



Laura S. Olton  
General Counsel

November 12, 2004

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**RE: Docket No. 3643 – In re: Complaint regarding Line Extension Rates**

Dear Ms. Massaro:

Enclosed please find an original and 9 copies of The Narragansett Electric Company's Motion and Memorandum to Dismiss the Complaint of Mr. Scott Pollard.

Thank you for your attention to this filing. Should you have any questions regarding this transmittal, please contact me at 784-7667.

Very truly yours,

Laura S. Olton

cc: Cindy Wilson, Esq.  
John Spirito, Jr., Esq.  
James Lanni  
Terry O'Brien  
Alex Moore, Esq.  
Scott Pollard, Esq.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

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**In Re: Complaint regarding Line Extension Rates ) Docket No. 3643**  
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**MOTION AND MEMORANDUM  
TO DISMISS CUSTOMER COMPLAINT**

Now comes The Narragansett Electric Company (“Narragansett” or the “Company”) and hereby moves, pursuant to Rule 1.15 of the Rules of Practice and Procedure of the Public Utilities Commission (“Commission”), to dismiss the above-captioned complaint for failure to state a claim upon which relief may be granted. Mr. Pollard has filed numerous letters challenging the legality and constitutionality of Narragansett’s Line Extension Policy B for Individual Residential Customers (“Line Extension Policy” or “Policy”)<sup>1</sup> because under the Policy, Mr. Pollard must pay for the extension of power lines on a public road.<sup>2</sup> The Line Extension Policy is a tariffed rate

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<sup>1</sup> It should be noted that Mr. Pollard’s complaint letters refer to Narragansett Line Extension Policy B. In Docket No. 3617, the Company made minor changes to the Line Extension Policy for Individual Residential Customers and renamed it Policy 1. These tariff pages were approved by the Commission on September 28, 2004 as part of its approval of the Second Amended Rate Settlement in Docket No. 3617. Thus, effective November 1, 2004, Policy 1 replaced Policy B. The changes reflected in Policy 1 from the former Policy B do not affect how the Policy would apply to Mr. Pollard’s circumstances. Policy 1 is attached hereto as Attachment A.

<sup>2</sup> Mr. Pollard’s initial complaint letters dated October 6, 2004 and October 13, 2004 were filed with the Division of Public Utilities (“Division”). On October 20, 2004, Chief Legal Counsel for the Division responded to Mr. Pollard and forwarded the complaint letters to the Commission. The Division found that Mr. Pollard’s claim was not one of “unreasonable practices” or “inadequate services” under the Division’s jurisdiction. Rather, the Division stated that his complaint asserts that “approved line extension charges are nevertheless ‘unjust’, ‘unreasonable’, ‘prohibited’ and ‘unlawful’ on their face.” On October 25, 2004, Mr. Pollard sent further correspondence to the Division asserting Division jurisdiction. On November 5, Counsel for the Division again responded to Mr. Pollard explaining that the Commission had approved the charges at issue, and therefore any related complaint must be directed to the Commission.

that has already been fully litigated before the Commission. Since this Line Extension Policy is a rate that has been deemed reasonable and lawful by the Commission, by law it has the force and effect of a statute. Mr. Pollard's arguments are a challenge to the rate itself that has already been found reasonable. Accordingly, it is clear that the complainant is not entitled to relief by the Commission under any set of facts that might be proved in support of his claim. Thus, the complaint should be dismissed.

#### Summary of the Tariff Pages

As stated directly in the tariff pages, the Line Extension Policy applies when a residential customer requests that a distribution line be extended to serve such customer's home regardless of whether the line will be over private property, along a common way or along a public way. The Policy provides for up to two poles and two pole spans of overhead distribution line needed to serve the customer plus a service drop to the customer's home free of charge. Policy, ¶ 2. If more than two spans of overhead distribution line are required to serve the customer's home, the customer must pay an "overhead installation charge" as calculated under the Line Extension Policy. Policy, ¶ 3. Where overhead service is requested by more than one customer for the same line, the overhead installation charge will be prorated among those customers, based on the amount of line attributable to each customer. Policy, ¶ 5. The Policy also provides that within the first five years from the date of first payment received from the original customer, any new customers supplied service by facilities constructed under this policy will be 1) credited the value of two poles and two spans per customer, and 2) required to make prorated contributions to the payment of the initial overhead installation charge. Policy, ¶ 6. These credits and new customer contributions would be applied to the

balance of the overhead installation charge, thereby reducing the payment obligations of the initial customer.

#### Authority of the Commission

The Commission has exclusive jurisdiction to determine the rates of public utilities. R.I.G.L. § 39-1-3. It is the function of the Commission to regulate a utility in order to determine that its rates are fair and reasonable. Blackstone Valley Elec. Co. v. Pub. Util. Comm'n, 543 A.2d 253, 255 (1988). All tariffed rates of utilities are subject to a full investigation and public hearing pursuant to R.I.G.L. §§ 39-3-10 and 39-3-11. Under the law as well as the Commission's Rules of Practice and Procedure, the Commission notices rate filings with the public, and then solicits public comment on the proposed rates. When the Commission approves a rate and pronounces that a specific rate is just and reasonable, the pronouncement has the force and effect of a statute. Narragansett Elec. Co. v. Burke, 122 R.I. 13, 404 A.2d 821, 827 (1979), cert denied, 444 U.S. 1079 (1980).

#### The Commission Has Fully Approved the Line Extension Policy

The Commission has reviewed and approved the Line Extension Policy at issue numerous times, dating back to at least 1979. On March 9, 1979, Narragansett filed with the Commission three policies covering the extension of its system to provide service to new customers. In Re: The Narragansett Elec. Co. Filing on Certain Policies Filed on March 9, 1979, Docket No. 1417. The three proposed policies were: (1) Residential Overhead Line Extension Policy; (2) Commercial and Industrial Customers Construction Contribution Policy; and (3) Temporary Service Installation Policy. As described by the

Commission, the first policy (the predecessor to the current Policy 1) “supersedes the Line Extension Plan for Domestic or Farm Service of January 1, 1963” and was “designed to state as clearly and concisely as possible the Company’s policy for implementing ... the terms and conditions in situations where the Company is requested by a residential customer to provide service which will require construction of an extension to the Company’s overhead lines.” Narragansett Elec. Co., Order 9801 (March 30, 1979). After a preliminary review of the filing, the Commission declared that “the public interest requires a thorough and complete investigation be made of the proposed tariff changes and that public hearings be held thereon.” Id. Accordingly, the Commission ordered on its own motion and pursuant to the provisions of R.I.G.L. § 39-3-11 suspension of the tariff filing pending an investigation. Id.; see also Narragansett Elec. Co., Order 9915 (Aug. 27, 1979, further suspending the tariff three additional months).

After publication of notice, the Commission held a public hearing in Docket No. 1417 on October 24, 1979 and after reviewing the record, the Commission approved the Company’s Residential Overhead Line Extension Policy. Narragansett Elec. Co., Order 10006 (Nov. 30, 1979). The Commission took eight months to review the policies and made a reasoned decision. In its analysis, the Commission stated that “the existing provision for extension of service along a public way to a residential customer provides that the Company will extend its line up to 500 feet per customer free of cost.” Id. (emphasis added). Under the Company’s 1979 proposal, “the 500 feet allowance would be changed to the span of two poles, with the cost of all additional footage being charged to the customer.” Id. Thus, the authority and reasonableness of the Company to charge a residential customer for an extension of service along a public way was not only

approved by the Commission in 1979, but the concept of charging residential customers for additional new facilities along a public way was part of the earlier 1963 Line Extension Plan for Domestic or Farm Service. As described above, the Commission reviewed the policy and associated rates and found them just and reasonable. See Order No. 10006 (1979). Since that time, the Commission has continued to thoroughly review such policies and has consistently approved their terms as lawful, fair, constitutional and reasonable. See, e.g., Order No. 14147 (1993).<sup>3</sup>

When the Commission has approved a rate and pronounces that a specific rate is just and reasonable, the pronouncement has the force and effect of a statute. Narragansett Elec. Co. v. Burke, supra; see also New Eng. Tel. & Tel. Co. v. Public Utilities Comm'n, 116 R.I. 356, 388, 358 A.2d 1, 20 (1976). Here, the Commission has undertaken sufficient review and established a substantial administrative record upon which its decision to approve the Company's Line Extension Policy is based. There is no basis for finding the adequacy of that review, or the Commission's decisions approving the Line Extension Policy, as unreasonable, arbitrary or capricious. Thus, there are no grounds for relief of Mr. Pollard's complaint and the complaint should be dismissed.

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<sup>3</sup> It also is worth noting that the currently effective overhead cost per foot of \$8.80 of which Mr. Pollard complains has been in place for line extension applications received by the Company since December 31, 1999.

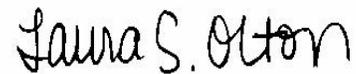
**CONCLUSION**

The Commission has fully investigated and approved the Line Extension Policy and by law it has the force of a statute. For the reasons stated above, The Narragansett Electric Company respectfully requests the Commission grant this Motion to Dismiss.

Respectfully submitted,

THE NARRAGANSETT  
ELECTRIC COMPANY

By its attorney,



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Dated: November 12, 2004