

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

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

SUPPLEMENTAL MEMORANDUM OF
THE GEORGE WILEY CENTER

What constitutes “failure to comply” under G.L. § 39-2-1(e)(1)(iv)

The Commission has asked the parties to comment on the meaning of the phrase “failure to comply” under the payment incentive / forgiveness portion of the Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006, G.L. § 39-2-1(e)(1)(the Act).

The Act affords National Grid (NG) and the Commission some discretion on this question. The Act states that “failure to comply with the payment provisions set forth in this subsection *shall be grounds* for the customer to be dropped from the repayment program ...” § 39-2-1(d)(1)(iv). It does not mandate that the customer “shall be dropped” upon any failure to comply.¹ Broader language connotes a broader mandate.

The General Assembly requires that these words be interpreted liberally, in favor of very low income customers: “This act, being necessary for the welfare of the state and its inhabitants shall be construed liberally so as to effectuate its purposes.” P.L. 2006 ch. 236 § 16. Those purposes are set forth *inter alia* in § 42-141-1(a), which provides 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.”

¹ This choice of words must be deemed meaningful and deliberate. *E.g.*, *Champlin’s Realty Associates, LP v. Tillson*, 823 A.2d 1162, 1165 (R.I. 2003)(the Rhode Island Supreme Court presumes that the General Assembly intended to attach a significant meaning to every word of a statute).

The General Assembly therefore deems it “necessary for public health and welfare to address the energy needs of low income households in a manner that supports the efficient use of energy resources.” § 42-141-1(d).

Liberally construed in favor of very low income customers,² “failure to comply” constitutes “grounds” for removal from the program under § 39-2-1(d)(1)(iv), but does not mandate immediate removal. Time to cure of a reasonable duration may be afforded in response to a late payment.

The Wiley Center suggests three (3) months to cure a late payment is a reasonable time to cure a default under the statute, measured from the date the missed payment was due. The Center respectfully asks that the Commission so order.

Availability of the Payment Incentive / Forgiveness Plan Upon Notice of Termination

The Commission has also asked for comment on whether very low income customers are eligible to participate in the payment incentive / forgiveness plan upon receipt of a notice of termination, but before service is physically 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, as well as with the General Assembly’s mandate that the Act be liberally construed in favor of very low income customers.

² This reading operates in NG’s favor as well, as it affords the most stressed customers a continued incentive to pay, even through the moratorium, thereby reducing NG’s bad debts.

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.

In addition, 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 abides by the corollary principle that it will not construe a statute to reach an absurd result).

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on the 3rd day of May, 2007, a copy of this document was emailed to:

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