

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

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

Docket No. 3943

**PROPOSED FINDINGS OF FACT
AND RULINGS SUBMITTED BY
CONSERVATION LAW FOUNDATION**

Conservation Law Foundation (CLF) respectfully submits its proposed findings of fact and rulings by the PUC in this Docket.

In this Docket, CLF has only taken a position on National Grid's (NGrid's) proposed Revenue Decoupling Mechanism (RDM), and these proposed findings of fact and rulings address only that issue. CLF takes no position on NGrid's proposed increase of Return On Equity, other rate-design issues, non-firm rate issues, the proposed low-income rate, or the gas marketing program.

Proposed Findings of Fact

CLF's Proposed Findings of Fact are divided into three categories, as follows:

- I. NGrid's Proposal;
- II. Support for NGrid's Proposal;
- III. Opposition to NGrid's Proposal.

For each proposed finding of fact, CLF provides citations to the Record in this case that directly support that proposed finding.

After setting forth these Proposed Findings of Fact (in three categories), CLF sets forth proposed Rulings of the PUC.

I. NGrid's Proposal

1. In this Docket, NGrid has proposed a Revenue Decoupling Mechanism (RDM). [Pre-Filed Principal Testimony of Nickolas Stavroupolos (April 1, 2008) (Stavroupoulos Principal Testimony), p. 6, lines 17-21; Pre-Filed Principal Testimony of James Simpson (April 1, 2008) (Simpson Principal Testimony), passim]

2. As originally proposed by NGrid, the RDM would have applied across the board to all customers in all rate classes, excepting only new Commercial and Industrial (C&I) customers in four rate classes as follows: (1) Large Low Load Factor; (2) Large High Load Factor; (3) Extra large Low Load Factor; and (4) Extra Large High Load factor. [Simpson Principal Testimony, p. 4, lines 1-7]

3. The Energy Council of Rhode Island (TEC-RI) opposed NGrid's RDM. [Pre-Filed Principal Testimony of John Farley, July 25, 2008, (Farley Principal Testimony) at p. 19, line 5]

4. TEC-RI further urged that if the Commission adopted NGrid's proposed RDM, that all C&I "Large and Extra Large rate classes be exempted entirely from the" RDM. [Farley Principal Testimony, p. 35, lines 8-9]

5. On September 12, 2008, during the hearing on this Docket, NGrid modified its original RDM proposal by accepting TEC-RI's suggestion that all C&I Large and Extra

Large rate classes be exempted. [Tr., 9/12/08,¹ p. 5, line 1 - p. 6, line 9; p. 9, line 4 - p. 10, line 12] Thus, the companies and institutions represented in this proceeding by TEC-RI would no longer be included in NGrid's proposed RDM.

6. On October 22, 2008, during the hearing on this Docket, NGrid again modified its original RDM proposal, this time at the urging of the Wiley Center, which represents low-income Rhode Islanders. On this occasion, NGrid agreed that, if the proposed RDM is approved by the Commission, it would not apply to the class of low-income customers eligible for, and receiving, LIHEAP assistance. [Tr., 10/22/08, p. 89, line 5 - p. 90, line 16]

7. Accordingly, NGrid's proposed RDM, at the close of the hearing in this Docket, did not include the C&I Large and Extra Large class, and similarly did not include low-income customers receiving LIHEAP assistance.

II. Support for NGrid's Proposal

8. As described more fully below, at least two major arguments in favor of NGrid's proposed RDM were articulated by the parties in pre-filed testimony and during the course of the hearing: (1) traditional ratemaking no longer works as it has in the past; and (2) decoupling is necessary to remove a disincentive that the utility now has to promote conservation and efficiency as required by law. The first of these arguments

¹ References to the hearing transcript are denoted by the abbreviation "Tr.," for Transcript, followed by the date.

was put forward by NGrid; the second of these arguments was put forward by NGrid, CLF, and Environment Northeast.

A. Traditional Ratemaking Is No Longer Working

9. While traditional ratemaking worked successfully for decades, a variety of factors have combined to make traditional ratemaking methodology less appropriate today. [As to prior success, Tr. 9/12, p. 53, lines 7-16; p. 55, lines 8-11]

10. Traditional ratemaking does not work today as it has in the past because NGrid customers are dramatically reducing their use of gas. This is true of NGrid residential customers. [Simpson Principal Testimony, p. 15, line 1 - p. 16, line 2; NG-JDS-4] This is true of NGrid Small and Medium C&I customers. [Simpson Principal Testimony, p. 16, line 3 - p. 17, line 7; NG-JDS-6]

11. Although the parties before the Commission in this Docket took varying positions with regard to decoupling, there appeared to be no difference of opinion with regard to the fact of declining gas use. While the expert witness of the Division of Public Utilities and Carriers (the Division), Bruce Oliver, opposed NGrid's proposed RDM, he acknowledged both significant declines in gas consumption nationally, [Tr., 10/22, p. 222, lines 4 - 21], and significant declines in Rhode Island. [Id., line 22 - p. 223, line 1.]

12. Some of the reduction in gas consumption is due to so-called "passive" conservation measures. This refers to situations in which customers are forced to replace old, outdated, failing gas appliances with newer appliances that are more energy-efficient than the old ones. [Simpson Principal Testimony, p. 18, line 9 - p. 20, line 5; NG-JDS-7]

13. Some of the reductions in gas consumption are due to so-called “active” conservation measures. These are voluntary actions that customers take to reduce gas consumption, usually in response to higher gas prices. [Simpson Principal Testimony, p. 20, line 6 - p. 21, line 4]

14. Reductions in gas consumption by residential and small and medium C&I customers are directly linked to spikes in recent years in the commodity price. [Simpson Principal Testimony, p. 21, line 15 - p. 23, line 12; Tr., p. 55, lines 11 - 18; NG-JDS 8 (as to residential customers); NG-JDS-9 (as to small C&I customers); NG-JDS-10 (as to medium C&I customers)]

15. As a result of this declining use, NGrid has been deprived of revenues that have been allowed by the Commission as reasonable and prudently incurred in the previous rate case. [Stavropoulos Principal Testimony, at p. 18, lines 5 - 10]

16. NGrid’s inability to collect revenues that it has been allowed by the Commission as reasonable and prudently incurred has an impact upon safety because such funds are needed by NGrid to operate the gas infrastructure on a consistently safe and reliable basis. [Stavropoulos Principal Testimony, at p. 18, lines 5 - 10; Pre-Filed Principal Testimony of Seth Kaplan, July 11, 2008 (Kaplan Principal Testimony), at p. 14, lines 5 - 9; Tr. 9/12/08, p. 40, line 8 - p. 41, line 3]

17. Decoupling is an effective way both to address and to remedy the problem that traditional ratemaking does not work to ensure that the proper level of revenues -- as determined by this Commission -- flow to the utility. [Kaplan Principal Testimony, at p.

6, line 11 - p. 8, line 17; p. 16, line 9 - p. 18, line 6; Pre-Filed Sur-Rebuttal Testimony of Seth Kaplan (August 22, 2008) (Kaplan Sur-Rebuttal Testimony), p. 6, lines 6 - 15]

18. With decoupling, this Commission will set NGrid's revenue requirement at a level which will give NGrid a fair opportunity to achieve a Return on Equity (ROE) as set by the Commission. Thereafter, periodic true-ups will ensure that NGrid realizes just that revenue requirement. The periodic true-ups will ensure that NGrid realizes neither more nor less than the revenue requirement approved by this Commission. [Id.]

19. Decoupling helps to ensure that NGrid will not experience any windfall income or profit in the event that its per customer sales of commodity exceed the levels anticipated by the Commission in this rate case. [Id.; Kaplan Sur-Rebuttal Testimony, p. 7, line 5 - p. 8, line 5; Tr. 9/12/08, p. 38, line 12 - p. 40, line 5; Tr., 10/22/08, p. 196, line 19 - p. 197, line 24] Moreover, National Grid proposes to retain its earnings sharing mechanism so that the company and its customers will share in earnings that exceed the allowed ROE.

B. Decoupling Removes a Disincentive for Efficiency Programs

20. Traditional volumetric ratemaking provided NGrid with more revenue (and more profit) the more commodity it sold. [Kaplan Direct Testimony, at p. 10, lines 11 - 14;

21. Public policy in Rhode Island supports consumer consumption of less gas through increased conservation and efficiency. [Stavropoulos Principal Testimony, at p. 13, line 18 - p. 14, line 1; Comments of ENE Concerning the National Grid Decoupling

Proposal (July 25, 2008) (ENE Comments), at p. 4 - p. 5; Kaplan Principal Testimony, at p. 12, line 13 - p. 13, line 2; Kaplan Sur-Rebuttal Testimony, at p. 3, lines 1 -18]

22. Thus, traditional volumetric ratemaking sends precisely the wrong price signal to NGrid and sets NGrid's financial interest against the public interest in conservation and efficiency. [Stavropoulos Principal Testimony, p. 13, line 16 - p. 15, line 20; Kaplan Principal Testimony, at p. 10, line 1 - p. 11, line 2; p. 14, line 20 - p. 16, line 7; ENE Comments, p. 2 - 3; 5 - 7]

23. Decoupling is effective way both to address and to remedy the problem that the traditional, primarily method of ratemaking creates a perverse incentive that sets NGrid's financial interest against the public interest in conservation and efficiency. [Kaplan Principal Testimony, p. 14, line 4 - p. 16, line 7; ENE Comments, p. 2 - 3; 5 - 7; Stavropoulos Principal testimony, at p. 18, lines 10 - 18]

24. Decoupling ensures that neither NGrid's revenue nor profit will be adversely affected by NGrid's effective participation in gas conservation and efficiency programs mandated by state law and required sound public policy. [Kaplan Sur-Rebuttal Testimony, at p. 3, lines 3 - 18; Comments of ENE, p. 4 - p. 5]

C. Independent Environmental Organizations Support NGrid's Proposed RDM

25. As discussed more fully below, the independent environmental organizations that have intervened as full parties in this Docket strongly support NGrid's proposed RDM.

26. Those organizations are CLF and Environment Northeast (ENE). CLF is New England's leading environmental advocacy organization and is a nonprofit, member-supported organization. [CLF's Motion to Intervene, April 10, 2008, at p. 1.] ENE is a non-profit organization that researches and addresses environmental problems that threaten regional ecosystems, human health and the management of natural resources. [ENE's Motion to Intervene, May 23, 2008, at p. 1] (CLF and ENE are sometimes referred to herein collectively as "the environmental intervenors.")

27. In supporting NGrid's proposed RDM, CLF and ENE point to the environmental benefits to be derived from conservation and efficiency; and support the removal of the current strong financial disincentive to conservation and efficiency that inures in the current volumetric pricing of gas. [Kaplan Principal Testimony, p. 10, line 1 - p. 11, line 16; p. 14, line 5 to page 16, line 7; Kaplan Sur-Rebuttal Testimony, p. 2, lines 15 - 20; p. 8, line 7 to p. 9, line 11; p. 11, lines 1 to 13; Comments of ENE, p. 2 - 3; p. 5 - 7; p. 9 - 10]

28. Climate change is a major issue of concern to Rhode Island, the United States, and the world. [Tr., 10/22/08, p. 91, lines 7 - 9; see generally *id.*, p. 90, line 23 - p. 93, line 11; Kaplan Sur-Rebuttal Testimony, p. 2, line 15 - 20]

29. Climate change is caused, in part, by emission of carbon dioxide into the atmosphere from the combustion of fossil fuels such as natural gas. [Kaplan Sur-Rebuttal Testimony, p. 2, line 15 - 20]

30. Climate change can be ameliorated, in part, by reducing emissions of carbon dioxide. [Id.]

31. Quite separate and apart from the issue of climate change, the energy conservation and efficiency that would be fostered by adoption of NGrid's proposed RDM will reduce overall gas consumption thereby benefiting all ratepayers by helping them to avoid or reduce embedded carbon costs that will, in the future, be a part of the commodity prices of all carbon fuels. [Tr., 10/23/08, p. 75, line 13 - p. 76, line 15; p. 130, line 20 - p. 132, line 11]

32. CLF and ENE have no significant interest in Grid's revenues or profits. CLF and ENE are public-interest organizations working to improve the environment. [Kaplan Sur-Rebuttal Testimony, p. 5, lines 12- 19; p. 7, lines 19-20; see also CLF's Motion to Intervene, at p. 1; ENE's Motion to Intervene, at p. 1]

33. In appearances before this Commission over a period of years, CLF and ENE have consistently advocated for the public interest and environment.

34. CLF, in particular, has previously appeared before this Commission to advocate positions that have been adverse to positions taken by NGrid in certain dockets, most notably in Dockets 3765 (NGrid's renewable energy procurement for 2006) and 3901 (Grid's renewable energy procurement for 2007).

D. Other States Have Adopted Decoupling In Response to the Issues Identified in This Docket By NGrid

35. As discussed more fully below, other state utility commissions and boards have ordered decoupling in recent dockets to address precisely the issues, problems, and benefits identified by NGrid and the environmental intervenors in this Docket.

36. In an Order dated November 3, 2005, the North Carolina Utilities Commission, in combined gas ratesetting Dockets G-9, Sub 499; G-21, Sub 461; and G-44, Sub 15, ordered decoupling. The North Carolina Utilities Commission found, in relevant part:

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. Reconciling this inherent conflict between the utility and its customers can help open opportunities for conservation of energy resources, savings for customers, and downward pressure on wholesale gas prices, while also helping the utility recover its margin and earn a reasonable return.

CLF Exhibit 5 (Full), p. 23.

37. In an Order dated September 13, 2006, the Ohio Public Utilities Commission, in gas ratesetting Docket 05-1444-GA-UNC, ordered decoupling. The Ohio PUC found that decoupling is good public policy because, in relevant part, decoupling:

encourages innovation and the provision of cost-effective access to supply and demand-side natural gas services and goods by eliminating the linkage between [the utility]'s customer sales and recovery of fixed costs, thus allowing [the utility] to sponsor programs (through the Collaborative) that give customers greater ability to reduce natural gas purchases without creating financial harm to [the utility].

CLF Exhibit 6 (Full), p. 6.

38. In an Order dated July 19, 2007, the Maryland Public Service Commission, in ratesetting Docket 9092, ordered decoupling. The Maryland P.S.C. found, in relevant part, that decoupling:

removes a major disincentive to the Company's participation in the full deployment of demand-side management and energy efficiency programs. The enhanced deployment of such programs will enable customers to better control their [utility] bills.

CLF Exhibit 7 (Full), p. 81.

39. In an Order dated April 18, 2007, the New York Public Service Commission, in a combined electricity ratesetting Docket 03-E-0640 and gas ratesetting Docket 06-G-0746, ordered decoupling. The New York P.S.C. ruled, in relevant part:

A revenue decoupling mechanism (RDM) is a ratemaking approach designed to eliminate or substantially reduce the linkage between sales and utility revenues and/or profits. An RDM is used because existing utilities' delivery rate designs are, in most cases, not "optimal" in that they do not always collect fixed costs through fixed charges and variable costs through variable charges. RDMs remove the disincentive a utility has to promote energy conservation by removing the link between sales and profits.

CLF Exhibit 8 (Full), p. 7 - p. 8.

40. In an Order dated July 16, 2008, the Massachusetts Department of Public Utilities, in a generic Docket 07-05-A, ordered complete decoupling of gas and electricity prices in the Commonwealth of Massachusetts. The Massachusetts D.P.U. ruled, in relevant part:

In today's Order, the Department of Public Utilities ("Department") sets forth a plan for establishing a new rate base adjustment mechanism, or "decoupling," to be adopted by jurisdictional electric and natural gas distribution companies ("distribution companies") in the Commonwealth. This is a necessary evolution

of Department ratemaking practices -- it will help us address some of the profound impacts of increases in the costs of natural gas and electricity on the Commonwealth's residents and businesses. It will also provide distribution companies with better financial incentives to pursue a cleaner, more efficient energy future

This Order is a simple, albeit critical first step in altering the regulatory landscape in Massachusetts in a way that will fully align the financial interests of the shareholders of our investor-owned distribution companies with the economic and environmental imperatives facing us today. Distribution companies must have the proper regulatory and financial incentives to fully pursue the economic, price, reliability, and environmental benefits that are available

ENE Exhibit 3 (full), at p. 1- p. 2 (ENE Exhibit 3 is the same as Attachment B to Comments of ENE Concerning the National Grid Decoupling Proposal (7/25/08)).

III. Opposition to NGrid's Proposal

41. As discussed more fully below, several major arguments in opposition to NGrid's proposed RDM were articulated by the parties in pre-filed testimony and during the course of the hearing. We find these arguments to be unpersuasive.

42. TEC-RI opposed NGrid's proposal for an RDM in this Docket, in part, because TEC-RI believed that "decoupling . . . erodes the incentive for customers to conserve energy." [Farley Principal Testimony, p. 31, lines 14-15]

43. The Commission finds that NGrid's proposal for an RDM will not erode incentives for customers to conserve energy. Approximately 70% of each rate-payer's gas bill comes from the commodity charge. This will be wholly unaffected by NGrid's proposal for an RDM, since the RDM will only apply to the distribution charge. Indeed, because of the recent run-up in the commodity price for gas, there is a powerful incentive

for customer conservation with or without NGrid's proposed RDM. The remaining 30% of the gas bill is the utility's distribution charge to which the RDM does apply. However, while a conserving customer's distribution rate with the RDM might increase slightly as compared to what the same customer's rate would have been without the RDM, that customer's actual distribution payment will actually go down because the distribution charge will continue to be collected volumetrically. The less gas a customer uses, the lower that customer's commodity charge will be and the less that customer's distribution charge will be. [Sur-Rebuttal Testimony of Kaplan, at p. 8, line 7 - p. 9, line 11]

44. TEC-RI also opposed NGrid's proposal for an RDM in this Docket, in part, because TEC-RI believed that there would be a "non-participant penalty that is produced by utility efficiency programs." [Pre-Filed Principal Testimony of John Farley, 7/25/08, at 30, lines 4-5] As TEC-RI put it: "This is a result of how the costs of decoupling are distributed among customers in a rate class. Customers who participate in the efficiency program see their usage decline. All else being equal, this brings the revenue per customer for the class down. This increases the decoupling adjustment that all customers in the class must pay." [Pre-Filed Principal Testimony of John Farley, 7/25/08, at 30, lines 6 - 10]

45. The Commission finds that NGrid's proposal for an RDM serves the public interest, in part because there is a non-participant penalty associated with energy conservation and efficiency programs. The Commission finds that decoupling helps to achieve the public interest of conservation and efficiency because customers who engage

in conservation and efficiency use less fuel and pay less as a result. This benefits all consumers and the public at large because aggregate demand is reduced. The fact that some customers see greater benefit, because they actively participate in the efficiency and conservation programs of NGrid, is not unfair. [Sur-Rebuttal Testimony of Kaplan, at p. 10, line 1 - p. 11, line 13.]

46. The Division of Public Utilities and Carriers (the Division) also opposed NGrid's proposed RDM through the testimony of its expert witness, Bruce Oliver. [Direct Testimony of Bruce Oliver, 7/25/08, p. 4 - 19]

47. In particular, in his testimony, Mr. Oliver expressed skepticism regarding the degree to which financial incentives and disincentives described by NGrid's witnesses would be effective in influencing the utility's behavior. [Tr., 10/21/08, p. 207, line 4 - p. 208, line 17]

48. The Commission finds that financial incentives and disincentives do play an important role in influencing utility behavior.

49. The Wiley Center opposed NGrid's proposal for an RDM in this Docket, in part, because "[a]s long as usage declines, the RDM will cause utility bills to increase." [Emphasis supplied] [Pre-Filed Comments of George Wiley Center, 8/6/08, at 10]

50. The Wiley Center expressed particular concern because it feared that NGrid's proposed RDM would have a disproportionate impact on poor people. [Tr., 8/29/08, p. 220, line 18 - p. 221, line 2]

51. The Commission finds that NGrid's proposal for an RDM will not cause bills to increase, even in a circumstance where overall gas usage declines. With or without an RDM, commodity prices will continue to be set at market rates and will be unaffected by any RDM. With an RDM, when overall gas usage declines, distribution rates may increase slightly, but gas bills will decline for customers whose usage declines.

52. Moreover, the Commission finds that the Wiley Center's concern about disproportionate impact of an RDM on poor people is satisfactorily addressed by exempting the class of approximately 16,000 LIHEAP customers from the RDM.

Rulings of the PUC

1. The Commission hereby rules that decoupling is in the public interest because it separates -- that is, decouples -- NGrid's revenues and profits from the quantity of gas that it sells.

2. The Commission hereby rules that decoupling is in the public interest because it helps the state and nation address the challenges posed by climate change.

3. The Commission hereby rules that decoupling is in the public interest because it removes a disincentive to NGrid supporting as fully and enthusiastically as it might programs aimed at reducing consumption of natural gas by means of programs promoting conservation and efficiency.

4. The Commission hereby rules that decoupling is in the public interest because, the energy conservation and efficiency that decoupling will foster will help to reduce

overall gas consumption thereby benefiting all ratepayers by helping them to avoid or reduce embedded carbon costs that will, in the future, be a part of the commodity prices of all carbon fuels.

5. The Commission hereby rules that decoupling helps to achieve the public interest of conservation and efficiency because customers who engage in conservation and efficiency will use less fuel and pay less as a result. This benefits all consumers and the public at large because aggregate demand is reduced.

6. The Commission hereby rules that decoupling is in the public interest because it permits this Commission to set NGrid's ROE at a reasonable level and ensure that NGrid will not experience any windfall income or profit in the event that its sale of commodity exceeds the levels anticipated in this rate case. Ensuring against the possibility of windfall profits to the utility is especially important at this time of heightened economic uncertainty.

7. The Commission hereby rules that decoupling is in the public interest because it permits NGrid to fully collect those revenues that it has been allowed by the Commission as reasonable and prudently incurred and thus to maintain Rhode Island's

gas infrastructure in a manner that is consistently safe and reliable. This serves the public interest by advancing public safety.

CONSERVATION LAW FOUNDATION,
by its Attorney,

A handwritten signature in cursive script, appearing to read "Jerry Elmer", written over a horizontal line.

Jerry Elmer (# 4194)

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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 document were hand-delivered to Lully 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 Lully Massaro, Commission Clerk, on October 15, 2008. I hereby certify that all of the foregoing was done on the 6th day of November 2008.


