

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

In re: NARRAGANSETT ELECTRIC :
(d/b/a National Grid) AFFORDABLE : Dkt. # 3804
ENERGY PLAN :

MEMORANDUM OF THE GEORGE WILEY CENTER

The George Wiley Center (the Center) appreciates the opportunity to comment on National Grid's *Affordable Energy Plan for Gas and Electric Service* (the NG Plan). This memorandum will include comments in two categories: (1) the NG Plan's Low Income Gas Distribution Rate and LIHEAP Supplement Program (Part III (A)(B)); and (2) the NG Plan's Arrearage Forgiveness Enhancements (Part III (C)).

The Office of Energy Resources has also filed a *Strategic Plan For: Rhode Island Energy Affordability Fund Usage* (the OER Plan). For the reasons limned in Part I below, the Center understands that the Public Utilities Commission has no jurisdiction over the contents of the OER Plan.

I. Discounted Rates and LIHEAP

As National Grid notes (NG Plan at 6), the Public Utilities Commission's (PUC's) role in relation to discounted distribution rates and customer charges under the Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006 (the Act) is limited. While the Act contemplates that the PUC will administer rules to implement the forgiveness provisions of the NG Plan (*see* § 39-2-1(e)), the Act excludes the PUC from jurisdiction over the percentage or dollar amounts of discounts and other money issues. The Act places these questions in the exclusive domain of the Office of Energy Resources (OER), giving the PUC jurisdiction only to insure that National Grid's rates are consistent with the OER Plan.

Section 39-1-27.10(a) of the Act requires that National Grid submit to the PUC a “plan for affordable energy for low income households,” which must include *inter alia* discounted distribution rates and customer charges. The money to pay for these discounts comes from the Affordable Energy Fund (Fund or Energy Fund), administered by the OER Commissioner, who has authority to use Fund money to compensate National Grid for revenues lost due to these discounts “in accordance with a plan approved by the commission [PUC].” § 42-141-5(d)(ii). The PUC must “review the [NG] plan and *issue an order with regard to the plan* not later than May 31, 2007.” § 39-1-27.10(b)(emphasis supplied).

The permissible contents of this “order with regard to the plan” are outlined § 42-141-5(d)(2). This provision affords the PUC jurisdiction only to require NG to implement what OER has put in its Plan. It does not permit the PUC to set the dollar amounts or percentages of any discounts, or to resolve any other question concerning the use to which Energy Fund monies are to be put.

Thus, § 42-141-5(d)(2) provides: “*If the [OER] commissioner determines it is in the public interest to allocate funds for the purposes set forth in subparagraph (1)(ii) above, the commissioners shall notify the commission of the amount of funds to be allocated for a specified period. The [PUC] shall then direct [NG] 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.*” § 42-141-5(d)(2)(emphasis supplied).

Several things are clear from this language. First, what is “in the public interest” regarding discount amounts and allocations from the Energy Fund is up to the OER

Commissioner, not the PUC. Second, the amounts of those discounts are determined by OER. PUC is “notified” of the amounts that OER has allocated (as it has done here, by filing the OER Plan). Third, once notified, the PUC does nothing but “direct [NG] to file the appropriate rate tariffs” to implement OER’s Plan. The tariff amendments must be “consistent with the amount allocated” by OER. Outside this narrow parameter, the PUC has no jurisdiction. The PUC may not, for example, narrow the class of customers the OER Commissioner has proposed to assist, or alter the OER Commissioner’s approach to energy efficiency.¹

Consistent with these statutory mandates, the Center asks that the PUC order NG to file amendments to the appropriate tariffs to implement the allocations of Energy Fund dollars included in the OER Plan.

Forgiveness Provisions

The Center hopes that the PUC will keep the purpose of this law center-stage as it assesses the forgiveness portions of NG’s Plan. The General Assembly has found that “energy costs have been rising sharply while the incomes of low income households have been declining with the result that energy costs are substantial and growing hardship.” § 42-141-1(a). It is therefore “necessary for public health and welfare to address the

¹ One of the Commission’s data requests (Data Request 1-5) asks why NG’s Plan did not address the Act’s provision that Energy Fund moneys may be used “for a reasonable and prudent use by very low income households of gas and electricity that does not exceed average use for comparable units” (apparently referring to § 42-141-5(d)(1)(ii)). This is outside the PUC’s purview for reasons already given. The statute leaves it up to OER to decide whether to rely on National Grid’s finding that LIHEAP eligible customers do not exceed average use for comparable residential accounts.

energy needs of low income households in a manner that supports the efficient use of energy resources.” § 42-141-1(d).

Relief is a “necessary” as a matter of “public health and welfare” according to the General Assembly. The enhancements that National Grid has proposed to the statutory forgiveness provisions carry out the spirit of this law. The Wiley Center asks that the PUC support them.

Some aspects of NG’s Plan carry out the letter of the law as well. For example, NG’s Plan proposes that low income customers become eligible to participate in the forgiveness plan upon receipt of a notice of termination, but before service is actually cut off. The statute uses the phrase “termination of residential electric, gas, and water service.” § 39-2-1(e)(1). This phrase is capacious enough to encompass both actual and threatened terminations. Such a gloss would be consistent with the purposes of the Act. To the extent that the statutory phrase is ambiguous, it must be interpreted liberally, consistent with the Act’s broad public health purposes. *See* § 16 of the Act (P.L. 2006 ch. 236 § 16)(“This act, being necessary for the welfare of the state and its inhabitants shall be construed liberally so as to effectuate its purposes.”).

To read the statute narrowly, to reach only those actually terminated, would be unnecessarily costly. The Center understands that it costs the ratepayers \$75 every time a low income customer is cut off and then turned on again. And, if cessation of service is the trigger, customers will have an incentive to force terminations, not to avoid them upon receipt of a termination notice. This would be the kind of absurd result the PUC is charged to avoid. *E.g., Marques v. Pawtucket Mutual Insurance Company.*, 915 A.2d

745 (R.I. 2007)(when giving statutory terms their plain meaning, the Court must abide by the corollary principle that it will not construe a statute to reach an absurd result).

If the PUC concludes that the NG Plan cannot be squared with the Act, the Center asks that the PUC bring its expertise to the General Assembly and promote amendments that would make the Act more flexible. To the extent that low income customers have an incentive to pay a monthly amount they can afford, everyone wins. National Grid takes in more money, and the customers keep their service. There are bills pending in both the House (H-5905) and Senate (S-0384) that attempt to make the law more flexible by:

- Giving customers not one strike, but three, before they are out of the forgiveness program;
- Lowering the required down payment from 25% to 18%, as in the transitional program;
- Permitting customers to join the program on receipt of a termination notice, without requiring physical termination;
- Making the program available to all LIHEAP customers.

The Center asks that the PUC support these efforts.

Respectfully submitted,
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By its attorney,

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of March, 2007, I caused a copy of this document to be emailed to:

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