?
 - a. *See* R.I. Gen. Laws §39-30-3(b), “[...] Upon such payment, the municipality shall have the right to use, alter, remove, or replace such acquired lighting equipment in any way the municipality deems appropriate. [...]”
 - b. *See* R.I. Gen. Laws §39-30-3(a)(1), [The City of East Providence may] “Convert its street lighting service from the subject tariff rate to an alternative tariff rate providing for delivery service by the electric distribution company of electric energy, whether or not supplied by the electric distribution company, over distribution facilities and wires owned by the electric distribution company to lighting equipment owned or leased by the municipality, **and further providing for the use by such municipality of the space on any pole, lamp post, or other mounting surface previously used by the electric distribution company for the mounting of the lighting equipment**. [...]” (**emphasis added**).
 - c. *See* Attachment Agreement, Agreement of Sale.
 - d. As proposed by National Grid, the Attachment Agreement and Agreement of Sale empower National Grid to revoke the license allowing the City to attach its Lighting Equipment to National Grid’s supportive structures without cause and limits the City’s ability to use the lighting equipment in any way the City deems appropriate.

6. Non-Municipal Lighting. Can the Agreement of Sale and Attachment Agreement require the City to purchase non-municipal lighting equipment?
- a. *e.g.* State, federal, or private development lighting equipment.
 - b. *See* Attachment Agreement, Agreement of Sale.
 - c. *See* R.I. Gen. Laws §39-30-2(3) ““Lighting equipment” means all equipment used to light streets in the municipality, the operation and maintenance of which is currently charged to the municipality, including lighting ballasts, fixtures, and other equipment necessary for the conversion of electric energy into street lighting service, but excluding the utility poles upon which the lighting equipment is fixed. Lighting equipment shall include, but not be limited to, decorative street and area lighting equipment and solid-state (LED) lighting technologies.” (**emphasis added**).
 - d. As proposed by National Grid, the present Attachment Agreement and Agreement of Sale require the City to purchase Lighting Equipment for what the City has no legal interest.
7. Unjust Enrichment. If National Grid has been found to violate the Act, and has been enriched at the expense of the City as a result of that failure to comply with the Act, what is the remedy?
- a. *See* Statement of Agreed Upon Facts Exhibit 3, July 29, 2016 Letter
 - b. *See* East Providence Issue of Law #3, Expected Purchase Date under the Act of September 27, 2016.
 - c. The dollar amount of National Grid’s Unjust Enrichment may be calculated by the total of all charges that would not have been charged against the City of East Providence had the City purchased and converted its lighting equipment as was its right under the Act on September 27, 2016. This includes the facilities charge, non-

municipal lighting, differences in rates and savings upon energy efficient conversion.

On Behalf of the City of East Providence,
By its Assistant Solicitor,



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