

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: NARRAGANSETT ELECTRIC COMPANY :  
D/B/A NATIONAL GRID PROPOSED STANDARD : DOCKET NO. 3739  
OFFER SERVICE RATE REDUCTION

REPORT AND ORDER

I. BACKGROUND

The Utility Restructuring Act of 1996 (“URA”) requires each electric distribution company to arrange with wholesale power suppliers for a standard power supply offer to sell electricity to all customers at a stipulated rate. Pursuant to the URA, Narragansett Electric Company, now d/b/a National Grid (“NGrid”) entered into long term, all requirements, load following, wholesale Standard Offer supply contracts with the following base prices:<sup>1</sup>

<u>Calendar Year</u>	<u>Price per kWh</u>
2006	5.943 cents
2007	6.343 cents
2008	6.743 cents
2009	7.143 cents

The wholesale Standard Offer supply contracts also provide for increases in the price per kilowatt-hour (“kWh”) of wholesale power supplied to Narragansett in the event fuel prices increase above certain levels. As mandated by R.I.G.L. §39-1-27.3(b), to the extent that the total cost of the wholesale power supply to NGrid, including fuel charges in some of the wholesale contracts, is greater than the retail Standard Offer Service (“SOS”) charge, the under-collection is recoverable from NGrid’s customers through the annual reconciliation provisions of NGrid’s Standard Offer Adjustment Provision.

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<sup>1</sup> In Docket No. 3496, the Commission approved a Settlement entered into between NGrid and one of its standard offer suppliers to address responsibility for congestion costs in light of new locational marginal pricing rules in the wholesale electricity market. The settlement altered the base SOS cost in that contract.

Likewise, to the extent NGrid collects more than its total cost of providing SOS, the ratepayers are entitled to recoup the benefit with interest.

## II. MARCH 31, 2006 RATE FILING

On March 31, 2006, NGrid filed for a decrease in the SOS rate from 10.0¢ per kWh to 9.4¢ per kWh effective May 1, 2006. This would decrease the monthly bill of a typical residential customer using 500 kWh per month by \$3.12 or approximately 3.9%. Because this was a proposed rate decrease, NGrid requested that it go into effect without a hearing. NGrid explained that the proposed lower SOS rate is due to lower natural gas and oil prices following a relatively mild winter. Based on natural gas and oil prices as of March 27-29, 2006, NGrid estimated an over-collection of approximately \$31.9 million by the end of December 2006 should the SOS rate remain at 10.0¢ per kWh through the end of 2006.<sup>2</sup>

On April 21, 2006, NGrid revised its proposed decrease in the SOS rate. Instead of a rate of 9.4¢ per kWh, NGrid proposed a rate of 9.7¢ per kWh. This would decrease the monthly bill of a typical residential customer using 500 kWh per month by \$1.56 or approximately 1.9%. NGrid explained that oil prices have risen dramatically in recent weeks. Based on natural gas and oil prices as of April 18-20, 2006, NGrid estimated an over-collection of approximately \$14.6 million by the end of December 2006 should the SOS rate remain at 10.0¢ per kWh through the end of 2006.<sup>3</sup>

On April 25, 2006, the Division filed a memorandum by David Stearns, a Rate Analyst for the Division, and Stephen Scialabba, Chief Accountant for the Division. In the memorandum, the Division noted that rate stability has been the goal of the

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<sup>2</sup> NGrid's rate filing of 3/31/06.

<sup>3</sup> NGrid's rate filing of 4/21/06.

Commission. The Division explained that if the 9.7¢ per kWh rate decrease was approved then in order to avoid an under-collection at the end of December 31, 2007, the SOS rate would have to go from 9.7¢ per kWh to 10.7 ¢ per kWh on January 1, 2007 and then increased to 11.2¢ on July 1, 2007. The Division also explained that if the SOS rate was maintained at 10.0¢ per kWh, then the SOS rate would have to be increased to 10.3¢ per kWh on January 1, 2007 and then increased to 11.1¢ on July 1, 2007 in order to avoid an under-collection as of December 31, 2007. Furthermore, the Division noted that reducing the SOS rate to 9.7¢ per kWh, and keeping it in effect through June 30, 2007 would result in an under-collection of \$34 million. In addition, the Division noted that oil and natural gas markets are volatile and have increased recently. In conclusion, the Division stated that the current fuel prices would justify a slight reduction in the SOS rate for a short period of time, but a prudent course of action may be to defer any action on the SOS rate at the time and continue to monitor fuel markets.<sup>4</sup> At an open meeting of April 26, 2006, the Commission suspended NGrid's proposed SOS rate decrease pending further review of oil and gas prices.

On May 31, 2006, NGrid filed its Standard Offer Reconciliation Report and requested the withdrawal of its March 31, 2006 SOS rate decrease. As of April 30, 2006, NGrid indicated that the actual over-collection in SOS was only \$6.3 million, and based on oil and gas prices as of May 23-25, 2006, NGrid estimated an over-collection of \$48.4 million by the end of December 2006. NGrid stated that given the difficulty in predicting the SOS balance with a reasonable degree of accuracy by more than two or three months,

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<sup>4</sup> Div.'s memorandum of 4/25/06.

the best course was to maintain a stable SOS rate at the current level, especially with the hurricane season approaching.<sup>5</sup>

On June 16, 2006, the Division filed a memorandum by David Stearns and Stephen Scialabba. The Division calculated that a SOS rate of 10.0¢ per kWh would result in an over-collection of approximately \$90 million at the end of 2007, and even a 10 percent increase in projected fuel costs from July 2006 through December 2007 would still result in an over-collection of \$58 million by the end of 2007. As a result, the Division recommended a SOS rate reduction to 9.6¢ per kWh effective July 1, 2006. As long as fuel costs stayed within 10 percent of current levels, the Division stated a further reduction could be put into effect November 1, 2006 with no under-collection well into 2007. The Division stated that a phased-in SOS reduction is prudent while allowing the Commission to re-examine fuel markets as the winter season approached.<sup>6</sup>

On June 16, 2006, NGrid filed a response. In the response, NGrid indicated that the Division's proposed rate reduction had a rational basis and that NGrid had no strong opposition to it. But, NGrid preferred to wait until September 1, 2006 before making any changes to the SOS rate because the actual over-collection had not reached \$23 million. Also, NGrid indicated fuel markets continued to be volatile.<sup>7</sup> At an open meeting on June 22, 2006, the Commission decided to maintain price stability by deferring any decision to reduce the SOS rate until September 1, 2006 and to continue to monitor fuel markets.

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<sup>5</sup> NGrid's reconciliation filing of 5/31/06.

<sup>6</sup> Div.'s memorandum of 6/16/06.

<sup>7</sup> NGrid's response of 6/16/06.

### III. HARSCH GROUP'S PETITION

On July 6, 2006, J. William W. Harsch, a candidate for Rhode Island Attorney General, filed a petition with the Commission and the Division on behalf of a non-profit association called the Rhode Island Public Utility Regulatory Reform Alliance (“Harsch Group”). The Harsch Group alleged that the Commission failed to publicly notice NGrid’s rate reduction filing, or schedule and hold hearings pursuant to R.I.G.L. 39-3-11. As a result, the Harsch Group argued that it did not have notice to challenge the Division’s opposition to any rate reduction by NGrid and asserted that the Harsch Group would have standing to participate in all hearings in Docket No. 3739. Also, the Harsch Group maintained that NGrid’s rate reduction was still pending. Accordingly, the Harsch Group requested that: hearings be scheduled in Docket No. 3739; the Harsch Group be granted intervenor status; and that the record from Docket No. 3706, in which the Commission raised the SOS rate from 8.2¢ per kWh to 10.0¢ per kWh, be incorporated into Docket No. 3739.<sup>8</sup>

Also, the Harsch Group alleged the Division did not properly review the NGrid rate reduction proposal since it did not conduct hearings pursuant to Chapter 4 of Title 39. The Harsch Group argued that the Division failed to present an objective and accurate assessment of the facts related to the proposed rate reduction. More importantly, the Harsch Group accused the Division of violating Rhode Island’s Administrative Procedure Act, specifically R.I.G.L. 45-35-13, by engaging in an “ex parte” conversation with NGrid regarding the proposed rate reduction. Accordingly, the Harsch Group requested that: the Commission investigate the Division as to its conduct in Docket No.

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<sup>8</sup> Harsch Group’s Petition, pp. 7-9.

3739; the Division's memorandum be excluded from the record in Docket No. 3739; and the Division employ an independent expert for Docket No. 3739.<sup>9</sup>

Lastly, the Harsch Group argued that there has been a decline in oil and gas prices since Docket No. 3706, and noted the projected over-collection of \$48.4 million. Accordingly, the Harsch Group requested: an immediate SOS rate reduction to 9.4¢ per kWh; and refunds to all ratepayers. The refund would be in an amount equal to the difference between 10.0¢ per kWh and 9.4¢ per kWh for a period commencing January 1, 2006 and ending upon the effective date of the rate reduction.<sup>10</sup>

On July 20, 2006, NGrid filed an objection to the Harsch Group's motion to intervene in Docket No. 3739 and also filed a motion to dismiss, in the alternative stay, the Harsch Group's petition. Regarding NGrid's objection to the motion to intervene, NGrid argued that the Harsch Group failed to provide grounds for intervention pursuant to Commission Procedural Rule 1.13(b) and (c). NGrid explained that Commission Procedural Rule 1.13(b) requires any person claiming a right to intervene, or an interest of such nature that intervention is necessary or appropriate in any Commission proceeding, to meet one of three criteria. The three criteria are as follows: a right conferred by statute; an interest which may be directly affected and which is not adequately represented by existing parties; and any other interest of such nature that the movant's participation may be in the public interest.

Regarding the first criteria, NGrid argued that the Harsch Group did not have a statutory right to intervene since R.I.G.L. 39-4-3 only provides a right for 25 voters to file a complaint with the Division under certain circumstances and that the statute does not

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<sup>9</sup> *Id.*, pp. 9-11.

<sup>10</sup> *Id.*, pp. 12-14.

apply to the Commission. Also, NGrid argued that the Harsch Group does not meet the second criteria because its interests can be represented by others in the proceeding. NGrid noted that the Harsch Group represents 44 NGrid residential customers of which many are candidates for political office. NGrid indicated that the Harsch Group does not have an interest that is not otherwise represented by the Division or the Attorney General and that this group of customers is no different than any other NGrid residential customer. NGrid emphasized that if the Harsch Group was allowed to intervene, then anyone who is a customer would be allowed to intervene in the future and the limitations on intervention would be rendered meaningless. Lastly, for the third criteria, NGrid argued that the Harsch Group's intervention would not be in the public interest because the Harsch Group has not indicated it would offer any kind of unique perspective in the Commission proceeding. Instead, NGrid stated that as in the case of public officials or candidates for office, the Harsch Group can provide public comment, written or oral.<sup>11</sup>

In its motion to dismiss, NGrid argued that the Harsch Group's petition should be dismissed or stayed until the proceedings in Docket No. 3739 are complete because NGrid's upcoming rate reduction filing will render the petition moot and there were no procedural or administrative violations in Docket No. 3739. At the outset, NGrid noted that it was planning to make a supplemental filing for a rate reduction at the end of July 2006 for effect September 1, 2006. Furthermore, NGrid explained that since Standard Offer is a reconciliation account, there is no need for a refund since any over-collection will be returned with interest to ratepayers. Given the anticipated rate reduction, NGrid argued that the Harsch Group's petition for rate relief will be rendered moot.<sup>12</sup>

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<sup>11</sup> NGrid's Objection to Intervention, pp. 2-5.

<sup>12</sup> NGrid's Motion to Dismiss, pp. 4-7.

Regarding the procedural issues raised by the Harsch Group, NGrid explained that that the Commission can waive the hearing requirement for good cause pursuant to R.I.G.L. 39-3-12 and that a rate reduction has constituted good cause. Also, NGrid noted that the statutory public notice requirement for a rate change is upon the utility and that NGrid provided adequate notice. Furthermore, NGrid noted that the Commission suspended NGrid's rate change for a maximum of six months and that during this time the Commission can investigate and hold hearings regarding the rate change pursuant to R.I.G.L. 39-3-11. Also, NGrid stated that there was no need to incorporate the record of Docket No. 3706 into Docket No. 3739 because the Commission can and has relied on its orders in previous dockets as precedent. As a result, NGrid indicated there was no need to reopen an already open docket, Docket No. 3739, and that since the rate filing has been suspended, the Commission can have a public hearing at any time after NGrid submits its supplemental rate reduction at the end of July 2006.<sup>13</sup>

Lastly, NGrid argued that the Harsch Group's petition regarding the Division's conduct in Docket No. 3739 is entirely erroneous. NGrid indicated that the Commission does not have the statutory authority to investigate the Division. Also, NGrid emphasized that as explained in Narragansett Elec. v. Harsch the Division assumes the role of a party in Commission proceedings. Since Docket No. 3739 is a Commission proceeding, the Division is merely a party and, therefore, cannot be found to have engaged in "ex parte" conversations. Accordingly, the Harsch Group's petition as to the Division is without merit.<sup>14</sup>

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<sup>13</sup> Id., pp. 7-10.

<sup>14</sup> Id., pp. 11-14.



On July 24, 2006, the Division filed a response to the Harsch Group's petition. First, the Division noted it supported a rate reduction in the SOS rate to 9.6¢ per kWh and thus indicated there was little difference between its position and the position of the Harsch Group. Second, the Division took no position on whether to grant the Harsch Group intervenor status on Docket No. 3739. Third, the Division noted that it is a party in Docket No. 3739 and thus, cannot have engaged in "ex parte" communications with NGrid. In conclusion, the Division stated that it awaits NGrid's supplemental filing and hoped that the Commission would approve a long-term, sustained rate decrease in the very near future.<sup>15</sup>

Also, on July 24, 2006, the Attorney General filed a response to the Harsch Group's petition. First, the Attorney General noted that pursuant to R.I.G.L. 39-1-11, the Division, and not the Attorney General, is a necessary party to every Commission proceeding, and that the Attorney General only provides legal counsel to represent the Division in Commission proceedings pursuant to R.I.G.L. 39-1-19(b). As a result, the Attorney General only intervenes in a Commission proceeding if it is dissatisfied with the Division's position or there are other public interest considerations. Second, the Division, in consultation and with the support of the Attorney General, recommended a SOS rate reduction in Docket No. 3739, and thus, there was no need for the Attorney General to intervene in Docket No. 3739.<sup>16</sup>

On August 3, 2006, the Harsch Group filed a response and an objection to NGrid's motion to dismiss. Regarding NGrid's objection to intervention, the Harsch Group argued that it should be granted intervenor status in Docket No. 3739. The Harsch

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<sup>15</sup> Div.'s response (7/24/06).

<sup>16</sup> A.G.'s response (7/14/06).

Group stated it was an aggrieved party since its members pay higher than legally allowed electric rates, and compared itself to TEC-RI. Furthermore, the Harsch Group stated its interests differ from the Division because the Harsch Group: does not accept the Division's price stability approach to ratemaking; opposes the Division's attempts to avoid legally required public hearings and employ independent experts; and questioned the Division's "close relationship" with NGrid. As to other aspects of the Harsch Group's petition, the Harsch Group reiterated that public hearings, including full participation from valid intervening parties, are required by R.I.G.L. 39-3-11. Also, the Harsch Group reiterated that administrative notice of the data and findings in Docket No. 3706 should be undertaken in Docket No. 3739. In addition, the Harsch Group stated that NGrid's motion to dismiss should be denied. Lastly, the Harsch Group repeated that the Commission should investigate the relationship and communication between NGrid and the Division.<sup>17</sup>

At an open meeting on August 15, 2006, the Commission reviewed all the pleadings. The Commission denied and dismissed the Harsch Group's motion to intervene, as well as its petition in general.

#### IV. NGRID'S JULY 31, 2006 FILING

On July 31, 2006, NGrid renewed its filing for a SOS rate reduction from 10.0¢ per kWh to 9.4¢ per kWh for effect September 1, 2006. This would decrease the bill of a typical residential customer using 500 kWh per month by \$3.12 per month or 3.9%. In support of this filing, NGrid submitted the pre-filed testimonies of Ms. Jeanne Lloyd, a Principal/Financial Analyst of NGrid, and Mr. Michael Hager, Vice President of Energy Supply-New England for NGrid.

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<sup>17</sup> Harsch Group's response, pp. 1-13.

In her pre-filed testimony, Ms. Lloyd stated that NGrid is estimating an over-collection in SOS costs of approximately \$37.5 million by December 31, 2006. Ms. Lloyd explained that SOS is charged through a reconciliation provision in which any over-collection or under-collection, with interest, is returned back to or recovered from ratepayers. Thus, any over-collection in the SOS account does not harm ratepayers. As a result, NGrid proposed a SOS rate effective September 1, 2006 of 9.4¢ per kWh, which would be effective through the end of 2006. Also, if fuel markets remain stable, NGrid hoped it would be able to further reduce the SOS rate to 9.2¢ per kWh on January 1, 2007 when NGrid makes its annual retail rate filing. Ms. Lloyd noted that a reduction to 9.4¢ would result in an estimated over-collection of \$23 million by December 31, 2006, and that this would provide a cushion in the SOS account should fuel prices increase above the current projected levels. Lastly, Ms. Lloyd noted that Basic Service fixed residential rates among Massachusetts electric utilities ranged from 9.693¢ per kWh to 11.442¢ per kWh in comparison to NGrid's proposed SOS rate of 9.4¢ per kWh.<sup>18</sup>

In his pre-filed testimony, Mr. Hager explained that NGrid has three suppliers to serve the load within the pre-merger Narragansett Electric service territory ("Narragansett Zone") and four contracts with suppliers to serve the load within the service territory of the former Blackstone Valley Electric and Newport Electric ("EUA Zone"). All of these contracts run through December 31, 2009. Mr. Hager indicated that these SOS supply contracts include two price components: a base price and, for some contracts, a fuel index adjustment provision. For 2006, the base price is 5.9¢ per kWh, and for 2007 the base price is 6.3¢ per kWh. Mr. Hager noted that some SOS contracts have a fuel index adjustment provision that provides additional payments to suppliers in the event of

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<sup>18</sup> NGrid Ex. 1A (Ms. Lloyd's direct testimony), pp. 2-11.

substantial increases in the market price of fuel oil and natural gas. The provision compares the sum of a twelve-month rolling average of oil and natural gas prices to a preset trigger point. If the sum of the fuel index values exceeds the trigger point in a given month, then NGrid makes additional payments to the suppliers in that month. However, if the sum of the fuel index value is less than or equal to the trigger point in a given month, then no additional payments are made in that month.

Utilizing the oil and natural gas prices of July 25-27, 2006, NGrid would pay an arithmetic average fuel index adjustment payment for the period September 2006 through December 2007 of 4.122¢ per kWh for the Narragansett Zone load which corresponds to an arithmetic average of 3.050¢ per kWh applicable to both zones since the fuel index adjustment is not applicable for the EUA Zone. Mr. Hager compared NGrid's SOS rate to Last Resort Service requirements for Rhode Island, which had an arithmetic average rate from March 2006 through October 2006 of 11.205¢ per kWh for residential customers and 10.909¢ per kWh for commercial and industrial customers. For the August 2006 through October 2006 period, the Last Resort Service cost averaged 11.459¢ per kWh and 11.156¢ per kWh respectively. Also, Mr. Hager did not see evidence that natural gas and oil prices will abate from current levels. Lastly, Mr. Hager stated that beginning January 1, 2007, as required by state law, Renewable Energy Portfolio Standards will go into effect and add an additional cost to SOS, and that NGrid will make a separate filing by September 1, 2006 to propose a cost adder to SOS and Last Resort Service.<sup>19</sup>

On August 21, 2006, the Division submitted a memorandum by John Stutz, an outside consultant. The Division concurred with NGrid's reduction for SOS to 9.4¢ per

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<sup>19</sup> NGrid Ex. 1B (Mr. Hager's direct testimony), pp. 3-9.

kWh. Mr. Stutz noted that rate stability is an important ratemaking goal and cited Bonbright, an authority on public utility ratemaking. Mr. Stutz explained that stable rates promote efficiency since stable prices allow ratepayers to have a clearer picture of the benefit of purchasing more efficient electrical equipment such as high efficiency home appliances. Mr. Stutz also noted that recently passed legislation in Rhode Island refers directly to the benefit of stable rates. Furthermore, he explained that consumers prefer stable prices. He cited the work of a Nobel Prize winning economist who theorized that consumers' adverse reaction to a "loss", such as a rate increase, is 2.5 times greater than the positive reaction to an equal gain. Lastly, he pointed out that SOS expenses are difficult to estimate because of volatile oil and gas prices.<sup>20</sup> On August 22, 2006, NGrid updated its SOS rate filing. Based on oil and gas prices of August 16-18, 2006, NGrid estimated that a SOS rate of 9.4¢ per kWh would result in \$30.2 over-collection by December 31, 2006.<sup>21</sup>

After duly published notice, a public hearing was held at the Commission's offices at 89 Jefferson Boulevard, Warwick, Rhode Island on August 24, 2006. The following appearances were entered:

FOR NATIONAL GRID:	Laura S. Olton, Esq.
FOR THE DIVISION :	Paul Roberti, Esq. Assistant Attorney General
FOR THE COMMISSION:	Steven Frias, Esq. Executive Counsel

NGrid presented Ms. Lloyd and Mr. Hager as their witnesses. Mr. Hager explained that the price to trigger fuel payments under the SOS contract in 2006 is when

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<sup>20</sup> Div. Ex. 1 (Stutz's memorandum).

<sup>21</sup> NGrid Ex. 2.

the price of natural gas is above \$4.60 per mBtu and the price for oil is above approximately \$24 a barrel. Currently, the price for a barrel of oil is \$70 and natural gas is priced at \$7 to \$8 per mBtu. Mr. Hager indicated that the SOS rate is tied to oil and natural gas prices. Also, Mr. Hager stated that natural gas and oil sets the market price for electric generation in New England approximately 80 percent to 90 percent of the time. Furthermore, Mr. Hager generally concurred that until coal, nuclear or some other alternative energy is used to produce electric generation in New England, market prices produced by electric generation will be similar to SOS rates.<sup>22</sup> The Division presented Dr. Stutz as its witness. Dr. Stutz indicated that it was appropriate for the Commission to either raise or lower SOS rates based on projections. Dr. Stutz also explained that the use of residential electricity is generally inelastic. For example, in the short term, less than a year, if electric rates were increased by ten percent there will only be a decrease in residential electric usage of approximately one percent. Similarly, in the long term, if there is an increase in electric rates by ten percent there will only be a decrease in residential electric usage of approximately three percent.<sup>23</sup> At the end of the hearing, the Commission approved a reduction in the SOS rate to 9.4¢ per kWh for effect September 1, 2006.

## COMMISSION FINDINGS

### I. HARSCH GROUP'S PETITION

The Harsch Group filed a petition with the Commission which contained a litany of requests. The primary request of the Harsch Group was to open or re-open a proceeding to reduce SOS electric rates to 9.4¢ per kWh and to provide a refund. The

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<sup>22</sup> Tr. 8/24/06, pp. 31-38.

<sup>23</sup> Id., pp. 65-69.

request was considered essentially moot because in this pending proceeding, in Docket No. 3739, the Commission was considering a rate reduction. Furthermore, opening a new proceeding would be an inefficient use of administrative resources. As for the request to refund the SOS rate for funds collected above 9.4¢ per kWh since January 1, 2006, the Commission declined this request, because the SOS account is a purely reconciling clause. Thus, any over-collection in the SOS account is returned to ratepayers through future rates with interest and, therefore, there is no need for a “refund.”

In essence, the petition of the Harsch Group was a motion to intervene in Docket No. 3739 in which the Commission was considering lowering the SOS rate. Pursuant to R.I.G.L. §39-1-11, the Commission has established its Rules of Practice and Procedure. In Procedural Rule 1.13(b), the Commission set forth the criteria that must be met in order for a person to intervene in a Commission proceeding. In order to intervene, a person must meet one of the three criteria established in Procedural Rule 1.13(b). The first criteria is met by a “right conferred by statute.”<sup>24</sup> The Harsch Group did not cite a statute which grants an organization like the Harsch Group the right to intervene in a Commission proceeding. An example of such a statutory right would be R.I.G.L. §39-1-17, which allows the Consumers’ Council to intervene in Commission proceedings. The Harsch Group may consist of a few consumers and claim to represent consumers, but it is not the Consumers’ Council. Furthermore, the statute cited by the Harsch Group, R.I.G.L. §39-4-3, does not provide a statutory right to intervene in Commission proceedings, but instead allows for complaints to be filed with the Division under certain

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<sup>24</sup> RIPUC Rules of Practice and Procedure 1.13(b)(1).

circumstances. Thus, the Harsch Group has no statutory right to intervene in this proceeding.

The second criteria is met if an interest “may be directly affected and which is not adequately represented by existing parties.”<sup>25</sup> Generally, this criteria is met if there are a group of ratepayers who have a unique economic interest that differs from ratepayers in general. For example, groups of ratepayers who represent a specific class of ratepayers whose interests at times differ from the typical ratepayer include: The Energy Council of Rhode Island (“TEC-RI”), which represents large industrial and commercial ratepayers, and The George Wiley Center, which represents low-income consumers. The Harsch Group appears to consist of typical NGrid residential ratepayers. The role of the Division in Commission proceedings is to represent the ratepayers as a whole.<sup>26</sup> Since the economic interests of the Harsch Group members do not differ from the ratepayers in general, the Division can adequately represent the economic interests of the ratepayers in the Harsch Group. Thus, the Harsch Group does not have an interest which is not adequately represented by an existing party in this proceeding.

The third criteria is met if the movant’s participation is in “the public interest.”<sup>27</sup> The Harsch Group indicated that it advocates reform of public utilities regulation. However, the Harsch Group provided no specifics of its reform agenda except that it opposes the Division’s price stability philosophy. This vague and non-specific call for reform does not further the public interest in ratemaking. Accordingly, the Harsch Group has failed to demonstrate that its intervention would further the public interest.

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<sup>25</sup> *Id.* at 1.13(b)(2).

<sup>26</sup> *Narragansett Elec. v. Harsch* 117 R.I. 395, 404 (1977).

<sup>27</sup> RIPUC Practice and Procedure Rule 1.13 (b)(3).



Since the R.I. Supreme Court's ruling in which the Court found "the wisdom and appropriateness of the intervention in this case was questionable", the Commission has been more cautious in granting intervenor status to ensure that a movant actually meets one of the three criteria established in Procedural Rule 1.13(b).<sup>28</sup> For instance, in 2005, the Commission denied a motion for intervention in a Block Island Power rate case although the group seeking intervenor status represented approximately 200 residents.<sup>29</sup> Being denied intervenor status does not mean an organization cannot participate in a proceeding; any person or organization can give public comment, orally or in writing, to the Commission in any proceeding. For instance, in recent cases involving SOS electric rates, various elected officials provided public comment to the Commission.<sup>30</sup> The Harsch Group is afforded the same opportunity to provide public comment. However, the Harsch Group is not granted the right to intervene since it did not meet the criteria required for intervention. If the Harsch Group is granted intervenor status, then the limitation in the Commission's rules regarding intervention would become meaningless, and it would be impossible for the Commission to deny any request for intervention as long as the person seeking intervention was a utility customer.

The other primary request of the Harsch Group petition was to have the Commission investigate the Division for its "ex parte" communications with NGrid. This request is invalid and incorrect as a matter of law. The prohibition on "ex parte" communications pursuant to R.I.G.L. §42-35-13 or Commission Procedural Rule 1.2(h) is not applicable to the Division in these circumstances. The Division is a party before the Commission in this proceeding, Docket No. 3739, and therefore, the Division can

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<sup>28</sup> In re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1245-1246 (R.I. 2000).

<sup>29</sup> Order No. 18157.

<sup>30</sup> Order Nos. 18150 and 18474.

privately communicate with NGrid in this proceeding since NGrid is a party as well.<sup>31</sup> The remainder of the Harsch Group's petition requested a noticed public hearing in this docket, which occurred on August 24, 2006 although pursuant to R.I.G.L. §39-3-12, the Commission could have waived the hearing requirement for good cause since NGrid was proposing a rate reduction.<sup>32</sup> Also, at this hearing, the Commission reduced the SOS rate to 9.4¢ per kWh as requested by the Harsch Group, thereby satisfying the primary reason for the Harsch Group's petition.<sup>33</sup>

## II. RATE REDUCTION

In the fall of 2005, due to dramatic increases in the price of natural gas and oil, the Commission was required to increase SOS electric and Gas Cost Recovery Charge ("GCR") gas rates by double-digit percentages. Narragansett Electric's rate was increased by approximately 29 percent while New England Gas Company's ("NEGas") rate was increased by approximately 17 percent.<sup>34</sup> Unfortunately, this was not the first time such rate increases had to be approved due to dramatic increases in natural gas and oil prices. In 2000-2001, the Commission increased typical residential electric rates by 27 percent and gas rates by 25 to 29 percent.<sup>35</sup> After these large increases in 2000-2001 for the energy sector, in a series of rate reductions from October 1, 2001 through July 1, 2002, the Commission gradually reduced SOS electric rates and GCR gas rates as the

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<sup>31</sup> As for the remaining allegations made against the Division by the Harsch Group, the Division's memorandum of April 25, 2006 was not admitted into evidence and Dr. Stutz, an independent expert, was retained by the Division in this docket. Thus, the Harsch Group's requests regarding the Division's Memorandum and the employment of an independent expert are moot.

<sup>32</sup> See Order No. 16909, fn. 10.

<sup>33</sup> In addition, the Commission did not incorporate the record of Docket No. 3706 in Docket No. 3739, as requested by the Harsch Group, because when the Commission rendered a decision in Docket No. 3739 it took into account previous findings from prior SOS dockets.

<sup>34</sup> See e.g. Order Nos. 18521, 18509, and 18473.

<sup>35</sup> Order No. 16745.

price of natural gas and oil declined.<sup>36</sup> Specifically, the Commission reduced these rates gradually and followed a “tempered approach” because “given the volatility of fuel prices, the Commission did not want to reduce electric rates so low as to create another under-collection” if fuel prices rose again, which “in turn, would require a subsequent rate increase.”<sup>37</sup>

The Commission followed the same approach with NGrid’s recently proposed SOS rate decrease. The Commission did not want to implement a rate decrease which would only require the Commission to eventually increase the same rate if there was a rise in natural gas and oil prices. As a result, the Commission temporarily suspended the SOS rate reduction so as to monitor the natural gas and oil markets to insure that the hurricane season in the Gulf of Mexico did not cause a dramatic increase in natural gas and oil prices as it did in 2005. Once it became apparent that natural gas and oil prices would not dramatically increase in the short-term, the Commission approved the proposed SOS rate reduction to 9.4¢ per kWh.

If natural gas and oil prices continue to trade at prices below the levels they reached during the fall of 2005, the SOS rate should further decline. However, natural gas and oil prices remain volatile. The Commission will make its best efforts to provide ratepayers with a stable rate, but given the volatility of natural gas and oil prices, there can be no guarantee. Because of high natural gas and oil prices, the SOS rate is and will continue to be tied in part to natural gas and oil prices due to fuel adjustment clauses contained in some SOS contracts.<sup>38</sup> Little relief can be expected from competition in

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<sup>36</sup> Order Nos. 17444, 16916, 16909 and 16731.

<sup>37</sup> Order No. 16909.

<sup>38</sup> Tr. 8/24/06, pp 31-38.

electric generation because natural gas and oil sets the market price for New England electric generation approximately 80 percent to 90 percent of the time.<sup>39</sup>

The great problem of high electric supply costs will not be solved by debates about the ISO market rules, the procurement of electricity or the regulation of electric generation, but by fuel diversity. Changes in the market rules, new procurement plans, or the re-regulation of electric generation will not eliminate the dependence of New England or Rhode Island upon natural gas and oil to generate electricity. The price of electric generation in New England will continue to be tied to the high price of natural gas and oil until alternative energies, which are actually below the price of natural gas and oil, are utilized to produce electric generation for New England. Until fuel diversity in electric generation becomes a reality, Rhode Island ratepayers will remain subject to the volatile prices produced by the unpredictable natural gas and oil markets.

Accordingly, it is hereby

(18794) ORDERED:

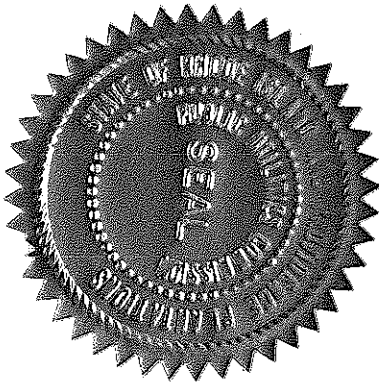
1. National Grid's proposed retail Standard Offer Service Rate of 9.4¢ per kWh is approved to become effective for service on and after September 1, 2006.
2. The Petition and Motion to Intervene by the Rhode Island Public Utility Regulatory Reform Alliance is hereby denied and dismissed.
3. National Grid shall comply with all other findings and instructions as contained in this Report and Order.

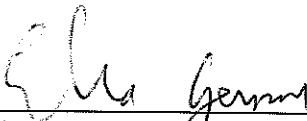
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<sup>39</sup> Id.


EFFECTIVE AT WARWICK, RHODE ISLAND ON SEPTEMBER 1, 2006  
PURSUANT TO OPEN MEETING DECISIONS ON APRIL 26, JUNE 22 AND  
AUGUST 15, 2006, AND THE BENCH DECISION ON AUGUST 24, 2006.  
WRITTEN ORDER ISSUED DECEMBER 27, 2006.

PUBLIC UTILITIES COMMISSION



  
\_\_\_\_\_  
Elia Germani, Chairman

  
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Robert B. Holbrook, Commissioner

  
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Mary E. Bray, Commissioner

**NOTICE OF RIGHT OF APPEAL** PURSUANT TO R.I.G.L. §39-5-1, ANY  
PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY,  
WITHIN SEVEN (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE  
SUPREME COURT FOR A WRITE OF CERTIORARI TO REVIEW THE LEGALITY  
AND REASONABLENESS OF THE DECISION OR ORDER.