

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: NARRAGANSETT ELECTRIC COMPANY :
d/b/a NATIONAL GRID REQUEST FOR : DOCKET NO. 3710
DISPENSATION OF SETTLEMENT PROCEEDS :

REPORT AND ORDER

I. NARRAGANSETT’S FILING

On November 15, 2005, Narragansett Electric Company d/b/a National Grid (“NGrid” or “Company”) submitted to the Public Utilities Commission (“Commission”) a Request for Dispensation of Settlement Proceeds (“Disposition of Funds”). In support of its filing, NGrid submitted the Pre-Filed Testimony of Ronald T. Gerwatowski, Vice President of Distribution Regulatory Services for the Narragansett Electric Company d/b/a National Grid and Jeanne A. Lloyd, Principal Financial Analyst in the Distribution Regulatory Services Department of National Grid USA Service Company, Inc.

In his Pre-Filed Testimony, Mr. Gerwatowski explained that the Company, Division of Public Utilities and Carriers (“Division”), the Attorney General of Rhode Island, and the Commission entered into a series of settlements, one arising out of the bankruptcy of USGen New England (“USGen Settlement”), one out of issues relating to disputes regarding New England Power Company’s (“NEP”) Contract Termination Charge (“CTC”) (“CTC Settlement”), and one resolving ratemaking treatment of disputed congestion costs (“Congestion charge Settlement”).¹

The USGen settlement allocates \$43.6 million to pay down the unrecovered fixed assets of Montaup Electric Company which are currently being recovered through the CTC. There is an additional \$10 million allocated to Rhode Island to be allocated back to

¹ NGrid Ex. 1 (Pre-Filed Testimony of Ronald T. Gerwatowski), p. 3.

ratepayers in accordance with Commission approval, with the exception of \$3.5 million which will be used to pay a portion of disputed congestion charges under the Congestion charge Settlement. Under the CTC Settlement, NEP agrees to pay the Company \$10 million to resolve the disputed issues between the State of Rhode Island (through the Commission, Division and Attorney General) and NEP. Therefore, \$16.5 million in Settlement funds is available to be allocated to the Company's customers in accordance with Commission approval.² That is the subject of this docket.

Mr. Gerwatowski explained that the Company proposes to allocate the \$16.5 million in the following manner: \$8.5 million to all ratepayers through the Transition charge in 2006 and an additional \$2 million to A-60 rate class through a uniform per kWh distribution credit on the first 450 kWh of usage in 2006. The A-60 rate class' \$2 million distribution credit would also continue through the period 2007 through 2009, for a total additional credit of \$8 million.³ The credit factor would be adjusted each year to take into account any increase or decrease in the A-60 rate class load in order to protect against a deferral which the Company would expect to recover from all customers at the end of 2009.⁴

In her Pre-Filed Testimony, Ms. Lloyd again explained the proposal and noted that the proposed annual amount of the discount to A-60 customer, using 2006 forecasted kWh for the A-60 rate class, is a credit of 1.240 cents per kWh in 2006. Multiplying this credit by the maximum 450 kWh, it would provide a monthly distribution credit to that customer of \$5.81 more than he or she would receive under the current discounted rate. She noted that the Company proposes commencing the A-60 distribution credit in the

² Id. at 3-4.

³ Id. at 5-7.

⁴ Id. at 6; NGrid's Responses to Commission Data Requests 1-1, 1-2, 1-3 and 1-4.

first cycle of the first billing month following approval of the USGen and CTC Settlements by the Federal Energy Regulatory Commission. This means the credit will be provided on a bills rendered basis rather than a usage basis, something that requires Commission approval. The rationale for this departure, according to Ms. Lloyd is that it will allow the Company to implement the credit as soon as possible after receiving approval of the Settlements.⁵

II. TEC-RI'S POSITION

On December 9, 2005, The Energy Council of Rhode Island ("TEC-RI"), an unincorporated, non-profit organization of large users of electricity within the NGrid service territory, filed its Position. In its filing, TEC-RI expressed concerns regarding NGrid's proposal. TEC-RI noted that the additional credit to the A-60 rate class is being proposed at the expense of all other customers. TEC-RI expressed concern that the business community can only provide so much relief to other sectors of the economy before the problem escalates. TEC-RI noted that under the proposal, the business community will contribute over 60 percent of the \$8 million, or approximately \$5 million. He proposed that while it may be appropriate for the Commission to allow the additional \$2 million distribution credit to the A-60 rate class in 2006, it should not allocate the remaining \$6 million in this decision, but should require NGrid to retain the funds for the benefit of all ratepayers pending a determination at a future time whether the continued additional benefit is necessary.⁶

⁵ NGrid Ex. 1 (Pre-Filed Testimony of Jeanne A. Lloyd), pp. 2-6.

⁶ TEC-RI Position, pp. 2-5.

III. WILEY CENTER'S POSITION

On December 12, 2005, the Wiley Center filed its Position in this matter. The Wiley Center supported NGrid's proposal, but requested the Commission consider expanding the proposal to allocate the entire \$16.5 million to the A-60 rate class, presumably at a level of a \$4 million credit per year for four years. In support of its claim, the Wiley Center argued that low income customers are impacted more severely by rate increases than are other customers. In support of this argument, the Wiley Center relied on testimony filed by John Howat in two prior Commission dockets.⁷

IV. DIVISION'S POSITION

On December 12, 2005, the Division submitted the Pre-Filed Testimony of John Stutz, its consultant. Dr. Stutz recommended approval of NGrid's proposal because the large increase in the SOS rate is of particular concern for low-income customers served under the A-60 rate. He stated that "diversion of funds required to provide credits of \$2 million per year for Rate A-60 customers would allow the Commission to ensure significant relief for those least able to cope with the increase in Standard Offer Rates, while preserving the majority of the funds received recently...for the benefit of all customers."⁸

V. ATTORNEY GENERAL'S POSITION

On December 13, 2005, the Attorney General filed his position, recommending the Commission approve NGrid's proposal as filed. The Attorney General stated that, "[w]hile we could not support devoting all of the money in the settlement to assisting a

⁷ WC Ex. 1 (Position Statement of the Wiley Center), pp. 1-2. The Commission also allowed the Wiley Center to submit as full exhibits the testimony of Mr. John Howat from Docket Nos. 3689 (In re: Narragansett Electric Proposed Standard Offer Rate) and 3690 (In re: New Gas Distribution Adjustment Clause).

⁸ Div. Ex. 1 (Pre-Filed Testimony of John Stutz), p. 7.

single class of ratepayers at the expense of all of the other classes, we believe devoting approximately half of the settlement, as advocated by National Grid, is appropriate.”⁹ The rationale for support was having the ability in this case to assist low income customers, “the segment of our population least able to absorb frequent and dramatic rate increases.”¹⁰

VI. HEARING

A public hearing was held at the Commission’s offices, 89 Jefferson Boulevard, Warwick, Rhode Island, on December 16, 2005 for the purposes of entertaining oral argument by the parties. The following appearances were entered:

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| FOR NATIONAL GRID: | Thomas G. Robinson, Esq. |
| FOR WILEY CENTER: | B. Jean Rosiello, Esq. |
| FOR ATTORNEY GENERAL: | William K. Lueker, Esq. Special Assistant Attorney General |
| FOR DIVISON: | Paul J. Roberti, Esq. Assistant Attorney General |
| FOR COMMISSION: | Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel |

Mr. Robinson noted that this decision is one of policy for the Commission. He opined that under R.I. Gen. Laws § 39-2-1.2, the Company may propose special programs for low income customers which may be approved by the Commission. He noted that the issue is whether the Settlement funds should be directed to all customers or to a select few. In response to questioning from the Bench, Mr. Robinson agreed that low income customers are already served under a discounted rate which provides an

⁹ *Id.* at 8-9.

¹⁰ AG Ex. 1 (Position of the Attorney General), p. 2.

approximate 50% discount on the distribution charge.¹¹ Mr. Robinson also conceded that the Company would not be making this recommendation to provide a larger distribution discount to the A-60 rate class if shareholder funds were at risk. Furthermore, he agreed that shareholders will actually benefit from this proposal through less risk of the cost of expansion of the A-60 rate and through potentially lower uncollectible accounts which are already factored into rates.¹² Finally, Mr. Robinson indicated that he expected FERC to rule on the Settlements themselves in January 2006.¹³

Mr. Roberti agreed that the decision in this matter is a policy call for the Commission and pointed out that because during this time of “extraordinary rate increases for electricity,” Rhode Island is fortunate to have the benefit of these Settlement proceeds which allow the Commission the ability, if it chooses, to provide some rate relief for a specific set of customers without having to actually raise the rates of other customers. In response to questioning from the Bench, Mr. Roberti noted that the Settlement proceeds relate to the transition, not the distribution portion of the electric bill.¹⁴

Mr. Lueker noted that because the availability of the Settlement funds arise out of events that occurred over a period of years, it would not be possible to return the funds to the exact ratepayers who paid their bills prior to the Settlement in the exact amounts. Therefore, he believed that the Company would be justified in returning a larger proportion to low income customers because “all Rhode Islanders should help their

¹¹ Tr. 12/16/05, pp. 11-13.

¹² Id. at 41, 59-60.

¹³ Id. at 57-58.

¹⁴ Id. at 14-17.

neighbors who need the help the most.”¹⁵ Upon questioning from the Bench, Mr. Lueker could not point out to the Commission an instance where a credit was not returned to all ratepayers on a per kWh basis.¹⁶ He agreed that the Attorney General believed it would be appropriate to transfer some of the funds that all ratepayers would ordinarily receive to low income ratepayers.¹⁷

Ms. Rosiello addressed several statutory cites and caselaw citations which she maintained gave the Commission the authority to approve the proposal submitted by the Company. She noted that this was a unique situation where all parties to the docket agreed on the methodology of allocating the Settlement funds.¹⁸ She addressed testimony that had been provided by Mr. John Howat of the National Consumer Law Center which addressed concerns specific to low income families.¹⁹ In advocating for the Company’s proposal and for the Wiley Center’s counter-proposal to allocate the entire Settlement funds to the A-60 rate class, she noted that data requests submitted by the Company indicate that the loss of those funds to all ratepayers is significantly less than the benefit such an allocation would have to A-60 customers.²⁰

VII. COMMISSION FINDINGS

At its Open Meeting held on December 22, 2005, the Commission voted 2-1, with Commissioner Holbrook dissenting, to approve the disposition of Settlement funds in part. The Commission specifically approved the disposition of \$8.5 million to all

¹⁵ Id. at 17-18.

¹⁶ Id. at 19. Mr. Roberti pointed out that the Commission had previously allowed the Navy to move to a lower rate class during the 2000 Distribution Rate Freeze Period, but Mr. Robinson conceded that in that case, both the Navy and shareholders gave something up to do so. The Navy agreed to forego its portion of the Settlement credit provided to all customers in 2005 and the Company agreed to share with customers the lost revenues resulting from that decision. Id. at 58-59.

¹⁷ Id. at 20.

¹⁸ Id. at 20-25.

¹⁹ Id. at 26-27.

²⁰ Id. at 28-30.

ratepayers through a per kWh reduction in the Transition Charge. The Commission specifically approved an additional \$2 million of the Settlement funds to be allocated solely to the A-60 rate class for Calendar Year 2006 through a per kWh distribution rate credit. The Commission deferred any decision on the allocation of the remaining \$6 million, which the Company shall maintain in a separate account which will accrue interest for the benefit of ratepayers.

As part of the restructuring, the General Assembly in Section 39-1-1(d)(7) states, "... that in a restructuring of the electrical industry the same practices currently afforded to low-income shall continue". Pursuant to that provision the Commission has continued low-income protection with some modifications. In addition, more recently the General Assembly added §39-2-1.2(c) of the Rhode Island General Laws which provides as follows: "Nothing in this section shall be construed as prohibiting electric distribution companies from offering any special rates or programs for low-income customers which are not in effect as of August 7, 1996, subject to the approval of the Commission." It is clear that on at least two occasions, the General Assembly indicated that it envisioned programs to assist low-income customers.

The Commission received a proposal sponsored by the Division and NGrid to allocate \$8 million as a credit to low-income customers at a rate of \$2 million a year over a four year period. The Commission received a request from NGrid to increase its standard offer rates. In considering this decision, the Commission was aware that it would be also considering at the same open meeting a request by NGrid to raise its rates to 10.0 cents per kWh this action followed earlier action by the Commission allowing NGrid to raise its rates. If approved, over approximately a three-month period, NGrid

was authorized to increase its standard offer rate from 6.7 cents per kWh to 10 cents per kWh.²¹ This rate request now before the Commission follows an earlier action very recently in which the Commission allowed NGrid to raise its rates. When one considers that the original Standard Offer rate in 1998 was 3.5 cents per kWh, the magnitude of the increases granted to NGrid and its impact on all of its customers and in particular its low-income customers is apparent.

All of the parties who participated in this action urged the Commission to take advantage of the authority given to the Commission by the General Assembly to provide special help for low-income customers. It is interesting to note that TEC-RI, which represents a group of the largest customers of NGrid, urged the Commission to grant at least \$2 million to low-income customers and forego its share of this portion of the refund. All parties appearing before the Commission including the Division, which represents all ratepayers, urged the Commission to allocate \$8 million of the proceeds of the refund that NGrid was receiving specifically for low-income customers. However, it is clear if one examines the evidence presented to the Commission and the statutes regulating the Commission that the Commission acted in a way to appropriately respond to the dilemma facing all ratepayers, but in particular low-income ratepayers.

In the past several months, this Commission has been required to act upon rate increase requests of staggering proportions from New England Gas and NGrid. These rate increase requests are a direct result of the dramatic increase in natural gas prices and relate solely to costs which are incurred by the utilities in purchasing gas or electricity.

²¹ The SOS rate of 10.0 cents per kWh was approved in Docket No. 3706. See Order No. 18509 (issued January 24, 2006).

These requests have resulted in a great deal of media attention and understandable concern which has been expressed by many public officials.

The Commission's offices were picketed on a daily basis by advocates for the poor urging passing motorists to "honk" if they wanted lower rates. At the hearing for public comment, the Commission heard speaker after speaker indicating the effect that any rate increase would have upon low-income ratepayers. It was in this highly-charged atmosphere that the Commission was obligated to discharge its statutory duties. At the Open Meeting in which the refund allocation decision was made, the Commission also voted on the second rate increase request it had received from NGrid within a two-month period. With respect to the first vote which related to the allocation of the refund to ratepayers, Commissioners Bray and Germani, in the majority, voted to allocate \$2 million to low-income customers over a one-year period and reserved action on \$6 million to a later date. The remaining \$8.5 million was allocated to all ratepayers. Commissioner Holbrook, the dissenting Commissioner, voted to return the entire refund to all ratepayers. In the vote which related to the rate increase request, Commissioners Holbrook and Germani were in the majority and Commissioner Bray was the dissenting opinion.

Unfortunately, in this decision which relates solely to the allocation of the refund, the dissenting Commissioner questioned the motives and integrity of the majority. These inappropriate comments serve no useful purpose but, in fact, have the effect of undermining the authority and credibility of the Commission as an institution. In addition, these remarks do not advance the highly principled regulatory philosophical principles of the dissenting Commissioner. As the majority respects the principled

regulatory philosophy of the dissenting Commissioner, so too does the majority hope the dissent recognizes the valid regulatory philosophy upon which it based its decision.

Accordingly, it is hereby

(18510) ORDERED:

1. Narragansett Electric Company d/b/a National Grid's Proposed Dispensation of Settlement Funds is hereby denied and dismissed.
2. Narragansett Electric Company d/b/a National Grid shall return \$8.5 million of the Settlement Funds to all ratepayers through a per kWh reduction to the Transition Charge, setting the rate as approved in the Commission's Order in Docket No. 3706 effective on usage on and after January 1, 2006.
3. Narragansett Electric Company d/b/a National Grid shall return an additional \$2 million to the A-60 rate class through an additional per kWh reduction to the already reduced distribution charge on the first 450 kWh of use effective on bills rendered on and after January 1, 2006.
4. Narragansett Electric Company d/b/a National Grid shall retain the remaining \$6 million of Settlement Funds in an interest bearing account for the benefit of ratepayers until further action of this Commission.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON DECEMBER 22, 2005. WRITTEN ORDER ISSUED JANUARY 24, 2006.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

*Robert B. Holbrook, Commissioner

Mary E. Bray, Commissioner

*Commissioner Holbrook dissented. His reasoning is attached hereto in a separate opinion.

Commissioner Holbrook, dissenting

I must respectfully dissent. As a result of a settlement, all the ratepayers were entitled to receive a refund of \$16.5 million. Instead, two members of this Commission have decided to take \$2 million of these ratepayer funds and give it to low income customers. Also, two members of this Commission have decided not to return an additional \$6 million to all ratepayers in order, apparently, to give the Rhode Island General Assembly more money to spend on social-welfare programs. Regardless of any potential legal authority the Commission has to allocate ratepayer funds in this manner, it is simply inconsistent with this Commission's statutory purpose and past practices.

To quote a recent Commission Order: "The Commission's statutory purpose is to set cost-based utility rates. It is not to redistribute wealth through utility rates."²² In other words, "rates are cost-based, not based on a ratepayer's income."²³ This does not mean that low income customers should not receive government assistance. What it means is that "the redistribution of wealth is an objective that the elected branches of our government can pursue at their option, but it is not a goal that appointed government officials should pursue."²⁴ The American Revolution was fought and won on the principle of "no taxation without representation." Two appointed bureaucrats distributing millions in ratepayer funds belonging to a million people and handing it over to a few is inconsistent with our principles of governance. This recent change in the Commission's regulatory practice may have less to do with the higher heating costs and more to do with the political heat coming from legislators. The Commission has become a post office for receiving comments from elected officials.²⁵ What these elected officials fail to understand is that this Commission is required by statute not to take into account political pressure in setting rates. The existence of this Commission is a result of the desire of the Rhode Island General Assembly to make the ratemaking process a non-political exercise. This Commission is a quasi-judicial

²² Order 17970 (issued 8/20/04).

²³ Id.

²⁴ Id.

²⁵ Letter from Senate President Montalbano 12/14/05.

tribunal, which is designed to be an impartial and independent body.²⁶ For that reason, the Commissioners serve six year staggered terms and can only be removed for cause.²⁷ The duties of a regulatory agency “are neither political nor executive but predominately quasi-judicial.”²⁸ In other words, a regulatory agency is a “body of experts...which shall be independent.”²⁹ This contrasts with the wording of a recent Rhode Island Senate press release in which it is stated that “the Senate has...communicated regularly with the Public Utilities Commission as it makes decisions” and referenced a letter in which the Senate President recommended the redistribution of ratepayer funds to low income customers and concluded by stating that “the PUC took action consistent with these recommendations.”³⁰

If the Rhode Island General Assembly wants to redistribute ratepayer or taxpayer funds, it can pass a law. However, they will have to explain to their constituents why they took away their refund in their electric bill to hand it over to benefit only a small segment of society. This at least is democracy. Two bureaucrats taking away a multi-million dollar refund from all ratepayers to give it to only a few customers is not democracy, and it is not independent cost-based ratemaking.

Robert B. Holbrook, Commissioner

²⁶ R.I.G.L. 39-1-3 and 39-1-11.

²⁷ R.I.G.L. 39-1-4 and 39-1-5.

²⁸ Humphrey’s Executors v. United States 295 U.S. 602, 624 (1935).

²⁹ Id. at 625.

³⁰ Senator Walaska’s Press Release 12/29/05.