

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**PUBLIC UTILITIES COMMISSION**

IN RE:           PETITION FOR DECLARATORY RULING  
                    OF DOWNCITY ENERGY COMPANY LLC

DOCKET NO. 3091

ORDER

**WHEREAS,** On March 8, 2000, DownCity Energy Company LLC (“DownCity”) filed with the Public Utilities Commission (“Commission”) a Motion for Declaratory Ruling that it would not be subject to the shut-off provisions contained in the Commission’s *Consumer Protection Requirements for Nonregulated Power Producers* (“NPP Requirements”), specifically Sections II D(3) and II H; and

**WHEREAS,** DownCity has an agreement with the Landlord to provide electric power, which it obtains from a wholesale affiliate, Capital Center Generating Company LLC (“CCGC”), to tenants of the Providence Place Mall (“Mall”); and

**WHEREAS,** CCGC produces electricity via generators located within the buildings of the Mall, and then commingles this electricity with power purchased by the affiliate from the Narragansett Electric Company (“Narragansett”); and

**WHEREAS,** The commingled electricity flows to the Mall’s tenants over the internal wiring of the Mall buildings, which are owned by the Landlord, and is metered by DownCity; and

**WHEREAS,** In the contracts between DownCity and the tenants, DownCity has the right to shut off electricity if the tenant defaults; and

**WHEREAS,** Because DownCity is actually selling electricity at retail, it is technically an NPP pursuant to R.I.G.L. § 39-1-2(19), and thus subject to the NPP Requirements; and

**WHEREAS,** The arrangements through which DownCity sells the electricity are quite different from the typical NPP-customer relationship, since DownCity is acting in the capacity of a contractor for a Landlord who has the obligation to make electricity available to its tenants through the internal wiring of the Mall, rather than over an electric distribution system of poles, outdoor wires, or underground circuits; and

**WHEREAS,** The underlying assumptions contained in Sections II D(3) and II H are inapplicable, since deliveries are not occurring through a utility's electric distribution system, nor are they being metered by the utility; and

**WHEREAS,** The Division of Public Utilities and Carriers ("Division") reviewed the proposed changes, and advised that it had no objection to the relief sought by DownCity; and

**WHEREAS,** Narragansett filed a letter on March 23, 2000, in which it cited the "highly unusual circumstances" as a basis for finding the Declaratory Ruling to be "reasonable and appropriate"; and

**WHEREAS,** At an open meeting on March 24, 2000, the Commission considered the Motion and responses, and declared that the provisos of the NPP Requirements found in Sections II D(3) and II H were inapplicable to the relationship between DownCity and its customers.

Accordingly, it is

(16208) **ORDERED:**

The provisions of the *Consumer Protection Requirements for Nonregulated Power Producers* which state that “the contract [between the NPP and customer] must clearly state that the NPP may not physically shut-off electric service to consumers” and that shut-offs are to be “controlled solely by the electric distribution company under its current termination rules” do not apply to the relationship between DownCity and its customers.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON MARCH 24, 2000. WRITTEN ORDER ISSUED APRIL 7, 2000.

PUBLIC UTILITIES COMMISSION

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Kate F. Racine, Commissioner

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Brenda K. Gaynor, Commissioner