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Order 16201 - Narragansett Bay Commission Seeking Declaratory Judgment  
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Narragansett Bay Commission:  
Seeking Declaratory Judgment

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 Sec. 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, Sec. 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

**(16201)** 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  
Judgment Or Summary Investigation  
By The Division

DOCKET No. D-98-20

CONSENT ORDER

Whereas, Narragansett Bay Commission (hereinafter "NBC") is a public corporation created pursuant to R.I.G.L. Sec.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. Sec.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 inches 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 inches 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 inches or 4 inches 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 inches 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 inches or 4 inches 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 inches 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 inches or 4 inches 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 inches 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 inches or 4 inches 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 inches 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 inches 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.

5. 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: 2/8/00  
 Paul Pinault, P.E.  
 Executive Director  
 Narragansett Bay Commission  
 The Foundry Building  
 235 Promenade Street, Suite 500  
 Providence, RI 02908

By its Attorney,

Date: 2/7/00  
Holly R. Ialongo, Esquire #5632  
Narragansett Bay Commission  
The Foundry Building  
235 Promenade Street, Suite 500  
Providence, RI 02908

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  
100 Weybosset Street  
Providence, RI 02903

WARWICK SEWER AUTHORITY

Date:  
Dennis Vinhateiro  
Warwick Sewer Authority  
125 Arthur W. Devine Boulevard  
Warwick, RI 02886

By its Attorney,

Date: 1/31/00  
William E. Smith #3696  
Seth Handy, Esquire #5554  
Edwards & Angell  
2700 BankBoston Tower  
Providence, RI 02903

ProvGas Guidelines for Backfill and Compaction around Gas Pipes  
(Regarding NBC/Warwick Sewer Authority Agreement)

Permanent Backfill and Compaction



DESCRIPTION: This work shall consist of backfilling and compacting all disturbed material at and around existing gas pipes and facilities. Size of pipe, material, length of exposed pipe, location of pipe, etc. will all follow the same set of standards and specifications stipulated by ProvGas.

If design plans call for gas pipes to be exposed and supported (sheeting methods not used), then at the time of backfill, all disturbed material below the invert of the gas pipe shall be removed and replaced with suitable roadway or trench excavation material or bedding material. The contractor will not be allowed to replace this disturbed material with the same existing material if it has now been mixed with adjacent silty subsoil (clays) and fines. Well graded gravel and sands will be used to replace the unsuitable material when no excess suitable material is available on-site. Soils with high humus or mineral content should not be used to for backfill because they can promote electrolytic or bacterial attack

Backfilling the gas pipe should begin immediately after the work in that location is complete. The region within 6 inches alongside and on top of the gas pipe shall be backfilled with padding sand (free of cinders, ash, and rock). In no case shall the material used for backfilling in this region contain any stones. Backfill shall consist of suitable materials (medium to coarse sands with little or no silts) placed in layers of not more than 8 inches to 12 inches after compaction. Trench spoil material shall be suitable for backfilling above the padding material as long as rocks with a diameter larger than 3 inches are removed.

The layers shall be mechanically compacted to the industry standard of 95% or until a density comparable to the unexcavated material is achieved. In some instances, flooding with water is an acceptable method of compaction but only if the backfill material is clean, coarse, and adequate drainage is existent. The above specified backfill material is essential in order to attain the degree of compaction necessary to avoid future settlement.

Tracing Wire shall be installed approximately 12 inches above the gas pipe.

A minimum of 2 inches temporary pavement shall be applied over the trench as soon as possible.

ProvGas Guidelines for Support of Gas Pipes  
(Regarding NBC/Warwick Sewer Authority Agreement)

#### Temporary Support of Gas Pipes

DESCRIPTION: This work shall consist of temporarily supporting gas pipes, during construction work and related activities. Any gas pipe that is exposed shall follow this specification stipulating pipe support criteria. Whether gas pipe is located directly in the excavation trench box or if it is located in the excavated adjacent slopes (Angle of Repose) all gas pipe must be supported.

When gas pipe is undermined for 5 feet or more at any given time, ProvGas Company must be notified and a decision will be made on what type of support system will be utilized. ProvGas Company reserves the right to insist that plans be submitted, by a Rhode Island Registered Professional Engineer, if the gas pipe being supported exceeds an unsupported span length of 12 feet, is located in cohesive soils (wet, silty soils), or feels that the structural integrity of the gas distribution system may be compromised.

All cast iron gas pipes will be replaced and not be temporarily supported, unless determined differently by ProvGas. This criteria is in accordance with Section 6315.6 of ProvGas' Operations Standards and Practices Manual.

The following criteria should be used as guidelines when undermining existing steel or plastic gas pipes:

**Steel Gas Pipe-** If pipe is undermined for a distance between 5 and 10 feet, the support system should consist, as a minimum, of adequately sized steel I- beams, steel plate girders, or 6 inch x 6 inch wood beams (Hem-Fir) with a sling supporting the pipe mid-span. For distances greater than 10 feet, these temporary support beams will have slings supporting the pipe every 10 to 12 feet along the length of the undermined pipe. Furthermore, when a mechanical coupling or fitting is encountered at any span length, the slings must be placed on either side of the fitting to avoid buckling.

**Plastic Gas Pipe-** If pipe is undermined for a distance between 5 and 10 feet, the support system should consist, as a minimum, of adequately sized steel I- beams, steel plate girders, or 4 inch x 4 inch wood beams (Hem-Fir) with a sling supporting the pipe mid-span. For distances greater 10 feet, these temporary support beams will have slings supporting pipe every 10 to 12 feet along the length of the undermined pipe. Furthermore, when a mechanical coupling or fitting is encountered, the slings must be placed on either side of the fitting to avoid buckling.

ProvGas Guidelines for Earth Shoring around Gas Pipes  
(Regarding NBC/Warwick Sewer Authority Agreement)

#### Permanent & Temporary Earth Shoring Systems

**DESCRIPTION:** When the installation of underground utilities or structures affect existing gas pipes or gas structures, all the design plans and specifications shall be submitted to ProvGas Company for review and approval of the proposed earth shoring methods. Some work may require elaborate and/or complex earth shoring designs and some work may only require a description of the work being done along with simple shoring solutions. ProvGas shall review the proposed work for proper design and conformance to ProvGas specifications. Also, ProvGas can meet with the owner before the project begins and decide on a "case-by-case" basis if plans are needed or if a description of the work is sufficient.

Should protection be required for gas utilities, the contractor will be required to provide an adequate earth shoring system (steel sheet piling, soldier piling & lagging, timber bracing, whaler bracing system, trench box, etc.) The temporary or permanent earth shoring system shall be furnished, installed, and left in place, or removed, installed, and disposed of properly by the contractor hired by the Sewer Authority. This work shall be done in accordance with the job specific specifications and details shown on the approved set of plans.

In all cases where sheeting is left in place after construction, it will be cut off a distance of two feet below grade.

The earth shoring system shall be of sufficient length and adequate section modulus to provide adequate resistance of loads and conditions involved to safely sustain earth banks, gas pipes and

facilities, and any other adjoining structures, which may endanger gas pipes by settlement or loss of ground.

General ProvGas considerations:

- steel sheet piling shall not be driven within five feet of cast iron gas pipe (this holds true for soils of medium to coarse sand with very little fines or silts. Cohesive and "silty" soils (28% silt or greater) requires even a greater horizontal distance -- approximately 10 feet). Soldier piling and lagging may be an alternative shoring method should these distances not adequately be met.
- As required by OSHA a minimum 2:1 slope of the embankment must always be maintained in an excavation trench or pit. Should this 2:1 slope (angle of repose) interfere with ProvGas utilities, then the affected utilities must be protected from potential vertical or horizontal settlement.

Other than steel trench boxes, which are suitable for all types of soils, designs and computations for these support systems shall be prepared by a registered professional engineer. ProvGas reserves the right, during the review process, to require additional support and shoring in areas where shoring may not be sufficient in ProvGas' opinion.

At the time of construction, the contractor' s attention is specifically directed to the proximity of the gas pipe and relation to the sheeting work. In regard thereto, it shall be the contractor' s responsibility to give a 24-hour advance notice to ProvGas so our inspector may be present during such work. Furthermore, the contractor shall maintain all excavations in good order, during construction, as to not undermine or reduce the stability of the shoring system, which may have adverse effects on the protected gas pipe.

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