

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

IN RE: COMPLAINT FILING BY MILES AVENUE :
PROPERTY COMPANY AGAINST THE : DOCKET NO. D-03-10
NARRAGANSETT ELECTRIC COMPANY :

REPORT AND ORDER

Introduction

On October 2, 2001, Miles Avenue Property Company, LLC. ("MAP"), 474 Hope Street, Bristol, Rhode Island, filed a complaint with the Rhode Island Division of Public Utilities and Carriers ("Division") against the Narragansett Electric Company ("Narragansett").¹ In its complaint, filed pursuant to R.I.G.L. §39-4-10, MAP asserts that Narragansett unreasonably refused to provide "overhead" electric service to property owned by MAP in Bristol. The complaint alleges that Narragansett wrongfully conditioned the provision of service to MAP's property on the unnecessary installation of a more expensive "pad-mounted" transformer. MAP contends that had Narragansett agreed to provide the service via an overhead connection, using pole-mounted transformers, MAP could have saved \$65,723.34 on the service connection plus an additional \$6434.39, which MAP claims is the value of the lost parking space on which the pad-mounted transformer was located. MAP thereupon concluded that Narragansett acted unreasonably and that the Division ought to order a refund

¹ See Complainant's Exhibit No.1.

of \$72,157.70 plus legal fees, infra.²

In response to the complaint, the Division scheduled and conducted six duly noticed public hearings and a “view”³ on the matter. The hearings were conducted in the Division’s hearing room located at 89 Jefferson Boulevard in Warwick on September 9 and 22, November 13 and 14, and December 15 and 16, 2003.⁴ The following counsel entered appearances:

For MAP:	Michael R. McElroy, Esq.
For Narragansett:	Peter V. Lacouture, Esq.
For the Division’s Advocacy Section:	Leo Wold, Esq. Special Assistant Attorney General

MAP proffered five witnesses in support of its complaint. The witnesses were identified as Mr. Lloyd Adams, MAP’s managing partner; Mr. Joseph Parella, Bristol’s Town Administrator; Mr. James W. Farley, the Chairman of Bristol’s Planning Department; Mr. John Milano, a consultant on electric service matters; and Mr. Robert Douglass, a construction management consultant. MAP also submitted a post-hearing memorandum in this docket.

² The written complaint (Complainant’s Exhibit No. 1) actually identified a refund amount of \$70,583.73, based upon a then expected installation amount of \$64,151.34. The installation amount later increased to \$65,723.34, which MAP discussed in detail during the hearing conducted on 9/9/03 (Tr. 51-52). MAP subsequently amended its complaint to include the updated installation charges; and legal fees, infra. See Complainant’s Exhibit No. 7.

³ The Division conducted a “view” of the subject area and related electrical facilities on November 4, 2003.

⁴ Albeit MAP filed its complaint on October 2, 2001, it opted to delay action on the complaint until it and Narragansett completed their efforts to negotiate a settlement. MAP subsequently elected to move forward with its complaint on May 23, 2003. The six hearings in this docket were conducted over a three-month period in response to various scheduling delays caused by the parties. The parties also stipulated to several delays regarding the deadline for filing post-hearing and reply memoranda in this docket. Memoranda (briefs) from MAP and Narragansett were received by the Division on April 23, 2004. Reply Memoranda were received by the Division on July 8, 2004.

Narragansett proffered one witness in this docket. The witness was identified as Mr. Robert Brawley, Narragansett's Manager of Distribution Design. Narragansett also submitted a post-hearing memorandum in this docket.

The Division's Advocacy Section ("Advocacy Section") did not proffer any witnesses in this docket. The Advocacy Section's did however offer a position on the matter in a post-hearing memorandum, infra.

MAP's Direct Case and Final Position

Mr. Lloyd Adams testified that the property in issue is a development project called "Thames Street Landing" (the "Project").⁵ He described the project as a three-phase development, which primarily involves the rehabilitation of several historic buildings on the Bristol waterfront. Mr. Adams related that the old buildings are being transformed into offices, retail space, restaurants and a hotel. He testified that a separate electric connection was required for each phase.⁶

Mr. Adams testified that electric service was provided by Narragansett to MAP for its first phase ("Phase I") needs without any problems. He related that the Phase I electric connection was provided overhead with three 50 kVA transformers "cluster" mounted to a pole on Thames Street sometime in 1999.⁷ He related that he anticipated that the second and third phase ("Phase II" and

⁵ 9/9/03, Tr. 25. See also Complainant's Exhibit Nos. 2, 3 and 4.

⁶ Id., Tr. 27.

⁷ Id., Tr. 26 and 62-63.

“Phase III”, respectively) electric connections would be effectuated in a similar “overhead” fashion.

Mr. Adams next testified that when Phase II of the Project was discussed with Narragansett, Narragansett indicated that it was unable to provide an overhead connection for the requested 600 amperes (“600A”) design specifications.⁸ Mr. Adams related that Narragansett first communicated its concerns about being able to provide a 600A overhead service in December of 2000.⁹ Mr. Adams also related that Narragansett did however agree to “work with [MAP] to make sure that we acquired the power that we needed”.¹⁰

Mr. Adams next testified that MAP’s engineers then started to explore the possibility of locating a “pad mount” electric connection somewhere on the Phase II site. He related that this idea was ultimately abandoned because the town of Bristol (the “Town”) would not agree to the placement of a pad-mounted transformer in a “velocity flood zone”. To further explain, Mr. Adams related that the Project is located in what the Federal Emergency Management Agency (“FEMA”) describes as a “velocity flood zone”. He testified that the Town adheres to the FEMA flood zone designations and related construction guidelines as violations of these construction guidelines can jeopardize “National Flood Insurance Program” (“NFIP”) eligibility.¹¹ MAP then offered for

⁸ Mr. Adams also testified that Phase II of the Project was originally designed with a 400A electric connection, which Narragansett had agreed to provide via an overhead connection. However, MAP’s engineers later recommended a 600A service after MAP decided to install air conditioning in additional Project buildings. Narragansett was first notified of the design change on December 19, 2000. Id., Tr. 66-71.

⁹ Id., Tr. 35.

¹⁰ Id.

¹¹ Id., Tr. 36-41.

the record a copy of a March 7, 2001 letter that the Town had received from FEMA regarding the option of installing a pad-mounted electric connection on the site of Phase II. In the letter, FEMA opines and recommends that the “proposed action would not meet the minimum requirements of the NFIP and...we strongly recommend that the community not permit this action”.¹²

Mr. Adams related that after it was determined that locating a pad-mounted transformer on the Phase II site was not achievable, MAP and the Town jointly approached Narragansett to again discuss the possibility of an overhead connection.¹³ Mr. Adams testified that a meeting was eventually held on April 3, 2001 between representatives of MAP (including himself), various Town officials (including the Town Administrator, the Building Inspector and Chairman of the Town’s Planning Board) and representatives of Narragansett (including Narragansett’s President and CEO).¹⁴

Mr. Adams testified that at the April 3, 2001 meeting, MAP and Town officials sought an overhead connection to Phase II by April 15, 2001. Mr. Adams explained that timing was becoming crucial as the hotel was scheduled to open at the end of May 2001 and that it was necessary to begin testing the elevator system and other electrical components.¹⁵ Mr. Adams related that

¹² Complainant’s Exhibit No. 6.

¹³ See Complainant’s Exhibit No. 9.

¹⁴ 9/9/03, Tr. 42-45. Also, the record in this docket (based on the testimonies of the several witnesses) reflects that this April 2001 meeting took place either on April 2 or April 3, 2001. While the actual date on which the meeting took place on is not crucial to addressing the relevant issues, to avoid inconsistency in the recapitulation of the record this report and order will adopt April 3, 2001 as the believed date of this meeting.

¹⁵ Id., Tr. 42-43 and 94.

despite their best efforts, Narragansett remained steadfast in its refusal to provide a 600A overhead connection to Phase II.¹⁶

Mr. Adams testified that Narragansett did however raise a different pad-mounted transformer option at the meeting. He related that Narragansett proposed to alternatively provide electric service to Phase II by installing a pad-mounted transformer across the street and out of the flood zone from the Phase II site on Phase I land (a parking lot) owned by MAP. Mr. Adams related that the new Narragansett proposal called for the Phase I pad-mounted transformer to be connected to the Phase II site via underground wiring that would be maintained by MAP.¹⁷ Mr. Adams testified that because MAP was seriously pressed for time at that point, MAP reluctantly agreed to the Narragansett proposal. He related that the Phase II electric connection work was later completed in about a month.¹⁸

Mr. Adams related that MAP later decided to file a complaint with the Division regarding the expensive Phase II electric service connection received from Narragansett. Mr. Adams identified three specific reasons why he believes Narragansett acted improperly in this matter. First, he contends that Narragansett should have been able to supply the three 75 kVA transformers necessary to provide a 600A overhead electric service to MAP's Phase II location from an existing pole location in the street. In support of this assertion, Mr. Adams stated that MAP personnel contacted eleven other electric utilities to

¹⁶ Id., Tr. 45-46.

¹⁷ Id., Tr. 46-48.

¹⁸ Id., Tr. 48-50.

inquire whether their companies could provide the 600A overhead service at issue in this case. Mr. Adams related that all eleven utilities indicated that they would provide such service connections upon request.¹⁹

Secondly, Mr. Adams faulted Narragansett for never offering MAP the option of installing an “SO” (solely-owned) pole on a Town lot directly across the street from the Phase II site.²⁰ According to Mr. Adams, Narragansett became aware of a Town-owned lot directly across the street from the Phase II site and the Town’s general willingness to let MAP use the lot to facilitate the provision of electric service at the April 2001 meeting.²¹

Thirdly, Mr. Adams faulted Narragansett for never offering MAP the option of replacing the “Class 2” pole currently across the street from the Phase II location²² with a larger “Class 1” pole capable of supporting the three heavier 100 kVA transformers that Narragansett claims are required to provide a 600A electric service connection.²³ Mr. Adams related that this option would have been far less costly. He calculated the cost of replacing the existing Class 2 pole with a larger Class 1 pole at only \$2,676.²⁴

MAP next proffered two Town officials in support of the complaint. Mr. Joseph Parella, the Town’s Administrator, testified that “the Town is very much in support of getting that project completed and completed as close to on time

¹⁹ Id., Tr. 56 and 80; See Complainant’s Exhibit 1 (for a listing of the eleven utilities contacted).

²⁰ Id., Tr. 46-47 and 57.

²¹ Photograph of Town’s lot partially depicted in Complainant’s Exhibit No. 5.

²² The existing “Class 2” pole is depicted in Complainant’s Exhibit No. 5.

²³ 9/9/03, Tr. 46 and 104.

²⁴ Id., Tr. 53-54.

as possible to Phase I, II and III".²⁵ Mr. Parella testified that the Town approves of the Project because it is improving a vacant and "blighted parcel" along the waterfront.²⁶ Mr. Parella also discussed how the Town follows FEMA's guidelines with respect to construction projects in designated flood zones. He agreed with Mr. Adams that based on FEMA's written position on the issue, the Town would have been unable to approve of a pad-mounted transformer on the Phase II site.²⁷

Mr. Parella testified that Mr. Adams contacted him to seek his assistance in persuading Narragansett to permit a 600A overhead service connection to Phase II of the Project. He related that in response to Mr. Adam's request for help, he wrote two letters to Narragansett, on December 14, 2000 and March 21, 2001, supporting MAP's quest for an overhead connection.²⁸ Mr. Parella also testified that he later agreed to further support MAP at the April 3, 2001 meeting with Narragansett. He confirmed that several Town officials attended the meeting.²⁹

Mr. Parella related that during the April 3, 2001 meeting the attendees did discuss the possibility of utilizing a small lot that the Town owns across the street from Phase II of the Project to bridge an electric connection from Narragansett to MAP. Mr. Parella recalled conversations with Narragansett about installing a pad-mounted transformer on the Town's lot. However, he

²⁵ Id., Tr. 109.

²⁶ Id., Tr. 110.

²⁷ Id., Tr. 113-121.

²⁸ Id., Tr. 123-127; and Complainant's Exhibit Nos. 8 and 9.

²⁹ Id., Tr. 127-128.

recalled that “the engineers kept telling us there wasn’t enough room”.³⁰ Mr. Parella also related that he remembers a discussion about a “crossbar or something” that perhaps could have been erected on the Town’s lot, but he believes that the discussion took place with MAP representatives before the meeting and not during the meeting with Narragansett.³¹

Mr. James W. Farley, the Town’s Planning Board Chairman, echoed Mr. Parella’s support for the Project. He called the Project a “revitalization of Downtown Bristol, which is really significant for us”.³²

Mr. Farley discussed FEMA’s concerns regarding the pad-mounted transformer on the Phase II site. He related that the Planning Board is “very cognizant of the FEMA issues and extremely cautious in doing anything that would violate their concerns”.³³ Mr. Farley testified that because of FEMA’s position on the matter, the Town would not have issued a variance to MAP to install a pad-mounted transformer on the Phase II site.³⁴

Mr. Farley also testified that he too attended the April 3, 2001 meeting. Mr. Farley related that although he recalls a discussion with Narragansett about the Town’s lot at the meeting, he couldn’t remember any details about those discussions.³⁵ During cross-examination, however, Mr. Farley indicated that he was rather sure that there were no discussions at the meeting about installing a pole on the Town’s lot. He believed the discussion was narrowly

³⁰ Id., Tr. 129-130 and 146.

³¹ Id., Tr. 129 and 133-135.

³² Id., Tr. 155.

³³ Id.

³⁴ Id., Tr. 156-158.

³⁵ Id., Tr. 159-161.

focused on whether a pad-mounted transformer could be located on the Town's lot.³⁶

Mr. John A. Milano testified for MAP as an expert witness on electrical service matters. Mr. Milano related that he had been employed at the Long Island Lighting Company for 37 years "in a distribution engineering capacity" and at the Division for 7 years as a water engineer and later as the Division's Deputy Administrator.³⁷

Mr. Milano testified that he had been retained by MAP as an electrical consultant with respect to the service requirements for Phase II of the Project. Mr. Milano contended that it was improper for Narragansett to refuse MAP's request for a 600A overhead electric service to MAP's Phase II location from an existing pole location in the street.

Mr. Milano first disputed Narragansett's claim that the three 75 kVA transformers that could have provided the requested 600A overhead service were "nonstandard" and therefore not available. Mr. Milano asserted that 75 kVA transformers are common in the industry.³⁸

Mr. Milano next disagreed with Narragansett's opinion and position that three 100 kVA transformers, configured in a cluster, could not be used to provide overhead service from a "JO" (jointly-owned)³⁹ pole located across the street from the Project. Mr. Milano opined that a cluster of three 100 kVA

³⁶ *Id.*, Tr. 163-166.

³⁷ 9/22/03, Tr. 8-10.

³⁸ 9/22/03, Tr. 13-14; also, 11/13/03, Tr. 33-37 and Complainant's Exhibit 37.

³⁹ A "JO" or jointly owned pole represents a pole that is jointly owned by both Narragansett and Verizon.

transformers could have been mounted on a JO pole in a way to “meet all of the necessary codes and clearances”.⁴⁰ Mr. Milano explained that Narragansett could have replaced the existing 45-foot “Class 2” pole across the street from the Project with a 45-foot “Class 1” pole, which Mr. Milano described as a stronger “standard” pole. Mr. Milano relied upon a document that Narragansett provided during discovery to support his claim. The document, entitled “Pole Loading Limits” provides tables that identify the “total allowable equipment weights” for various classes of poles.⁴¹ Based primarily on these tables (and also two other exhibits) Mr. Milano opined that a 45-foot “Class 1” pole would have been a reasonable alternative to the more expensive mad-mounted transformer that Narragansett required MAP to accept.⁴² Mr. Milano testified that the alternative cost to MAP for replacing the existing “Class 2” pole with a new “Class 1” would have been only \$2700.⁴³

In making his argument for a 45-foot Class 1 pole, Mr. Milano also relied upon the joint “Inter-company Operating Procedures” (“IOP”) pact that exists between Narragansett and Verizon with respect to the “joint pole space allocation” on the JO pole across the street from Phase II of the Project. Mr. Milano explained that based on provisions in the IOP, space allocations for wires on JO poles vary in accordance with the size, length and pole ownership allocation of a given pole.⁴⁴ He testified that under the IOP agreement,

⁴⁰ 9/22/03, Tr. 14-15.

⁴¹ Id., Tr. 15-20; and Complainant’s Exhibit 12.

⁴² Id., Tr. 21-33; and Complainant’s Exhibits 13 and 14.

⁴³ Id., Tr. 42-43.

⁴⁴ 11/13/03, Tr. 12-19; and Complainant’s Exhibit 32.

Narragansett could have renegotiated its ownership allocation with Verizon to increase its space allocation on the pole. Mr. Milano related that ownership allocation renegotiation is common in the industry and would have permitted Narragansett to replace the existing 45-foot “Class 2” JO pole with a 45-foot “Class 1” JO pole that would have provided adequate clearances for MAP’s purposes.⁴⁵

Mr. Milano also criticized Narragansett for not offering MAP the option of using an “SO” (solely owned) pole, located on the property being offered by the Town as another way of providing a service connection to Phase II of the Project. Indeed, Mr. Milano noted that even a “Class 2” pole would have been adequate under this alternative.⁴⁶ He noted that the cost to MAP under this option would similarly have been only about \$2700.⁴⁷

Mr. Milano next testified that he was surprised by Narragansett’s position to deny MAP’s request for a 600A overhead service connection as there are other “poles in the Narragansett service territory that have three 100 kVA cluster mounts on them”.⁴⁸ He related that he found three such overhead connections in the Bristol/Warren area alone, specifically at “Blount Marine”, “the Coast Guard Station”, and at a manufacturing plant on “Broad Common Road”.⁴⁹ Mr. Milano thereupon described and sponsored photographs of these three overhead service connections, and also photographs of comparable

⁴⁵ Id., Tr. 19-64; and Complainant’s Exhibits 33-36.

⁴⁶ 9/22/03, Tr. 35.

⁴⁷ Id., Tr. 43.

⁴⁸ Id.

⁴⁹ The service connections at these locations were later inspected during a view conducted on November 4, 2003.

overhead service connections owned by another electric distribution company (“NSTAR”) located in nearby Falmouth and Wareham, Massachusetts.⁵⁰

Mr. Milano concluded his testimony by stating that in his expert opinion neither the National Electric Safety Code (“NESC”) nor Narragansett’s own standards prohibit the installation of three 100 kVA transformers on a highway pole. He reiterated that this practice is common in the industry.⁵¹

Mr. Robert Douglass and his company, The Douglass Group, were retained by MAP to perform construction management consultant work on the Project. In describing the work that his company performs for developers, Mr. Douglass related that his company “help[s] them plan their projects and then hire architects, hire contractors to execute the work and then oversee it”. Mr. Douglass testified that he has been involved with hundreds of projects over the years that required new electrical service installations.

Mr. Douglass related that for Phase II of the MAP Project, the electrical loads needed to be recalculated due to mechanical design changes. He testified that on November 30, 2000 a meeting took place with Narragansett to discuss the changes. He related that he met with several individuals at the meeting, including Mr. Mike Bagnall, MAP’s site project manager; and Mr. Chuck Norden, Narragansett’s Business Services Account Manager for the MAP Project. Mr. Douglass stated that during the meeting the discussion focused

⁵⁰ *Id.*, Tr. 43-70; the “Blount Marine” pole is depicted in Complainant’s Exhibits 16 and 17; the “Falmouth” pole is depicted in Complainant’s Exhibits 18, 19, 20 and 21; the “Wareham” pole is depicted in Complainant’s Exhibit 22; the “Coast Guard Station” pole is depicted in Complainant’s Exhibit 24; the “Broad Common Road” pole and associated “weather head” are depicted in Complainant’s Exhibits 25, 26 and 27.

⁵¹ *Id.*, Tr. 74-75.

on how electric service could be provided to the flood zone in which the Project is located. He related that both pad-mounted and overhead transformer options were discussed. According to Mr. Douglass, Mr. Norden indicated at the conclusion of the meeting that he would “look into the possibility” of providing overhead service to the Project.⁵² Mr. Douglass also testified that the Project’s electrical engineer, Mark Keene, transmitted the new service requirements to Narragansett a week after the November 30, 2000 meeting.⁵³

Mr. Douglass next related that after the November 30, 2000 meeting, a series of telephone discussions and meetings took place between himself, Mr. Bagnall and Mr. Norden concerning MAP’s continued request for overhead service. He testified that these discussions and meetings extended into January 2001. Mr. Douglass stated that during these discussions, and as late as January 23, 2001, he believed that Narragansett was still entertaining the possibility of an overhead service connection. Mr. Douglass recalled that Narragansett initially expressed concern regarding the “weight of the wire that was going to have to be necessary from the pole over to the building and whether that pole could be guyed or that wire could be properly supported”.⁵⁴ Mr. Douglass related that Narragansett explained that even if the transformers could be mounted on the pole, the wire weight problem would necessitate a service connection to the building via a conduit under the street. However, Mr. Douglass testified that during subsequent discussions Narragansett rejected

⁵² Id., Tr. 75

⁵³ 11/13/03, Tr. 70-76; and Complainant’s Exhibits 40 and 41.

⁵⁴ Id., Tr. 77-78.

the overhead alternative altogether and concluded that a pad-mounted transformer was the only option.⁵⁵

Mr. Douglass testified that by February of 2001, the debate with Narragansett turned to discussions regarding a location for a pad-mounted transformer. He recalled that much of the discussion involved FEMA and the problem of having to locate a pad-mounted transformer in a flood zone.⁵⁶ He related that discussions and problems regarding this matter resulted in another meeting, held on March 8, 2001, during which time he and John Milano again met with Mr. Norden and also Mr. Tim Horan, Narragansett's Vice President of Business Services, to review MAP's electric service options to Phase II of the Project. Mr. Douglass recalled that at this time:

“...we were caught between a rock and a hard place. We were told that Narragansett Electric's standard procedures were that they didn't install overhead services of this size and we were told by FEMA that they were not going to approve a pad-mounted transformer on the site. We had a building that was nearing substantial completion at that point in time, and had no clear-cut way of understanding how we were going to get electrical service to the building”.⁵⁷

Mr. Douglass testified that during the March 8, 2001 meeting several options were identified as possible solutions to the problem. One option was to install a pad-mounted transformer in a “waterproof vault” on Project property. Another option was reduce the service connection from 600A down to a 400A to facilitate an overhead installation. Another option was to install two separate

⁵⁵ Id., Tr. 77-81; and Complainant's Exhibit 42.

⁵⁶ Id., Tr. 81-87; and Complainant's Exhibit 43.

⁵⁷ Id., Tr. 89.

services for the building. Nevertheless, Mr. Douglass observed that each of these options posed some problem for either MAP or Town officials, and accordingly, MAP again voiced its preference for a 600A overhead service connection from the nearby JO pole.⁵⁸ Mr. Douglass testified that upon leaving the March 8, 2001 meeting he felt that Narragansett's representatives understood and agreed that a "600A overhead was the only feasible way to install the service". Mr. Douglass related that "...when we left this meeting Tim, John and myself all felt that that was the service that we were going to be installing to the hotel".⁵⁹

Mr. Douglass next explained that shortly after the meeting MAP was contacted by Mr. Norden who reported that Narragansett's engineering department would still not agree to the requested 600A overhead service. He recalled that this development was communicated to the Town, which resulted in the Town sending a letter to Narragansett on MAP's behalf. Mr. Douglass related that MAP also requested a meeting with Narragansett's senior management at this time to find out why Narragansett was refusing to provide the requested 600A overhead service. Mr. Douglass related that MAP was desperate at this point because it needed to have the electric service installed by April 15, 2001.⁶⁰

Mr. Douglass testified that he also attended the April 3, 2001 meeting with MAP, Narragansett and Town representatives at Narragansett's offices in

⁵⁸ Id., Tr. 89-93.

⁵⁹ Id., Tr. 94.

⁶⁰ Id., Tr. 96-98.

Providence for a final discussion on MAP's request for a 600A overhead service. At this meeting, Mr. Douglass recalled Narragansett stating that it wanted to accommodate MAP but could not agree to an overhead service that exceeded 400A. He related that after much discussion about options and cost, Narragansett insisted that the only option available for providing a 600A service would be to install a pad-mounted transformer on MAP property (in a parking lot located in Phase I) across the street from Phase II of the Project in a location outside of the flood zone.⁶¹ Mr. Douglass noted that shortly after the April 3, 2001 meeting MAP received a letter from Narragansett that formally denied MAP's request for a 600A overhead service and which detailed the pad-mounted alternative installation that Narragansett described at the meeting.⁶²

In its post-hearing memorandum, MAP summarized its case and identified five "reasonable and inexpensive ways" that Narragansett could have provided overhead service to Phase II of the Project. MAP argued that each overhead option would have been much less expensive than the ultimate pad mounted solution "unreasonably insisted on by" Narragansett. The five overhead alternatives were summarized as follows:

- (1) With three 100 kVA transformers on a 50-foot class 1 JO pole⁶³;
- (2) With three 100 kVA on a 45-foot or 50-foot class H1 (0) or Class H2 (00) JO pole⁶⁴;

⁶¹ Id., Tr. 102-110.

⁶² Id., Tr. 110-111, and Complainant's Exhibit 46.

⁶³ MAP makes this assertion based on Narragansett data response 1-15, which MAP claims constitutes an admission by Narragansett.

⁶⁴ MAP makes this assertion based on Narragansett's supplemental response to data request 1-9.

- (3) With three 100 kVA on a 45-foot class 2, class H1 (0), or class H2 (00) SO pole on the Town parking lot across the street from phase II;
- (4) With three 75 kVA transformers on the existing 45-foot class 2 JO pole on Thames Street;
- (5) With three 100 kVA on a 45-foot class 1 pole on a 45/35 ownership basis with Verizon.⁶⁵

MAP thereupon concluded that based on the totality of evidence on the record the Division should find that Narragansett did not provide service to MAP that was reasonably demanded and order restitution in the amount of \$69,451.70 (\$72,157.70 minus \$2,676 per [MAP] Exhibit 7) plus attorney fees (\$59,778.46), for a combined amount of \$129,230.16. MAP further requests that Narragansett be ordered to take over ownership and maintenance responsibility for the underground lines and conduits from the pad-mounted transformer to the Phase II property.

Narragansett's Direct Case and Final Position

Mr. Robert Brawley introduced himself as Narragansett's Manager of Distribution Design. He testified that his responsibilities include "project management, commercial new business and residential new business" and responding to "service requests".⁶⁶

At the outset of his testimony, Mr. Brawley sponsored an exhibit depicting two diagrams that he opined would assist the Division and the

⁶⁵ MAP's Post-Hearing Memorandum, pp. 1-5.

⁶⁶ 11/14/03, Tr. 6. Mr. Brawley noted however, that at the time of MAP's Phase II service connection, his title was Project Engineering Supervisor, and that at the time he reported to Narragansett's then Manager of Distribution Design.

parties in better understanding the “basics of electricity” and the meaning of his responsive testimony on the MAP complaint.⁶⁷ The two diagrams compared the components and operations of a “water circuit” or “closed loop water system” with the components and operations of an “electrical circuit”. Mr. Brawley explained that in a water circuit the pump pumps water out at a specified pressure, which in turn allows water to flow through a pipe to a useful point where it can be used or consumed.⁶⁸ Mr. Brawley explained that in a circuit that uses water, the energy comes from the water and the pressure from the pump. He explained that the “volume of water that flows through the closed system would be equivalent to how much ... potential power is available inside the water and piping system”.⁶⁹ Mr. Brawley then asked the Division to consider the changes that occur in a closed water system when pressure and water flow are manipulated. He explained that if water flow remains constant you could increase the “power” by increasing the pumping pressure. He further explained that in a system where the pressure is constant you could still increase the power by increasing water flow.

In describing an electrical circuit, Mr. Brawley compared the transformer to the pump in a water circuit. He related that the transformer provides the voltage in an electrical system, not unlike the pressure in a water circuit. He explained that the transformer takes high voltage electricity and reduces it down to lower voltage electricity in order to make it more usable. He likened

⁶⁷ Id., Tr. 7-8, and Narragansett Exhibit 15.

⁶⁸ As an example of a water circuit, Mr. Brawley referred to the operation of an old water wheel, which uses a stone grinding wheel to mill wheat. (Id., Tr. 9).

⁶⁹ Id., Tr. 10-11.

electrical current, which is a flow of electrons (measured in amperes), to the flow of water. He explained that the main switch in an electrical system would be equivalent to a shutoff “valve” in a water system. Mr. Brawley next talked about “load”, which he described as “your energy”. In the diagram, the load was represented by a “motor”, which Mr. Brawley called a “common electrical device”.⁷⁰

Mr. Brawley testified that in an electrical circuit “the transformer has to be of a sufficient size in order to supply the load”.⁷¹ He explained that if the transformer were too small it would not be able to provide the pressure in order to support the load. He related that transformers therefore come in different sizes, which are measured in units of “kilovolt amperes” or “kVA”. Mr. Brawley defined “kVA” as “one thousand times the volts, times the amperes”. Mr. Brawley compared a circuit’s kVA to the “power” in the circuit. He explained that in a water-circuit the relevant equation would be “power equals pressure times water flow”. In an electrical circuit, he stated that equation would be “power equals voltage times current”. So to calculate the power in an electrical system, Mr. Brawley explained that you must “take the units of volts and measure it in volts, current in amperes, so, therefore power is measured in volt amperes”. He related that to convert volt-amperes to kVA’s, you would divide it by 1000.⁷²

⁷⁰ Id., Tr. 12-13.

⁷¹ Id., Tr. 13-14.

⁷² Id., Tr. 14-15.

Mr. Brawley then explained what happens when pressure (voltage) and electron flow (current) are manipulated in an electrical circuit. He explained that if the current is held constant and you change the voltage, you change the pressure, which increases the power that's available inside the circuit. He explained that the same thing happens when the voltage is held constant and the current is increased, namely, the power available inside the circuit increases.⁷³

Mr. Brawley testified that knowing and understanding the interplay between these factors becomes crucial when Narragansett designs new electrical services for customers. Mr. Brawley related that Narragansett relies upon "four basic documents" when designing new electrical services. He identified the four documents as (1) the "Green Book", which he described as an outline of Narragansett's service requirements for electricians and developers⁷⁴; (2) the "Inter-Company Operating Procedures" ("IOP") pact, supra, which he described as a contractual agreement between Verizon and Narragansett regarding the maintenance and ownership of poles; (3) the "National Grid Construction Standards" guidebook, which provides information on 'standard construction configurations', work methods and inventory practices⁷⁵; and (4) the "National Electrical Safety Code" ("NESC"), which provides standards for clearance requirements in electrical systems.⁷⁶⁷⁷

⁷³ Id., Tr.15.

⁷⁴ Narragansett Exhibit 7A.

⁷⁵ Narragansett Exhibit 17.

⁷⁶ Narragansett Exhibit 16.

⁷⁷ 11/14/03, Tr.15-18.

Mr. Brawley next discussed how Narragansett utilizes the aforementioned electrical circuit description and its “four basic documents” when it designs a new service. He testified that Narragansett’s service methods are designed around the customer’s “main switch size” or maximum potential kVA that the switch can draw. He explained that the transformers are then sized according to the customer’s load demands.⁷⁸ Mr. Brawley also explained that Narragansett has policies in place, which are based upon the National Grid Construction Standards and the NESC clearance requirements, which set forth the criteria for overhead and underground service connections.

Regarding these policies, Mr. Brawley testified that at a standard “120/208 volts” Narragansett would serve up to a 400A main switch from the street, which he related equates to a maximum potential of 150 kVA of transformation. Mr. Brawley related that three 50 kVA transformers “in a bank” would be used in this type of overhead connection. In standard 120/208 volts, 600A applications, Mr. Brawley testified that Narragansett would require an “aerial underground siphon” (“AUG”) type installation, which Mr. Brawley explained would similarly use three 50 kVA transformers on a pole, but connect to the customer’s property via an underground rather than an aerial connection.⁷⁹

When higher voltage is required, like in a standard 277/480 volts application, Mr. Brawley testified that an overhead connection is only possible

⁷⁸ Id., Tr. 27.

⁷⁹ Id., Tr. 28-29.

at 200A. He related that Narragansett could use three 50 kVA transformers on a pole to provide a 200A overhead service connection. However, the witness emphasized that when you get up to a 400A 277/480 service, which he noted “is capable of 300 kVA of potential demand...we cannot fit three 100 kVA transformers on the pole”.⁸⁰ Mr. Brawley therefore opined that “the service method on a “fully rated” 400A switch would require some other method of service other than an overhead service drop”.⁸¹ Mr. Brawley testified that in 277/480 volts, 600A electrical service applications, like the one MAP requested for Phase II of the Project, the potential demand increases to 503 kVA, which he testified would require three 167 kVA transformers to meet the maximum load demands. Mr. Brawley emphatically maintained that overhead services of this size are not possible.⁸²

Mr. Brawley next discussed the method by which a commercial customer applies for new service. He explained that the customer would be required to discuss their electrical needs, including service voltage and anticipated loads, with Narragansett’s “Business Services” department. He related that when the Business Services representative has sufficient information, the representative fills out a “Request for Service Investigation” (“RSI”) form and forwards the RSI form to Narragansett’s “Project Engineering Group” (“P.E. Group”). Mr. Brawley testified that a meeting between the Business Services representative and a P.E. Group representative ensues whereat the two department members

⁸⁰ Id., Tr. 29-30.

⁸¹ Id., Tr. 30.

⁸² Id., Tr. 30-32.

discuss the customer's service requirements. He added that a field visit with the customer is also common.⁸³ Mr. Brawley testified that the P.E. Group subsequently issues a "RSI Response" to the Business Services representative, which documents the P.E. Group's recommendations on the service request. Mr. Brawley related that the RSI Response delineates the details of how the service will be provided, including any special requirements that the customer may have to meet in order to obtain service. According to the witness, the Business Services representative thereafter sends the customer a "Service Letter" that sets forth the details and conditions of service.⁸⁴ Mr. Brawley testified that the "Service Letter" document constitutes Narragansett's official "approval of the service".⁸⁵ Mr. Brawley testified that Narragansett's Business Services representative on the MAP Project, Mr. Chuck Norden, sent MAP a Service Letter for Phase II of the Project on April 10, 2001.⁸⁶

Mr. Brawley next discussed the chronology of events associated with MAP's request for electrical service. He related that Mr. Chuck Norden, Narragansett's Business Services representative for the MAP Project, forwarded three RSIs to the P.E. Group in April 1999, one for each of the three phases of the Project. Mr. Brawley related that the P.E. Group quickly answered the Phase I RSI and a 400A 120/208 service was installed later that same year.⁸⁷

⁸³ Mr. Brawley noted that an SRE (Service Request Electrical) form is also filled out at this time. This form alerts the Meter and Customer Service Departments of the request for new services; Id., Tr. 34-35.

⁸⁴ Id., Tr. 35-36.

⁸⁵ Id., Tr. 36.

⁸⁶ Id., Tr. 36, and Narragansett Exhibit 12.

⁸⁷ Id., Tr. 38-46, and Narragansett Exhibit 18.

Mr. Brawley testified that despite the previously submitted RSI, Narragansett received “the first concrete loads” for Phase II on September 24, 1999.⁸⁸ However, Mr. Brawley related that the P.E. Group contemporaneously discovered from MAP’s Phase I electrical contractor (Clem’s Electric) that the initial load characteristics and main switch size for Phase II would be changing.⁸⁹ Mr. Brawley related that this uncertainty about the load numbers and main switch size for Phase II prompted Narragansett to delay its RSI Response and send MAP a letter on October 19, 1999, which clarified Narragansett’s policy that all service changes must be communicated to Narragansett in writing.⁹⁰ Mr. Brawley stated that although many “site meetings” took place after Narragansett sent the letter, “they couldn’t tell us what the loads would be”.⁹¹ Mr. Brawley related that Narragansett subsequently received the “final written confirmation of the changes” from MAP’s electrical engineer fourteen months later on December 19, 2000.⁹² Mr. Brawley noted that MAP’s Phase II RSI was consequently amended to reflect the new service requirements.⁹³

Mr. Brawley next testified that shortly after receiving the final written load and switch changes from MAP, Narragansett verbally informed MAP that it was unable to provide a 277/480 volts, 600A, overhead service from a JO pole on Thames Street to Phase II. Mr. Brawley related that this development

⁸⁸ The initial load information came to Narragansett in the form of a letter from Mark Keene, MAP’s electrical engineering consultant. See Narragansett Exhibit 1.

⁸⁹ Id., Tr. 48-50.

⁹⁰ Id., Tr. 50, and Narragansett Exhibit 11.

⁹¹ Id., Tr. 52-55.

⁹² Id., Tr. 52, and Narragansett Exhibit 2.

⁹³ Id., Tr. 56-58, and Narragansett Exhibit 19.

resulted in an increase in the number and “intensity and pressure” of meetings between MAP and Narragansett personnel. Mr. Brawley testified that it was at this time that Narragansett looked to MAP to provide space on its property to locate an SO pole or a pad-mounted transformer.⁹⁴

Mr. Brawley testified that Narragansett was later informed by MAP that it could not locate an SO pole or a pad-mounted transformer on the Phase II property. Mr. Brawley related that this option became problematic for a number of reasons, including the fact that the Phase II property was located in a FEMA designated “velocity flood plane”, that there was no buildable land left on the Phase II property, and that using up a parking space would violate the Town’s minimum parking space laws.⁹⁵

Mr. Brawley also testified that Town officials began contacting Narragansett at this time to urge Narragansett to agree to MAP’s continuing request for an overhead connection to Phase II of the Project. Mr. Brawley related that Town officials ultimately requested and attended a meeting with Narragansett’s President to further advocate for an overhead connection.⁹⁶ Mr. Brawley related that he attended that meeting, which took place on April 3, 2001.

Mr. Brawley testified that during the April 3, 2001 meeting MAP and the Town officials aggressively argued that Narragansett provide an overhead connection to Phase II from JO pole No. 21 located on Thames Street. Despite

⁹⁴ Id., Tr. 62-68.

⁹⁵ Id., Tr. 71-73.

⁹⁶ Id., Tr. 77-87, and Complainant Exhibit 9.

this pressure from the Town, Mr. Brawley related that Narragansett remained steadfast in its position that public safety concerns prevented them from agreeing to the overhead service connection.⁹⁷ He related that at this juncture, after exhausting all the other options, including the possibility of locating an “SO structure” on the Town’s lot or an “SO pole” somewhere on the actual Phase II site, the discussion turned to locating a pad-mounted transformer on private property somewhere outside the flood zone.⁹⁸ In response to this notion, Mr. Brawley related that:

“Somebody at the meeting brought up that they owned a parking lot that was outside the flood plane which was further down the street from the existing buildings, and a conversation ensued about providing a pad-mounted service from that location....”⁹⁹

Mr. Brawley testified that in agreeing to provide service in this manner Narragansett had to give up its “franchise right to the street”, but did so as a “compromise solution”.¹⁰⁰ Mr. Brawley recalled that everyone at the meeting accepted the idea of installing the pad-mounted transformer in this parking lot that was outside the flood plane, with MAP owning the “secondaries in the street”, as a “compromise solution”.¹⁰¹ Mr. Brawley stated that based upon this agreement, Narragansett sent MAP an official Service Letter on April 10, 2001 documenting approval of the agreed upon service installation to Phase

⁹⁷ Id., Tr. 82-83.

⁹⁸ Id., Tr. 82-84 and 112-113.

⁹⁹ Id., Tr. 84.

¹⁰⁰ Id., Tr. 84-85.

¹⁰¹ Id., Tr. 85-86.

II.¹⁰² He noted that the service was subsequently installed and energized “a month or two” later.¹⁰³

In response to previous testimony from MAP’s witnesses regarding the Town’s lot near Pole 21, Mr. Brawley related that consideration was given to using the lot to locate a pad-mounted transformer but “clearance” issues posed a serious problem. He explained that unavoidable close proximity to wooden buildings and large mature trees effectively negated this lot as a viable location on which to place a pad-mounted transformer.¹⁰⁴

Mr. Brawley next addressed how MAP’s decision to increase its main switch size from 400A to 600A affected Narragansett’s method of providing service. First, he emphasized that Narragansett cannot design an electrical service until it knows the voltage and main switch size requirements of the customer. He related that this is why Narragansett needed to wait for MAP’s final written decision on these specifications, which Narragansett finally received in December of 2000, before it was able to move forward on a final service design. Mr. Brawley testified that when Narragansett received MAP’s request for a 277/480 volts 600A main switch service he knew that this service could not be provided from a pole in the street.¹⁰⁵ Mr. Brawley emphasized that the method of providing service must be based on the potential load that the main switch could handle. He related that if Narragansett installed transformers that were not capable of supplying the load, “they would overheat

¹⁰² Id., Tr. 86-91, and Narragansett Exhibit 20.

¹⁰³ Id., Tr. 116.

¹⁰⁴ Id., Tr. 97-100, and Narragansett Exhibit 24.

¹⁰⁵ Id., Tr. 101-104.

and burn up”.¹⁰⁶ He stated that if Narragansett had gone forward and designed MAP’s service based on a smaller 400A main switch and it was later determined that the transformers could not supply the load, Narragansett would then have to install and provide the expanded service at its own expense.¹⁰⁷

Mr. Brawley next turned his attention to MAP’s complaint filing with the Division. He related that he was surprised to hear of the complaint because he witnessed no indications that MAP was “unhappy with the compromise solution”.¹⁰⁸ He also faulted MAP for being so adamant about its request for an overhead service when an overhead service was not possible under the circumstances.¹⁰⁹

He also disagreed with several of the assertions contained in the complaint. Specifically, he disagreed with MAP’s assertion that: ‘it was recognized early in our contacts with Narragansett Electric that overhead services would be required’. Mr. Brawley cited his earlier testimony about MAP not knowing its load requirements or main switch size until December of 2000. He also disagreed with MAP’s assertion that ‘locating a pad-mounted service would be impossible due to requirements set forth by FEMA’. Mr. Brawley stated that Narragansett has frequently observed successful petitions to the DEM and the CRMC for authority to install electric services inside a flood plane. Mr. Brawley also disagreed with MAP’s assertion that a 600A 277/480

¹⁰⁶ Id., Tr. 105.

¹⁰⁷ Id., Tr. 105-106.

¹⁰⁸ Id., Tr. 116-117.

¹⁰⁹ Id., Tr. 117.

volts overhead service is the ‘type and style of service [that has]...been available in Narragansett’s...territory and is still a standard in the electric industry’. Mr. Brawley stated that while a 600A 277/480 volts service was available from a JO pole in the past, clearance revisions to the NESC in 1990 have changed the standards. He testified that 600A 277/480 volts service from an SO pole is permitted if adequate space is available on private property.¹¹⁰

Mr. Brawley next responded to MAP’s survey of other electric utilities and its claim that these other utilities would provide a 600A 277/480 volts overhead service from a JO pole. Mr. Brawley, relying on a data response from MAP, sponsored an exhibit that documented MAP’s inquiry to ConEdison on the issue and ConEdison’s reply. Mr. Brawley interpreted ConEdison’s reply much differently than MAP’s witnesses. Mr. Brawley pointed out that while ConEdison indicated that it could provide the service, it also indicated that ‘it would be advisable to have a licensed electrician contact our Energy Service Department to determine what exactly is the optimum way to address your needs’.¹¹¹ Mr. Brawley called this response from ConEdison “a polite reply to get them to provide more information so they can determine what the service method should be...”. Mr. Brawley observed that ConEdison responded to a “vague inquiry”, he contended: “I don’t believe it to confirm that 277/480 600 amp service is available from a JO pole in ConEd’s territory”.¹¹² Mr. Brawley

¹¹⁰ Id., Tr. 117-121.

¹¹¹ Id., Tr. 122, and Narragansett Exhibit 25.

¹¹² Id., Tr. 123.

insisted that before you can “get useful information” from a utility “they would have to know your load”.¹¹³

Mr. Brawley also commented on MAP’s report that Niagara Mohawk would have provided a 600A 277/480 volts overhead service from a JO pole. Mr. Brawley first noted that National Grid has purchased Niagara Mohawk thereby making Niagara Mohawk an affiliate of Narragansett. Mr. Brawley testified that in view of this relationship he contacted the engineering department at Niagara Mohawk to discuss this issue. Mr. Brawley related that he learned that Niagara Mohawk is able to provide the service in question because it has a completely different IOP relationship with the local telephone company. Mr. Brawley testified:

“Their IOP actually is not a joint custody space allocation IOP. It is an IOP based upon the burden of the company requiring the change in the pole to design the pole to meet all the requirements and place everyone on the pole in order to meet the NESC”.¹¹⁴

Mr. Brawley next challenged the accuracy of Mr. Milano’s opinion regarding the issue of whether a 45’ “Class 1” pole could have been used to provide overhead service to Phase II. Referring to the actual exhibit sponsored by Mr. Milano on this point¹¹⁵, Mr. Brawley asserted that had Narragansett replaced the 45-foot Class 2 pole on Thames Street (Pole 21) with a 45-foot Class 1 pole, as suggested by Mr. Milano, there would still have been an NESC “mid-span clearance” violation. Mr. Brawley related that “when you...do the

¹¹³ Id.

¹¹⁴ Id., Tr. 123-126.

¹¹⁵ Complainant’s Exhibit 14.

mid-span clearance calculations”, the calculations reveal that the “neutral” “would be too close to the municipal conductor and would violate the mid-span clearance to the highest communications conductor located on the pole”.¹¹⁶ Mr. Brawley testified that Mr. Milano’s assessment was inaccurate because he only looked to see if the larger transformers would fit on the pole. According to Mr. Brawley, space for the transformers on the pole is just one factor to be considered, he explained that you must also “know the type of wire, you need to know the type of secondary, [and] you need to know...the...longest back span...distance”.¹¹⁷

Mr. Brawley also addressed the issue of pole ownership, and particularly the IOP’s “ownership basis” ratio. As an example, he explained that when a JO pole has a “45/40 basis”, the first number equates to the length of the pole (in this example 45 feet) and the second number represents the “allocation basis”. In the example offered, Mr. Brawley related that the “40”:

“means that we are on a 40-foot allocation basis with the phone company which means that their spaces are as if it was a 40-foot pole, so in turn what that means is that Narragansett has purchased...five extra feet of that pole in order to deal with our clearance requirements and our clearance issues and when you get into the specs of the IOP, Narragansett pays an extra \$100 for that five extra feet so that it can meet its clearance requirements and deal with the issues that we have to deal with on the top of the pole”.¹¹⁸

¹¹⁶ 12/15/03, Tr. 28-31.

¹¹⁷ Id., Tr. 31-40.

¹¹⁸ Id., Tr. 40-41.

Mr. Brawley thereupon, in response to Mr. Milano's claim that Narragansett could have acquired the necessary additional clearance space on a 45-foot "Class 1" JO pole, based on his [Mr. Milano's] understanding that Narragansett and Verizon routinely renegotiate their ownership basis in order to meet clearance requirements, testified that "...since deregulation of the phone industry back in I think '96...the phone company has been fiercely territorial of their allocation space in accordance with the IOP. It is a rare exception that they will renegotiate space differently than what they're entitled to under the IOP."¹¹⁹ In his final comments on this issue, Mr. Brawley concluded that it would have been fruitless for Narragansett to seek additional clearance space on the pole from Verizon by attempting to renegotiate the pole's ownership basis.¹²⁰

Mr. Brawley also discussed Mr. Milano's assertion that 75 kVA transformers are standard in the industry and could have been installed on a 45-foot Class 2 pole on a 45/40 ownership basis to provide MAP's requested overhead service to Phase II. Mr. Brawley called this arrangement "a non-starter", because "75 kVA transformers 277/480 are not a standard stock available item inside of Narragansett Electric".¹²¹ Mr. Brawley explained that although this size transformer is available for purchase, Narragansett decided years ago to eliminate this size from its inventory. He related that other size

¹¹⁹ Id., Tr. 41.

¹²⁰ Id., Tr. 42-46.

¹²¹ Id., Tr. 47-49.

transformers were also eliminated from Narragansett's inventory, including "5's, 15's ...and 37-and-a-half's". He explained:

"...we really wouldn't want to begin to purchase those and have to maintain inventory and stock. Our stocking practices and purposes are to make available what is required in order to serve people's load without putting an undue burden upon us to maintain every type of nut and bolt transformer type of wire that's available on the open market. We have...not installed or used 75 kVA transformers in quite a long time.¹²²

Mr. Brawley next discussed MAP's claim that Narragansett could have replaced the existing Class 2 JO pole in front of Phase II with a larger H-1 or H-2 pole (also known as Class O and Class OO poles, respectively) to facilitate an overhead service connection. In response to this claim, Mr. Brawley related that "H-1 and H-2 poles have never been used for distribution inside Narragansett's system on a 45 and a 50-foot basis."¹²³ He noted that the smallest H-1 pole in Narragansett's system is 75 feet tall and is stocked as a "transmission asset".¹²⁴ Mr. Brawley also rejected the idea of cutting 30 feet off the top of an H-1 pole to produce a 45-foot pole capable of carrying the weight of three 100 kVA transformers. He explained that the resulting pole would be equivalent to an H-4 pole, which he described as too large to accommodate the other inventory stock (e.g., mounting brackets and bolts) that Narragansett uses on its poles.¹²⁵

¹²² Id., Tr. 51.

¹²³ Id., Tr. 56-58.

¹²⁴ Id., Tr. 57.

¹²⁵ Id., Tr. 58-59.

Mr. Brawley also criticized Mr. Milano's comments about the appropriateness of utilizing a 277/480 volts 600A service drop cable to provide an aerial connection from a JO pole to the Phase II property's weather head. He related that Narragansett does not stock the size of the wire that would be needed "to carry ...the higher amps". Mr. Brawley testified that when you start dealing with these "extremely large service drop conductors you open up yourself [to] a whole other realm of clearance calculations and strength calculations associated with attachment points between...where you are going to attach to the customer's premises [and]...the pole".¹²⁶ He emphasized that ice accumulating on the larger service drop cables creates sag and tension concerns and could result in damage to the transformers on the poles.

Mr. Brawley next commented on the photographs proffered by MAP that depict existing poles carrying three 100 kVA transformers. MAP had offered these photographs to show that it is not uncommon to provide an electric connection from a cluster of three 100 kVA transformers on a Class 2 JO pole. Mr. Brawley first commented on the two photographs depicting the "Blount Seafood" installation.¹²⁷ He testified that this transformer bank was installed in 1993 under what appears to have been circumstances unique to that location. From an examination of the configuration on that pole, Mr. Brawley opined that such a configuration today would violate the current NESC clearance standards.¹²⁸

¹²⁶ Id., Tr. 59-61.

¹²⁷ See Complainant's Exhibits 16 and 17.

¹²⁸ 12/15/03, Tr. 69-72.

The next three photographs depicted the “Broad Common Road” installation.¹²⁹ Mr. Brawley testified that this transformer bank was installed in 1987. Mr. Brawley distinguished this overhead installation from MAP’s requested overhead installation on two grounds, specifically, that in the Broad Common Road installation the customer had space to locate an SO pole on the property; and also that the overhead connection does not “cross a public way”. Mr. Brawley explained that the clearance requirements for this type of drop are not as “stringent”.¹³⁰

Mr. Brawley next commented on the five photographs depicting two NSTAR poles in Falmouth and Wareham, Massachusetts configured with three 100 kVA transformers.¹³¹ Mr. Brawley testified that he would need to take measurements at the poles to determine if all the clearances are adequate. Nevertheless, he expressed “some grave concerns” that the Falmouth pole looks to have communications conductors too close to the “four kV primary”. He contended: “there’s no way that this is meeting the clearance requirements associated with that pole”.¹³² He additionally observed that the Falmouth pole in the photographs looks to have “a heavy corner load on it” as well.¹³³

Mr. Brawley also commented on the photograph depicting an installation at the Coast Guard station at the south end of Thames Street.¹³⁴ Mr. Brawley noted that this photograph depicts an SO pole at the end of a dead end street.

¹²⁹ See Complainant’s Exhibits 25, 26 and 27.

¹³⁰ 12/15/03, Tr. 72-73.

¹³¹ Complainant’s Exhibits 18-21.

¹³² 12/15/03, Tr. 73-74.

¹³³ Id., Tr. 74-79.

¹³⁴ Complainant’s Exhibit 26.

He observed that the pole does not cross a public way, is “on their property” and in a location that is not “heavily traveled”.¹³⁵

Mr. Brawley subsequently testified that mid-span clearances for overhead service for Phase II from Pole 21 could not have been met with any of Narragansett’s standard poles or any of the larger poles suggested by MAP. In support of this contention, Mr. Brawley proffered a spreadsheet exhibit that considered all of Narragansett’s standard poles, including 35’ - Class 3, 40’ - Class 3, and 45’ - Class 2 poles, and all of the various ownership bases; and also the larger nonstandard poles, including 40’ - Class 2, 40’ - Class 1, 45’ - Class 1, and 50’ - Class 2 poles, and all of the various ownership bases. In short, he explained that given the 277/480 volts 600A service requirements needed for Phase II of the Project, Narragansett would not have been able to install an overhead service connection to Phase II and satisfy all of the mid-span and space allocation clearances mandated under the NESC and the IOP.¹³⁶

Mr. Brawley also commented on a MAP data request that required Narragansett to provide a list of all overhead installations in Narragansett’s system, performed over the last ten years, wherein a cluster of three 100 kVA or higher transformers was used. Mr. Brawley related that the data request required Narragansett to identify whether all the clearance requirements had been met on these installations. On these installations, Mr. Brawley indicated

¹³⁵ 12/15/03, Tr. 79-81.

¹³⁶ Id., Tr. 81-90, and Narragansett Exhibit 55.

that there are a number of poles out there that have three 100 kVA or higher transformers on them, however, he testified that most of these poles are SO poles located on private property that consequently do not have clearance problems. He added that the other poles mostly reflect “engineering mistakes”, changes to primary voltage, and transformers “from the old EUA territory...installed prior to the merger”.¹³⁷ Mr. Brawley emphasized that only one of these installations resulted from a service request from a customer and that installation involved an SO pole on private property.

In his final comments, Mr. Brawley summed up his testimony and asserted that it was not possible “...to put three 100 kVA or larger transformers on Pole 21 on Thames Street in Bristol and comply with the requirements of the NESC, the IOP and the National Grid standards”.¹³⁸ Mr. Brawley also stated that while there may be some JO poles in Narragansett’s system that have three 100 kVA transformers on them, Narragansett cannot agree to “knowingly violate the NESC” and add any more such installations.¹³⁹

In its post-hearing memorandum, Narragansett summarized its case and asserted that the only unreasonable actions in this case have been those of MAP. Narragansett declared that instead of designing the appropriate electrical service and communicating with Narragansett during the permitting phase of the Project, MAP waited until the “eleventh hour to demand service that could

¹³⁷ Id., Tr. 91-99, and Narragansett Exhibits 53 and 56.

¹³⁸ Id., Tr. 113.

¹³⁹ Id., Tr. 114.

not be reasonably provided by Narragansett”.¹⁴⁰ Narragansett further declared that instead of considering various alternatives on private property including overhead service from an SO pole or a pad-mounted transformer on site, MAP foreclosed these options and then claimed that it was forced to accept the solution offered by Narragansett. Narragansett questions why MAP accepted Narragansett’s service if it believed the service was unreasonable. Narragansett contends that if MAP actually believed that the service was truly unreasonable it would have refused the service and immediately filing a complaint with the Division. In closing, Narragansett suggested that “what is truly unreasonable is to attempt to coerce a utility like Narragansett to knowingly violate, at its most basic level, the NESC, the IOP, and Division and Company standards, and jeopardize the safety of the public and Narragansett and other utilities’ employees”.¹⁴¹

The Advocacy Section’s Position

As noted at the outset of this report and order, the Division’s Advocacy Section did not proffer any witnesses in this proceeding. It did however, extensively cross-examine the witnesses proffered by MAP and Narragansett and submit a post-hearing memorandum reflecting its recommendation on MAP’s complaint.

As detailed in its memorandum, the Advocacy Section has reduced the instant complaint case down to a discussion concerning subject matter jurisdiction. Specifically, the Advocacy Section questions the Division’s

¹⁴⁰ Narragansett’s Post-Hearing Memorandum, p. 19.

¹⁴¹ Id.

jurisdiction to award the relief being requested by MAP (i.e., compensatory damages, out-of-pocket sums of money and legal fees).

In addressing the subject matter issue, the Advocacy Section first points out that none of the damages being sought by MAP actually represent payments made to Narragansett. Instead, the Advocacy Section observes that the list of damages includes line items for the “fair market value” of a lost parking space, sums paid to third party contractors, and sums paid in legal fees related to the prosecution of the instant complaint case. The Advocacy Section also observes that MAP is seeking these damages pursuant to the Division’s authority set forth in R.I.G.L. §39-4-10, which the Advocacy Section contends must be read in concert with the Division’s refunding authority under R.I.G.L. §39-3-13.1.

In discussing the Division’s powers under the aforementioned two sections, the Advocacy Section contends that neither section provides the Division with the authority to award MAP the type of monetary damages it seeks through its complaint. The Advocacy Section relies on two arguments, the first being that the monetary damages available to ratepayers under these sections of the law are based upon a prerequisite need to compel a public utility to pay “restitution”, which the Advocacy Section maintains first requires a showing of unjust enrichment by the public utility. On this point, the Advocacy Section contends that MAP has failed to show that Narragansett has been unjustly enriched or received any benefit at the expense of MAP in this matter. Moreover, the Advocacy Section notes that the law requires that

restitution be awarded in the form of a ‘cash refund’, a ‘billing credit’ or a ‘rate adjustment’.¹⁴² The Advocacy Section observes that these methods do not include monetary damages.

The second argument espoused by the Advocacy Section hinges upon the availability of “civil remedies” that would allow MAP to pursue its request for monetary damages in the courts. Specifically, the Advocacy Section relies on language contained in R.I.G.L. §39-2-7, which affords private parties with the right to bring ‘civil actions’ ‘within three years from the time the cause of action accrues for the amount of damage’ sustained in consequence of any violation of chapters 1-5 of Title 39.¹⁴³

In short, the Advocacy Section opines that the Division must dismiss MAP’s complaint against Narragansett based on a lack of subject matter jurisdiction. Predicated upon this conclusion and recommendation, the Advocacy Section opted not to address any of the other issues presented in this case.

Findings

The issue before the Division is whether Narragansett violated R.I.G.L. §39-4-10 by refusing MAP’s request for overhead service to Phase II of the Project. The pertinent provisions of this law are as follows:

If, upon a hearing...the division...shall find that any...practice, act, or service of any public utility is unjust, unreasonable, insufficient...or that any service of any...public utility is inadequate or that any service which can be reasonably demanded cannot be

¹⁴² Citing language contained in R.I.G.L. §39-3-13.1.

¹⁴³ Advocacy Section Post-Hearing Memorandum, p. 5.

obtained, the division shall have the power to substitute therefore such other ...practices, service, or acts...as shall be just and reasonable, and the power to order refunds as provided for in §39-3-13.1.

Due to its integral connection to R.I.G.L. §39-4-10, the pertinent provisions of R.I.G.L. §39-3-13.1 are reproduced below:

The division shall have the power, when deemed by it necessary, to provide remedial relief from unjust...[or] unreasonable...acts, or from any matter, act, or thing done by a public utility which matter, act, or thing is...prohibited...to order the public utility to make restitution...by way of a cash refund, billing credit, or rate adjustment, or any other form of relief which the division may devise to do equity to the parties. Any award made in restitution shall carry interest from the date of the injury, at a rate of seven percent (7%)...[to] the date of the order of the division.

Regarding the applicability of the aforementioned laws to the instant complaint matter, the Advocacy Section contends that because the damages that MAP seeks to not relate to any direct payments made to Narragansett subject matter jurisdiction fails to attach and that, consequently, the complaint must be dismissed. The Division disagrees.

R.I.G.L. §39-4-10 prohibits, inter alia, unjust and unreasonable practices and acts, and service denials that are reasonably demanded. The applicability of this section therefore does not require that payments be made to a public utility as a prerequisite to the Division's enforcement of the prohibition(s). Obviously no payment would ever be connected to a complaint associated with a denial of service decision from a public utility. If Narragansett's actions and practices in the MAP complaint case were determined to be unreasonable, the Division would want to take corrective steps to prevent it from occurring again.

Moreover, in the instant case, in addition to its request for money damages and attorney fees, MAP has also requested that Narragansett be ordered to take over ownership and maintenance responsibility for the underground lines and conduits from the pad-mounted transformer to the Phase II property. As this issue is clearly within the scope of R.I.G.L. §39-4-10 the Division finds the Advocacy Section's subject matter jurisdiction argument without merit.

With respect to restitution, R.I.G.L. §39-3-13.1 authorizes the Division to "devise" any "form of relief" it finds necessary to "provide remedial relief...[and] to do equity to the parties". The section clearly applies to cases involving violations of "prohibited" acts, of which the Division finds includes the acts prohibited under R.I.G.L. §39-4-10. In the context used in the statute, this authority clearly transcends cash refunds and rate adjustments. Accordingly, the Division finds that the authority conferred under R.I.G.L. §39-3-13.1 is not limited to simply ordering refunds for over payments as suggested by the Advocacy Section.

For the reasons stated above, the Division finds the Advocacy Section's motion to dismiss MAP's complaint without merit. The Advocacy Section's motion to dismiss is therefore denied.

The Division will now move to an examination of the record for the purpose of determining whether Narragansett violated R.I.G.L. §39-4-10 by refusing MAP's request for overhead service to Phase II of the Project. Regarding this issue, the Division makes the following findings:

- That Narragansett provided 400A 120/208 overhead service to Phase I of the Project in 1999. The service method used for this installation employed an overhead connection from a JO pole using three 50 kVA transformers. The provision of this service was without incident.

- That the initial load design for Phase II of the Project was 400A 277/480 and was communicated to Narragansett on September 24, 1999. Narragansett contemporaneously discovered through discussions with MAP's Phase I electrical contractor that the load information for Phase II would likely change.

- That the load information for Phase II remained uncertain to Narragansett until November 30, 2000, where at a meeting MAP confirmed to Narragansett that mechanical design changes had prompted a load recalculation for Phase II. Narragansett received final written confirmation of the new load service needs from MAP, 600A 277/480 volts, on December 19, 2000.

- That Narragansett's Business Services Account Manager for the MAP Project, Mr. Chuck Norton, expressed concerns during the November 30, 2000 meeting about whether Narragansett could provide a 600A 277/480 volts overhead service connection to Phase II. Discussions regarding an alternative pad-mounted transformer on the site of Phase II began at this time.

- That after receiving the December 19, 2000 revised load calculation letter from MAP, Narragansett's P. E. Group immediately rejected the idea of providing a 600A 277/480 volts overhead service from a JO pole on Thames Street. The P. E. Group verbally communicated this decision to Mr. Chuck

Norton, who in turn verbally communicated the decision to MAP. Therefore, the Division finds that MAP was definitively placed on notice that Narragansett would not approve a 600A 277/480 volts overhead service from a JO pole on Thames Street in December of 2000.

- That numerous meetings and telephone discussions between MAP's representatives and Narragansett's Business Services representatives ensued during which time MAP continued to aggressively press for an overhead connection to Phase II due to a scarcity of available service method options and serious time constraints (MAP needed to have electric service to Phase II by April 15, 2001).

- That the costs associated with the various possible service method options never became an issue during these meetings and discussions, instead the parties' agents focused exclusively on finding some physical means of providing a 600A 277/480 volts electric service to Phase II of the Project, without violating NESC, FEMA and local permitting requirements. That MAP's objection to the cost of the eventually selected service method first became aware to Narragansett after seeing the instant complaint.

- That MAP never challenged the soundness or reasonableness of Narragansett's refusal to provide an overhead 600A 277/480 volts electric service connection to Phase II during the meetings and discussions that took place between December 19, 2000 and April 3, 2001. During this timeframe, none of MAP's electrical advisors, including Mr. Keene, Mr. Bagnall, Mr. Douglass or Mr. Milano ever questioned the technological rationale associated

with Narragansett's refusal to provide an overhead service to Phase II. No one said that Narragansett's refusal or NESC clearance concerns were unfounded from an engineering standpoint. Similarly, none of MAP's electrical advisors ever floated the idea of using larger class JO poles or a different IOP pole ownership basis as potential solutions to the Phase II electric service problem during these many meetings and discussions. Nevertheless, MAP now asserts that these alternative service method options are common in the industry and should have been obvious to Narragansett. MAP makes this assertion even though it wasn't obvious at the time to Mr. Douglass, who testified that he has been involved in hundreds of new electrical service installation projects; or Mr. Milano, who worked as an engineer for an electric distribution company for 37 years.

- That Narragansett reasonably endeavored to find a suitable alternative service method for energizing Phase II of the Project after learning of MAP's recalculated load requirements in December of 2000. The Division finds that Narragansett appropriately considered the options of locating an exposed pad-mounted transformer, a pad-mounted transformer constructed in a waterproof vault, and an SO pole on the Phase II property. MAP, however, rejected all of these options.

The Division finds that Narragansett also appropriately considered and rejected the option of locating a pad-mounted transformer on the Town's lot near Pole 21 on Thames Street. The record supports Narragansett's contention

that there was inadequate room to locate and maintain a pad-mounted transformer on the Town's lot.

Significantly, the Division finds insufficient evidence in the record to support a finding that locating an SO pole on the Town's lot was ever considered as an option by the parties. The Division also finds no evidence that shows that this oversight ought to be ascribed to any dereliction on Narragansett's part.

- That Narragansett is under no regulatory obligation to stock and/or utilize all the distribution equipment currently available in the electric distribution industry for its local system. Further, the Division finds Narragansett's statement that it prefers to keep its distribution system's components as standardized as possible to be reasonable. The Division finds that standardization in this sense serves the public convenience and promotes cost-effectiveness by (1) minimizing the need to keep large diverse inventories on hand, (2) speeding up the time required to carry out repairs and new installations, and (3) helping to ensure that crews are adequately trained and that safety remains paramount.

Moreover, the Division finds that Narragansett's policy to keep its system's components uniform is especially important in the context of restorations associated with ice storms and windstorms. It would be costly and difficult, if not impossible, for Narragansett to effectuate timely repairs, after a winter ice storm or a major windstorm, to a distribution system replete with a hodgepodge of customized poles, transformers, wires and related hardware.

- That Narragansett is not required to install electric distribution system components that are specifically requested by a customer if Narragansett determines that the installation of such equipment would be inimical to the operation of its system and/or not in the interest of its other ratepayers. How Narragansett constructs its electric distribution system is a matter that falls within its managerial discretion.¹⁴⁴

- That Narragansett's standard policy to not provide 600A 277/480 volts services via overhead (or aerial) connections is based upon legitimate safety-related concerns and is therefore reasonable. The seriousness of the safety issue must not be played down or diminished. It was not unreasonable for Narragansett to remain immobile on this "safety" matter.

- That the existence of other overhead 600A 277/480 volts services in Narragansett's existing distribution system does not automatically create an appropriate basis on which to add more. The specific circumstances surrounding those earlier installations were, in some cases, based on earlier NESC installation standards; in other cases, the circumstances may have been unique (some unknown); and in other cases, probably ill-advised. In view of the different installation standards in effect today, the Division finds no justification for using these older installations as a model.

- That MAP's contention that all the other utilities it contacted would have provided the requested 600A 277/480 volts overhead service is inconclusive.

¹⁴⁴ See Providence Water Supply Board v. Public Utilities Commission, 708 A.2d 537 (R.I. 1998). See also generally, Blackstone Valley Electric Company v. Public Utilities Commission, 543 A. 2d 253 (R.I. 1988); and United Transit Company v. Nunes, 209 A.2d 215 (1965).

The Division finds that little weight can be given to MAP's study as the accuracy and reliability of the questions asked and the responses received is suspect.

- That Narragansett's practice to design an initial service method based on the customer's main switch size is also not unreasonable. This practice ensures that the selected service method will be able to handle the maximum potential kVA that the customer may extract from Narragansett's grid. The practice also ensures that Narragansett's other customers will not have to foot the bill for an expensive service method expansion when a Narragansett commercial/industrial customer experiences business growth that leads to greater energy demands.

- That using MAP's private property (a parking space for Phase I) to locate a pad-mounted transformer is not an unreasonable condition for the provision of service to Phase II. Such possible use of private property is clearly delineated in Articles 307 and 701 of Narragansett's "Electrical Service 2000" Handbook (a.k.a. the "Green Book").

- That Narragansett's insistence that MAP own and maintain the secondary electrical service connection under Thames Street, as a condition of providing electrical service to Phase II, is also not unreasonable. Article 702 (C) of Narragansett's "Electrical Service 2000" Handbook provides adequate notice of this condition of service.

- That MAP bears some responsibility for the circumstances surrounding its complaint. Albeit it first contacted Narragansett regarding the Project in

early 1999, MAP was unable to finalize its electrical needs for Phase II until December 2000. Upon learning of the significant design changes, Narragansett immediately rejected MAP's request for overhead service to Phase II (also in December of 2000). If MAP seriously believed that it had been wronged at that time it could have pursued a parallel course and filed a complaint with the Division. In view of the construction deadlines that MAP was facing the Division would have handled MAP's complaint as expeditiously as possible.

Additionally, MAP could have been as aggressive with the Town as it was with Narragansett with respect to seeking a variance that would have facilitated the installation of an SO pole on the Phase II property. The record reflects that MAP simply capitulated on this matter. While it may have been problematic to seek a variance that would have permitted the installation of a pad-mounted transformer in a flood plane, the record suggests that seeking a variance that would have permitted the installation of an SO pole on the Phase II site would have been far easier. From the record, it appears that the primary, if not the only, obstacle was the need for an exemption from the Town's minimum parking space requirements. It is abundantly clear from the record that the Town hugely supports the MAP Project. Clearly the Project means a great deal to the revitalization of this area of Bristol and to the general economic welfare of the Town. The Division doubts that the Town would have allowed the Project to fail by incongruently denying a variance from the Town's minimum parking space regulations.

Conclusion

The Division has carefully considered the evidence and arguments in this docket and finds that Narragansett did not unreasonably refuse to provide overhead electric service to Phase II of MAP's Project in Bristol, or otherwise violate the provisions of R.I.G.L. §39-4-10 with respect to MAP's Project.

Instead, the Division has concluded that the very unique confluence of circumstances surrounding Phase II of MAP's Project, including its location (in a FEMA designated velocity flood zone), its site layout (inadequate room for a pad-mounted transformer or SO pole arrangement), a last-minute 600A 277/480 volts electric service upgrade, and the time crunch to complete Phase II construction by April 15, 2001, all combined to create a "Perfect Storm" dilemma. Despite the higher than anticipated expenses incurred by MAP in this matter, the Division cannot assign any misconduct to Narragansett. The Division finds that Narragansett properly adhered to the mandatory tenets of the NESC and that it acted in a professional fashion consistent with its internal service installation policies and construction standards.

Accordingly, it is

(17818) ORDERED:

1. That the October 2, 2001 complaint filed by Miles Avenue Property Company, LLC against The Narragansett Electric Company, is hereby denied

and dismissed.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON JULY 14, 2004.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator