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Order 16001 - Narragansett Bay Commission

**Document: Order 16001 -
 Narragansett Bay Commission**

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 DIVISION OF PUBLIC UTILITIES AND CARRIERS
 100 ORANGE STREET
 PROVIDENCE, RHODE ISLAND 02903

IN RE: Petition Filing by Narragansett Bay
 Commission Seeking Declaratory
 Judgment or Summary Investigation

Docket No. D-98-20

ORDER

Whereas, on May 22, 1998, the Narragansett Bay Water Quality Management District Commission ("NBC") filed a petition with the Rhode Island Division of Public Utilities and Carriers ("Division"), pursuant to Rhode Island General Laws Section 39-4-10 and Rule 13 of the Division's Rules of Practice and Procedure, requesting a declaratory judgment that certain provisions contained in the "Operation Standards and Practices Manual" of Respondent, Providence Gas Company ("ProvGas") are inapplicable and unenforceable against the NBC. Alternatively, the NBC requested that the Division summarily investigate, pursuant to Rhode Island General Laws, Section 39-4-13, the issue of whether ProvGas possesses the statutory or regulatory authority to apply and enforce the provisions of its "Operation Standards and Practices Manual" against the NBC.

Whereas, on June 8, 1998 the Warwick Sewer Authority ("WSA") filed a motion to intervene in the proceeding commenced by the NBC.

Whereas, the Division conducted a prehearing conference in this docket on June 17, 1998. During the prehearing conference the Division established a procedural schedule and granted the WSA's motion to intervene.

Whereas, pursuant to the procedural schedule adopted during the prehearing conference, the following chronology of events followed:

- ProvGas filed an answer in response to the NBC's petition on July 1, 1998.
- The Division's Advocacy Section propounded data requests on July 22, 1998.
- The parties filed a "Statement of Undisputed Facts" on August 5, 1998.
- The NBC propounded data requests on August 11, 1998.
- The WSA propounded data requests on August 17, 1998.
- The WSA filed data responses on September 24, 1998.
- ProvGas filed pre-filed witness testimony on December 3, 1998.
- ProvGas filed a "Summary of Issues" on December 10, 1998.
- ProvGas filed data responses on December 22, 1998.
- The WSA propounded additional data requests on December 31, 1998.

- The NBC propounded additional data requests on February 2, 1999.

Whereas, during the discovery phase of the proceeding the parties jointly requested a postponement of the hearing schedule for the purpose of exploring the possibility of a settlement agreement. This request was granted and the parties were instructed to contact the Division when they were ready to resume with the procedure schedule, or alternatively, when a settlement agreement had been reached.

Whereas, the NBC, the WSA and ProvGas jointly filed an executed "Consent Order" with the Division on February 14, 2000. The parties represent that the instant consent order constitutes a comprehensive settlement to all issues previously in dispute. The parties accordingly seek Division adoption and approval.

Whereas, On March 8, 2000 the Division's Advocacy Section submitted written comments relative to the aforementioned "Consent Order." While the Advocacy Section did not express an opinion regarding the substance of the Consent Order, it did raise some procedural matters. In short, the Advocacy Section opined that the instant Consent Order ought to have been filed as a "Settlement Agreement" and that certain concomitant and perfunctory language had been omitted. The Advocacy Section predicated its comments on procedural requirements set forth in the Division's Rules of Practice and Procedure.

Whereas, the Division has examined the settlement reached between the parties, as manifested in the Consent Order, and finds the agreement reasonable and in the best interest of ratepayers. The Division also finds that the procedural deficiencies raised by the Advocacy Section are de minimus in nature and an insufficient reason to order the parties to amend and reexecute the instant agreement. The Division considers the Consent Order filing in substantial compliance with the Division's Rules of Practice and Procedure.

Now, therefore, it is

(16001) ORDERED:

1. That the "Consent Order" filed by the parties in this docket represents a fair and reasonable resolution to the issues previously in dispute and is hereby approved and adopted.
2. That the "Consent Order", attached to this order, shall be incorporated by reference.

Dated and Effective at Providence, Rhode Island on March 13, 2000.

DIVISION OF PUBLIC UTILITIES AND CARRIERS

John Spirito, Jr., Esquire
Chief Legal Counsel

Thomas F. Ahern
Administrator

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Division of Public Utilities and Carriers

IN RE:

Petition Filing By Narragansett Bay
Commission Seeking Declaratory Docket No. D-98-20
Judgment Or Summary Investigation
By The Division

CONSENT ORDER

Whereas, Narragansett Bay Commission (hereinafter "NBC") is a public corporation created pursuant to R.I.G.L. Section 46-25-1, *et seq.*, having a principal business address at 235 Promenade Street, Suite 500, Providence, RI 02908; and

Whereas, NBC owns and operates Rhode Island's two largest wastewater treatment facilities; and

Whereas, Providence Gas Company (hereinafter "ProvGas") is a privately-owned Rhode Island corporation having a principal business address at 100 Weybosset Street, Providence, RI 02903; and

Whereas, ProvGas provides natural gas service to customers throughout Rhode Island; and

Whereas, Warwick Sewer Authority (hereinafter "WSA") is a public not-for-profit utility having a principal business address at 125 Arthur W. Devine Boulevard, Warwick, Rhode Island 02886; and

Whereas, WSA operates the City of Warwick's wastewater treatment plant; and

Whereas, NBC and ProvGas are "public utilities" under R.I.G.L. Section 39-1-2(20) and as such are subject to the regulations and requirements imposed upon public utilities by the Division of Public Utilities and Carriers (hereinafter "Division") pursuant to the power and authority granted to the Division; and

Whereas, on or about April 24, 1997, NBC commenced a sewer replacement project (hereinafter "Project") in the Town of Johnston whereby NBC intended to replace approximately 23,000 feet of sewer; and

Whereas, on or about November 20, 1997, ProvGas verbally notified NBC that certain sewer construction activities on the Project could not continue until NBC replaced various ProvGas cast-iron mains of 8" or smaller in accordance with ProvGas requirements and thereafter confirmed this oral direction by written correspondence on or about December 2, 1997; and

Whereas, ProvGas relied on selected pages from ProvGas' internal *Operation Standards and Practices Manual (Revised and Updated March 1997)* (hereinafter "Manual") in support of its directive to NBC to replace those certain ProvGas cast-iron mains of 8" or smaller; and

Whereas, on or about May 22, 1998, NBC filed a petition for Declaratory Judgment, or, Alternatively, Request for Summary Investigation, with the Division requesting that the Division enter a judgement

declaring that (a) the standards and practices set forth in the Manual do not apply to NBC; or (b) alternatively, if such standards do apply to NBC, they are unjust, unreasonable and unjustly discriminatory and, therefore, void; or (c) alternatively, commence a summary investigation of ProvGas' discriminatory and illegal demand to the NBC as a condition to the providing of its service; and (d) providing such further relief as the Division deems appropriate and proper; and

Whereas, on or about June 8, 1998, WSA filed a Motion to Intervene with the Division, stating as grounds therefore that WSA was involved in several sewer installation projects in the City of Warwick where proposed sewer pipe locations were in City streets occupied by old gas mains installed and maintained by ProvGas and ProvGas sought to charge WSA for relocation of said gas mains located in City streets as well as removal and replacement of residential connections lines pursuant to the Manual; and

Whereas, during a June 17, 1998 prehearing conference, the Division granted WSA's Motion to Intervene; and

Whereas, the parties in this proceeding have agreed to a resolution of the issues raised herein and wish to incorporate their agreement into an Order of the Division.

NOW THEREFORE, before the taking of any testimony, without any adjudication or admission of any issue of fact or law, and upon consent and agreement of the parties to this Consent Order, and in accordance with applicable rules, it is hereby Ordered, Adjudged and Decreed that:

1. The parties hereby agree to the following procedures for all future sewer and gas construction, replacement, relocation, and repair projects (hereinafter "sewer work").

A) For gas related construction activities, all parties shall employ all proper and reasonable construction practices pursuant to ProvGas Company Guidelines (hereinafter "ProvGas Guidelines"). Said Guidelines are included in Exhibit A, attached hereto and incorporated herein by reference. Any and all modifications to said Guidelines shall not take effect unless agreed to in writing by either NBC and ProvGas or WSA and ProvGas.

B) Prior to commencing final design of any sewer work, the party performing the sewer work shall contact ProvGas to arrange a field visit to review "onsite" all ProvGas gas main location information to ensure proper location of all affected existing gas mains and sewer pipes. All changes to the sewer design plans/specifications made necessary based on said field visit shall be documented in writing and executed by ProvGas and the party performing the sewer work in a timely manner.

C) The requirement for marking the location during design of all sewer pipes and gas mains affected by the sewer work shall be determined by agreement of ProvGas and the party performing the sewer work on a case by case basis. Each party shall bear 100% of the costs associated with locating and marking its affected gas mains or sewer pipes.

D) If it is determined prior to commencement of the sewer work, that relocation and/or replacement of ProvGas gas mains will be required, the party performing the sewer work may, with ProvGas' approval, include the gas main relocation and/or replacement work in its general bid for the sewer work. Any award for contractor or subcontractor services of the gas main replacement portion of the sewer work shall be awarded only to ProvGas approved gas main contractors.

E) Where under this Agreement, ProvGas is to receive 50% or 100% reimbursement for the relocation or replacement of ProvGas gas mains, service lines will be reimbursed to ProvGas only for the charges, estimated at \$400 per connection, or the actual charges incurred by ProvGas.

2. All future disputes arising from sewer work wherein NBC and/or WSA encounter ProvGas gas mains shall be resolved in accordance with the following schedule. For purposes of this schedule, "properly marking" shall be defined as marking the location of gas pipe within 1.5 feet on either side of the gas pipe.

Gas Main or Service Broken or Damaged

A) Where a ProvGas cast iron, steel or plastic gas main or service, is either broken or damaged during sewer work, and ProvGas properly marked the location of the gas main, the party causing the break or damage shall reimburse ProvGas 100% of the costs associated with fixing the damage or break.

B) Where a ProvGas cast iron, steel or plastic gas main or service is either broken or damaged during sewer work, and ProvGas failed to properly mark the location of the gas main, ProvGas shall bear 100% of the costs associated with fixing the damage or break. ProvGas shall also reimburse the party performing the sewer work for costs incurred due to contractual delays, including sewer contractor downtime.

Gas Main Located Within Trench Box

C) Where a ProvGas cast iron, steel or plastic gas main is exposed and located within the trench box during a sewer replacement project where the sewer is being replaced in the same horizontal location, the gas main shall be relocated by ProvGas and ProvGas shall bear 100% of the costs associated with relocation of the gas main.

D) Where a ProvGas steel or plastic gas main is exposed and located within the trench box during a new sewer installation project, the gas main shall be relocated by ProvGas and the party installing the new sewer shall reimburse ProvGas 100% of the costs associated with relocating the gas main.

E) Where a ProvGas cast iron gas main of 3" or 4" is exposed and located within the trench box during a new sewer installation project, the gas main shall be relocated by ProvGas and ProvGas shall bear 100% of the costs associated with relocation of the gas main.

F) Where a ProvGas cast iron gas main of 6" or larger is exposed and located within the trench box during a new sewer installation, the gas main shall be relocated by ProvGas and the party installing the new sewer shall reimburse ProvGas 100% of the costs associated with relocating the gas main.

Gas Main Located Outside of Trench Box

G) Where a ProvGas steel or plastic gas main is exposed and located outside of the trench box running parallel to the trench during sewer work, the party performing the sewer work shall properly support the gas main and properly backfill the trench in accordance with ProvGas Guidelines incorporated by reference at Section 1(A) above and the design plans/specifications executed pursuant to Section 1(B) above.

H) Where a ProvGas cast iron gas main of 3" or 4" is exposed and is located outside of the trench box running parallel to the trench during sewer work, ProvGas shall bear 100% of the costs associated with its replacement or relocation.

I) Where a ProvGas cast iron gas main of 6" or larger is exposed and is located outside of the trench box running parallel to the trench during sewer work, the party performing the sewer work shall reimburse ProvGas 100% of the costs associated with protecting the existing gas main or its replacement or relocation.

Gas Main Unexposed and 3 Feet or Less from Trench Wall

J) Where an unexposed ProvGas steel or plastic gas main runs parallel to and is located 3 feet or less from a trench wall, during sewer work, the party performing the sewer work shall properly backfill the trench in accordance with methods that comply with industry standards.

K) Where an unexposed ProvGas cast iron gas main of 3" or 4" runs parallel to and is located 3 feet or less from a trench wall, during sewer work, ProvGas shall bear 100% of the costs associated with its replacement or relocation.

L) Where an unexposed ProvGas cast iron gas main of 6" or larger runs parallel to and is located 3 feet or less from a trench wall during sewer work, the party performing the sewer work shall reimburse ProvGas 50% of the costs associated with replacement or relocation of the gas main, or trench support requested by ProvGas that is in addition to methods that comply with industry standards.

Gas Main Unexposed More Than 3 Feet from Trench Wall

M) Where an unexposed ProvGas steel, plastic or cast iron gas main runs parallel to and is located more than 3 feet from a trench wall, during sewer work, ProvGas shall bear 100% of the costs associated with replacement or relocation.

N) Where an unexposed ProvGas steel, plastic or cast iron gas main runs parallel to and is located more than 3 feet from a trench wall, during sewer work, and the party performing the sewer work requests that the gas main be relocated, ProvGas shall relocate the gas main and, the party performing the sewer work shall reimburse ProvGas 100% of the costs associated with relocation of the gas main.

Gas Main Exposed and Perpendicular to Trench

O) Where a ProvGas steel or plastic gas main is exposed and runs perpendicular to the trench during sewer work, the party performing the sewer work shall properly support the gas main and properly backfill the trench in accordance with ProvGas Guidelines and the design plans/specifications executed pursuant to Section 1(B) above.

P) Where a ProvGas cast iron gas main of 3" or 4" is exposed and runs perpendicular to the trench during sewer work, ProvGas shall bear 100% of the costs associated with its replacement or relocation.

Q) Where a ProvGas cast iron gas main of 6" or larger runs perpendicular to the trench and is exposed for a length of 5 feet or less during sewer work, the party performing the sewer work shall properly

support the gas main and properly backfill the trench in accordance with the ProvGas Guidelines incorporated by reference at Section 1(A) above and the design plans/specifications executed pursuant to Section 1(B) above.

R) Where a ProvGas cast iron gas main of 6" or larger runs perpendicular to the trench and is exposed for a length of greater than 5 feet during sewer work, ProvGas shall replace the gas main and the party performing the sewer work shall reimburse ProvGas 100% of the costs associated with replacement of the gas main. The replacement distance shall be the length of the exposed gas line, plus twice the distance from the top of the gas pipe to the bottom of the trench.

3. The provisions of this Consent Agreement shall be binding upon NBC, ProvGas and WSA, and their officers agents, employees, successors and assigns.

ENTERED as an Order of the Division of Public Utilities and Carriers this day of 2000.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized representatives, this Agreement on this day of , 2000.

ENTER: PER ORDER:

Assented to:

NARRAGANSETT BAY COMMISSION,

Date:
Paul Pinault, P.E.
Executive Director
Narragansett Bay Commission
The Foundry Building
235 Promenade Street, Suite 500
Providence, RI 02908

By its Attorney,

Date:
Holly R. Ialongo, Esquire #5632
Narragansett Bay Commission
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PROVIDENCE GAS COMPANY

Date:

James Dodge
President & CEO
Providence Gas Company
100 Weybosset Street
Providence, RI 02903

By its Attorney,

Date:

Susann Mark, Esquire #2554
Providence Gas Company
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WARWICK SEWER AUTHORITY

Date:

Dennis Vinhateiro
Warwick Sewer Authority
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Warwick, RI 02886

By its Attorney,

Date:

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