

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID GAS --
APPLICATION TO IMPLEMENT NEW
RATES

Docket No. 3943

**POST-HEARING MEMORANDUM OF
CONSERVATION LAW FOUNDATION**

Conservation Law Foundation (CLF) respectfully submits its Post Hearing Memorandum. CLF is simultaneously filing Proposed Findings of Fact and Rulings.

In this Docket, CLF has only taken a position on National Grid's (NGrid's) proposed Revenue Decoupling Mechanism (decoupling), and this Memorandum addresses only that issue.

The evidence in this case presents compelling reasons why the Commission should approve NGrid's proposal for decoupling. CLF discusses several of these in its Proposed Findings of Fact. This Memorandum looks only at two specific matters: (1) climate change; and (2) incentives.

Climate Change

Mr. Stavropoulos is the NGrid executive in charge of all of NGrid's gas distribution operations in the United States. [Stavropoulos Pre-Filed Testimony, 4/1/08, p. 1, lines 5-8; Tr., 10/22/08, p. 14, lines 12-14¹]

¹ References to the hearing transcript are denoted by the abbreviation "Tr.," for Transcript, followed by the date. The abbreviation "p." refers to the applicable page number of that day's hearing transcript.

Mr. Stavropoulos testified that climate change is an “extremely important” issue. [Tr., 10/22/08, p. 91, lines 7 - 9; see generally id., p. 90, line 23 - p. 93, line 11]

Mr. Stavropoulos explained how and why climate change is a part of NGrid’s overall corporate vision statement. [Tr., 10/22/08, p. 91, line 7 - p. 92, line 10]

Mr. Stavropoulos urged that climate change should be one of the factors considered and weighed by the Commission in deciding whether or not to approve NGrid’s decoupling proposal. [Tr., 10/22/08, p. 92, lines 11 - 15]

Finally, Mr. Stavropoulos explained precisely why he believes that climate change should and must be an important factor weighed by the Commission in deciding whether to approve decoupling. [Tr., 10/22/08, p. 92, line 16 - p. 93, line 11]

Seth Kaplan is CLF’s Vice President for Climate Advocacy and the Director of CLF’s Clean Energy/ Climate Change program for the six New England states. [Pre-Filed Testimony of Seth Kaplan, 7/11/08, p. 1, lines 17 -20] Mr. Kaplan has vast experience with utility dockets and decoupling issues before utility commissions throughout New England. [Tr., 10/23/08, p. 87, line 8 - p. 88, line 8]

Not surprisingly, Mr. Kaplan opined both that climate change is an important issue, [Pre-Filed Sur-Rebuttal Testimony of Seth Kaplan, 8/22/08, p. 2, lines 15 - 18] and that the Commission should consider climate change as “one factor among several” in deciding whether to approve decoupling. [Tr., 10/23/08, p. 75, line 13 - p. 76, line 15]

Thus, on the issue of climate change, there was strong and consistent agreement between a senior executive of Rhode Island’s dominant utility who is a corporate

manager and a senior executive of New England's leading environmental organization who is a public-interest advocate.²

Messrs. Stavropoulos and Kaplan agreed that climate change is a crucially important issue to which the Commission should pay attention.³

Messrs. Stavropoulos and Kaplan agreed that climate change is one important factor that the Commission should consider in deciding whether to approve NGrid's proposed decoupling mechanism.

Finally, Messrs. Stavropoulos and Kaplan agreed that approval of decoupling is in the public interest.

Respectfully, CLF believes that climate change is a major issue of which the Commission should take account in approving NGrid's decoupling proposal. Indeed, climate change is an issue that will take on increasing importance in future dockets before this Commission.

Incentives

Several witnesses were asked the nearly identical question: are incentives an important factor in motivating the actions of utilities? [Tr., 10/21/08, p. 207, line 4 - p.

² As to alignment of the parties in this matter, see generally Opening Statement of CLF's counsel. [Tr., 8/27/08, p. 229, line 23 - p. 231, line 22]

³ However, even a regulator who did not believe that it is essential to take action to avert climate change would need to acknowledge that state and federal actions to address climate change will make fossil-fuel-based energy more expensive, so it is prudent to conserve and invest in energy efficiency to reduce costs to ratepayers. [Tr., 10/23/08, p. 75, line 13 - p. 76, line 15; p. 130, line 20 - p. 132, line 11] See CLF's Proposed Finding of Fact # 31.

208, line 17 (question to Oliver); Tr., 10/22/08, p. 94 lines 14 - 17; p. 95, line 12 - p. 96, line 22 (to Stavropoulos); Tr., 10/23/08, p. 68, line 1 - p. 69, line 19 (to Kaplan)]

Mr. Oliver distinguished himself by being entirely unable to give a straightforward answer to this simple question. At one point, Mr. Oliver evaded the question by posing a question of his own. [Tr., 10/21/08, p. 207, lines 19 - 23] At another point, when asked the simple question “Do you believe as a general matter that utility companies’ behavior is affected by economic incentives?” Mr. Oliver equivocated thus: “It can be. It is not necessarily.” [Tr., 10/21/08, p. 207, lines 9 - 13] When counsel took another run at the same question, Mr. Oliver slid away again: “It may affect behavior. It does not necessarily.” [Tr., 10/21/08, p. 208, lines 7 - 8] Mr. Oliver then went on to list a variety of reasons why he believes that financial incentives would not affect utility behavior at all. [Tr., 10/21/08, p. 208, lines 8 - 17]

Mr. Oliver’s equivocating about incentives was of a piece with the rest of his testimony. For example, Mr. Oliver had to be asked 10 times whether he had knowledge of the Division’s position on NGrid’s proposed ramp-up of gas efficiency programs. [Tr., 10/21/08, p. 209, line 23 - p. 213, line 11] Finally the Chairman had to intervene and tell the evasive witness “It calls for a yes or no answer.” [Tr., 10/21/08, p. 213, lines 14-15]

Perhaps the most egregious example of Mr. Oliver’s troubling testimony came when Mr. Oliver, who opposes decoupling in this Docket, was asked if he had ever supported decoupling in other proceedings. Mr. Oliver testified plainly that he had not ever supported decoupling. [Tr., 10/21/08, p. 218, lines 14 - 16] When confronted with

NGrid Exhibit 41, his own testimony in a recent Maryland Public Service Commission proceeding in which he supported decoupling without any expressed reservations whatever, Mr. Oliver was given five separate opportunities to correct his prior, untrue statement. [Tr., 10/21/08, p. 249, line 3 - p. 251, line 18] Even when he held the damning Exhibit 41 in his own hand, and had been read portions of his own prior testimony, Mr. Oliver could not bring himself to correct his prior misstatement. Instead, Mr. Oliver chose to dig himself in deeper. He testified in this Docket, under oath, "No. That was not my testimony. My testimony was I opposed it [decoupling]." [Tr., 10/21/08, p. 251, lines 17 - 18]

In marked contrast to Mr. Oliver, NGrid's Vice President, Mr. Stavropoulos, was able to give a direct, one-word answer as to whether incentives influence utility behavior. That answer was: "Yes." [Tr., 10/22/08, p. 94, lines 14 - 17] When asked to explain his answer, Mr. Stavropoulos did so clearly, basing his comments on his management of NGrid's gas operations for the United States. [Tr., 10/22/08, p. 95, line 12 - p. 96, line 21]

Mr. Kaplan, speaking from a very different perspective from Mr. Stavropoulos, gave a very similar answer. Mr. Kaplan also gave a one-word answer when asked whether incentives influence utility behavior: "Yes." [Tr., 10/23/08, p. 88, lines 1 - 6] When asked to explain, Mr. Kaplan, in part, quoted John Rowe, the former President of New England Electric System to the effect that "I might be a rat, but even a rat can smell cheese." [Tr., 10/23/08, p. 68, line 7 - p. 69, line 18]

Mr. Kaplan explained simply, but eloquently, that the purpose, the very raison d'être, of decoupling is to eliminate the disincentive to conservation and efficiency that inures in tradition ratemaking and to align the utility's incentives with the public interest. [Kaplan Pre-Filed Sur-Rebuttal Testimony, p. 10, line 1 - p. 11, line 16]

Every other state utility commission or board that has ordered decoupling has agreed -- using much the same language. Some of these decoupling orders are full exhibits in this proceeding. See, e.g., CLF Exhibit 5 (North Carolina Utilities Commission) ("The decoupling of recovery of margin from usage will better align the interests of the Company and its customers with respect to conservation, and this is particularly important today."); CLF Exhibit 7 (Maryland Public Service Commission) (decoupling "removes a major disincentive to the Company's participation in the full deployment of demand-side management and energy efficiency programs."); CLF Exhibit 8 (New York Public Service Commission) (decoupling will "remove the disincentive a utility has to promote energy conservation by removing the link between sales and profits."); ENE Exhibit 3 (Massachusetts Department of Public Utilities) ("Distribution companies must have the proper regulatory and financial incentives to fully pursue the economic, price, reliability, and environmental benefits that are available . . .").

Conclusion

For these reasons, and for those more fully set forth in CLF's Proposed Findings of Fact, CLF respectfully urges the Honorable members of this Public Utilities

Commission to approve NGrid's decoupling proposal in this Docket, as that proposal was amended during the course of this proceeding.

CONSERVATION LAW FOUNDATION,
by its Attorney,

A handwritten signature in cursive script, appearing to read "Jerry Elmer".

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to PUC Rule of Practice and Procedure 1.7(a), an original and seven copies of the within Memorandum were hand-delivered to Luly Massaro, Commission Clerk, Public Utilities Commission, 99 Jefferson Blvd., Warwick, RI 02888. In addition, a hard copy was hand delivered to Mr. Thomas F. Ahearn, Administrator, Division of Public Utilities, 99 Jefferson Blvd., Warwick, RI 02888. In addition, hard copies of the within Motion were sent by first-class mail, postage prepaid to each of:

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In addition, electronic copies were transmitted to all of the persons on the PUC's Service List for this Docket, as provided to all the parties by Luly Massaro, Commission Clerk, on October 15, 2008. I hereby certify that all of the foregoing was done on the 6th day of November 2008.


