



State of Rhode Island and Providence Plantations

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VIA HAND DELIVERY & ELECTRONIC MAIL

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

Re: **Affordable Energy Plans**
Docket No. 3804 and 3806

On behalf of the Division of Public Utilities and Carriers (“Division”), I am writing to convey the Division’s response to the Affordable Energy Plan filings of the Office of Energy Resources (“OER”) as well as the electric and gas utilities, as they pertain to the implementation of the affordable energy provisions of the Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006 (the “Act”). Pursuant to the Commission’s procedural schedule, the Division files these comments in lieu of submitting prefiled testimony.

I. Background

A. Affordable Energy Plan – Mandate to Electric and Gas Utilities and Scope of Coverage

Section 39-1-27.10 of the Act requires electric and gas distribution companies to submit plans to the Commission that facilitate the availability of “affordable energy” for those customers who meet the definition of “low income households” and “very low income households” as provided in RIGL § 42-141-3. The Plan must provide for implementation of the “affordable energy fund,” and as it relates to gas and electric utilities, must include provisions for “discounted distribution rates and customer charges, payments on arrearages and unpaid balances,” including energy efficiency and weatherization programs. The mandated criteria are then followed and qualified by the following language: “to the extent that funding is allocated by the commissioner pursuant

to subsection 42-141-5(d).” “Commissioner” refers to the Commissioner of the Office of Energy Resources.¹

**B. Affordable Energy Fund – Administration By OER
and Discretion Over Fund Allocations**

A separate Chapter of the Act entitled “Affordable Energy” describes the actual Plan that the Commissioner must develop. The Plan’s scope of coverage is broad and is defined as a “state strategic plan”. The directive covers all low-income and very low-income households throughout the State without regard to location. There are no exclusions based upon the derivation of program funds. The Plan must propose: (1) energy efficiency and weatherization measures for low-income and very low-income households; (2) contain allocations of the affordable energy fund that will compensate electric and gas utilities for lost revenues associated with planned reductions of rates and charges to qualifying customers; (3) contain estimates of expenses and revenues for the fiscal year in question; and (4) contain standards for fair and effective administration of “energy affordability activities.”

Funding for the Plan is contained in Section 42-141-5(a) of the Act, and includes: (1) sums of money appropriated by the legislature; (2) moneys received from federal, state or private donor sources; (3) fees; (4) interest on fund balances; and (5) “affordable energy fees” derived from a redirection of public service corporation taxes in the following amounts: 1% of gross receipts of gas distribution companies subject to the tax; 1% of gross receipts of electric distribution companies that are subject to the tax; and 2% from the sale of heating fuel subject to provisions of chapter 44-13 (note: residential use exempted under 44-18-30(20)).²

The defined purposes of the fund are instructive regarding the rights and responsibilities of electric and gas utilities. Section 42-151-5(d) directs that the AEP fund may be used to “compensate electric and gas distribution companies for revenues lost due to the reductions in distribution and customer charges, in accordance with a plan approved by the commission to very low income households, and if feasible to low income households, which shall as a first priority, be used to provide up to 50% reduction in the distribution charges” The commissioner of OER is granted discretion concerning the level of allocations to gas and electric utilities, as specified below:

“If the commissioner determines that it is in the public interest to allocate funds for the purposes set forth in subparagraph 1(ii) above,

¹ The Division notes that at this time, the Governor has yet to appoint the “Commissioner” referenced in Section 42-141-5(d), and the Division understands that this function is currently being executed by the Governor’s Advisor on Energy.

² The Division interprets “heating fuels” to include distillate oil and propane. It is unclear whether OER’s strategic plan includes funds derived from propane sales since the plan references “2% from the sales of heating oil.” See *OER’s Plan*, at 1.

the commissioner shall notify the commission [PUC] of the amount of funds to be allocated for a specified period. The commission shall then direct the electric and/or gas distribution companies to file amendments to the appropriate tariffs to implement rate reductions designed to provide the rate reduction *consistent with the amount allocated for the period designated* Once [PUC] approval is given, the allocated funds from [OER] shall be transferred to the gas and/or electric distribution company. [Emphasis supplied]

The emphasized language above is particularly instructive regarding the PUC's mandate under the Act. The PUC is only authorized to implement funding for the AEP program to the extent directed by the commissioner of OER as *evidenced by OER's allocation of funding to electric and gas distribution companies*.

On a broader note, the Act signals a change from the past in that for the first time, the legislature has seen fit to holistically address the perceived need for energy assistance regardless of whether the citizens heat by electricity, natural gas, heating oil or propane. The OER commissioner is solely responsible for determining how available funds should be allocated to accomplish the Act's aims and purposes, subject, however to the obligation of the commissioner to make such determination with the assistance of a stakeholder process articulated in Sections 42-140.1-3(b)(2) and 42-141-3.³

C. Treatment of Existing Low-Income Discounts

It is also important to note that the Act exempts discounts to low-income customers under the anti-discrimination prohibitions contained in Section 39-2-5 (13). This Section also makes it clear that the Act does not "prohibit the continuation of any low income discounts approved by the commission prior to January 1, 2006, and in effect as of that date." While the Division believes that the Act provides a more acceptable, integrated approach to addressing the needs of low-income households, the Division interprets the Act and OER's submitted plan to justify continuation of existing rate discounts for National Grid's A-60 customers, which are currently being recovered from all other rate classes. *See also RIGL § 42-141-5(d)(iv)*.

³ The Division again recognizes that the legislatively ordained stakeholder process did not, and cannot occur in light of the fact that members of the newly created RI Energy Efficiency and Resources Management Council have yet to be appointed. In the absence of a "Council", the Division understands OER's attempt to fulfill the objectives of the Act.

II. STRATEGIC PLAN FOR RI ENERGY AFFORDABILITY FUND

On March 1, the Governor's Chief Advisor on Energy, on behalf of the Office of Energy Resources, submitted its strategic plan for allocating the available funds created by the Act. The revenues created from the legislatively-mandated diversion of gross receipts taxes on electricity and natural gas, along with the diversion of a portion of sales taxes on non-residential distillate oil and propane sales, generates an estimated \$15 million towards the Affordable Energy fund. OER proposes to phase in the fund at higher levels over a period of three years as a result of an executive branch strategy to "alleviate the FY08 budget shortfall."⁴ Accordingly, the available funds in the first year of the program would decrease to approximately \$7.5 million.⁵ See *OER Strategic Plan, at p. 1*. From these funds, OER proposes to allocate \$3.5 million to National Grid to create a low-income natural gas distribution rate. *Id. at 6*. In terms of electric discounts, OER allocated no dollars to National Grid based on its finding that the Commission had already created low-income subsidies for the distribution component that exceeded the statutory prescription in the Act (i.e., 50%). Currently, National Grid's A-60 rate customers receive a discount of 80%.⁶ In addition, OER allocated \$500,000 to be available for expanding National Grid's low-income energy efficiency and weatherization programs. The proposed allocation is intended to allow OER, in conjunction with the Community College of Rhode Island, to "develop a larger contractor base." *Id. at 4*.

Lastly, as it relates to National Grid, OER proposes to allocate no amounts for the Arrearage Forgiveness mandates of the Act, since OER does not anticipate National Grid to incur any costs arising out of the arrearage forgiveness program until FY2010. This aspect of the plan needs clarification. National Grid filed an arrearage forgiveness plan that was substantially different from the plan required by statute. See *Section 39-2-1(e)(1)*. National Grid's plan requires arrearage payments to be made for two years rather than three. Further, rather than requiring payments to be made for the entire period, one-quarter of the remaining arrearage balance would be forgiven at six-month intervals as long as the customer remains current with the required payments during those six months. The OER plan does not address this directly, but does refer to the arrearage forgiveness component as an enhancement. If the OER is in fact adopting National Grid's enhanced arrearage forgiveness plan, the Division believes there would be an impact on the AEP fund prior to FY10. Clarification on this point needs to be made

⁴ The Division understands that the proposed diversion of funds in the first year may require statutory change. This issue may need to be examined further in the docket.

⁵ OER is authorized to use up to 10% of the fund revenue for "necessary administrative expenses, personnel expenses and equipment costs of the office . . ." § 42-141(f). For FY08, OER calculates the 10% on the total fund balance of \$15 million, despite the fact that \$7.5 million would not be utilized for affordable energy plan initiatives. The Division takes no position of these determinations, but believes those decisions are administrative compliance matters that are best suited for review by the Department of Administration as required by Section 42-141-5(e)(2) of the Act.

⁶ Estimated for a customer who uses 500kWh per month.

during this proceeding. Lastly, OER's plan proposes to allocate the remaining fund balance (\$1,986,400) to supplement existing LIHEAP programs. *Id.*

III. NATIONAL GRID'S PROPOSAL DATED JANUARY 2, 2007

On January 2, 2007, National Grid filed its plan for implementing the affordable energy mandates of the Act. National Grid acknowledged that (1) there was no existing discount program for gas customers; and (2) existing electric discounts more than adequately complied with the Act. For gas customers, National Grid projected that the creation of a low-income rate, which would cover those customers that were eligible for LIHEAP assistance, would cost approximately \$3.5 million per year. National Grid, like the Division, agrees that the expansion of rate discounts as ordained by law is contingent on an allocation of funds from OER. *See NGrid filing, at 6.*

In its filing, National Grid recommends that OER provide supplements to the LIHEAP program, particularly with respect to the winter of 2008, when it appears that additional LIHEAP funds will be needed. With respect to weatherization programs, National Grid invites OER to allocate funds that could be used to "increase [program] activities already planned and approved by the commission." *Id. at 10.* Lastly, with respect to the arrearage forgiveness directives contained in the Act as mentioned above, National Grid proposes to "enhance" the legislatively-mandated program in three ways. First, any customer who fulfills the program after 24 months "would have . . . arrears forgiven after 24 months instead of 36 months," the latter of which is directed by § 39-2-1(e). Second, the Company proposes to "accelerate the forgiveness" in six-month increments, rather than the legislatively directed three years. Finally, National Grid proposes that customers be granted the opportunity to enroll in the program after receiving a notice of termination, rather than after termination, as the Act appears to direct.

The Division has reviewed the program enhancements and does not believe that some of the proposed deviations from the law are appropriate. Specifically, with respect to the first two program modifications, the Act contains a clear and unambiguous directive, which followed a comprehensive review and consideration of energy affordability issues by the legislature. As a result, the Division believes that the Act is legally dispositive concerning the timeframes associated with the forgiveness program. While the Commission retains its plenary authority despite the passage of the Act, there has been no demonstration that the first two proposed enhancements are anything more than a revision to the existing and coherent mandates in the Act. Therefore, the Division believes that the Commission must adhere to the plain language of the statute and reject the first two enhancements that were proposed by National Grid.

In terms of National Grid's third enhancement proposal, the question concerning whether a customer is eligible for the program upon "termination," rather than upon

receiving a “notice of termination,” warrants more consideration. The Division would not object to the Commission allowing customers the advantage of entering the program upon receiving a notice of termination, since it would not only avoid termination of service to a particular customer, but also avoids the cost associated with termination. The matter ultimately hinges on the Commission’s interpretation of the Act, and the meaning of “termination,” which under the rules of statutory construction, the Commission’s interpretation would be accorded substantial deference.

III. PASCOAG UTILITY DISTRICT AND BLOCK ISLAND POWER PROPOSALS.

Block Island Power Company’s (“BIPCO”) submission as filed provides for a reduction of 50% of all charges, not just distribution charges as called for in the law. Because BIPCO’s rates have not been unbundled to distinctly break out generation costs separately from distribution costs as was done with the other utilities, the proposed discounts exceed the amount allowed per statute. The Division has proposed a proxy methodology of using Pascoag Electric’s (“Pascoag”) distribution rate as a proxy for BIPCO’s rate. BIPCO agreed that the Division’s recommended approach was reasonable. Based on that approach, BIPCO’s estimated lost revenues from the 50% discount on distribution charges are approximately \$3,300, rather than the originally submitted \$9,000.

For both the Pascoag and BIPCO plans, it is unclear whether the companies’ arrearage forgiveness proposals are consistent with the statute. As discussed earlier, the statute is quite prescriptive regarding the 36 month program and eligibility,⁷ with the arrearage forgiveness occurring upon successful completion of the payment requirements. The utility submissions are vague as to whether the forgiveness proposals adhere to the law. The OER filing is also unclear as to whether the arrearage program funding is based upon the statutory plan of 1/36 payment of half of the remaining unpaid balances, with a forgiveness of the remaining 50% upon successful completion of 36 payments. This should be clarified as the docket continues.

⁷ The Division notes that only those customers who meet the definition of “very low income household” qualify under the arrearage forgiveness program. See RIGL § 39-2-1(e)(1). According to National Grid’s response to PUC data request 1-1, National Grid states that it does not have available information to distinguish between “low income” and “very low income” customers. National Grid determines eligibility solely on the basis of whether a customer is a LIHEAP recipient. The OER plan does not address this issue. Clarification should be provided as to whether the OER plan adheres to the statute on eligibility for the arrearage forgiveness program.

IV. CONCLUSION AND RECOMMENDATIONS

As the Strategic Plan indicates, the Division engaged in constructive dialogue with OER, the affected utilities, and interested parties regarding the implementation of the Affordable Energy Plan provisions of the Act. The Division believes the Strategic Plan complies with the broader objectives of the Act, but questions remain on certain threshold questions on implementation and adherence to the letter of the Act where the law provides specific program mandates. There should be necessary clarification on the points noted above regarding arrearage forgiveness and BIPCO's distribution rate discount.

The Division supports Commission action to revise the rates and tariffs of National Grid, BIPCO and Pascoag based upon the allocation of funds from the Plan. For National Grid, this would pertain only to the discounted natural gas rate, as the Strategic Plan does not contain funding to reduce or eliminate existing discounts for National Grid electric customers. The Division does not believe the Commission has the discretion under law to approve National Grid's proposed enhancements on arrearage forgiveness with the exception of allowing eligible customers to participate in the program upon receiving a notice of termination from the utility. Lastly, with regard to the weatherization assistance and LIHEAP supplements, the Division assumes that National Grid will utilize and track the use of funds allocated to the program by OER

Respectfully submitted,



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cc: Thomas F. Ahern, Administrator
Service Lists in Dockets 3804 & 3806