

June 6, 2008

VIA HAND DELIVERY & ELECTRONIC MAIL

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

**RE: Docket 3943 – National Grid Request for Change of Gas Distribution Rates
Response to NEGWA Petition to Intervene**

Dear Ms. Massaro:

Enclosed please find one original and nine (9) copies of National Grid's¹ response to the Motion of the New England Gas Workers' Association to Intervene in the above-captioned proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosures

cc: Docket 3943 Service List

¹ The Narragansett Electric Company d/b/a National Grid ("Company").

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND PUBLIC UTILITIES COMMISSION

_____)	
National Grid)	
Application to Change Rate Schedules)	Docket 3943
_____)	

**RESPONSE OF NATIONAL GRID
TO MOTION FOR INTERVENTION**

This memorandum is submitted by The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) in accordance with the Rhode Island Public Utilities Commission (the “Commission”) Rule 1.13 in response to the interventions of New England Gas Workers’ Association (“NEGWA”) in the above-captioned docket. National Grid has reviewed the NEGWA’s petition, and for the reasons stated below, does not believe that NEGWA has satisfied the Commission’s criteria for intervention. However, if the Commission determines that NEGWA has satisfied its criteria in some respect, National Grid respectfully requests that NEGWA’s participation be limited to the issues that the Commission finds appropriate for this rate case.

I. BACKGROUND

On Tuesday, April 1, 2008, the Company filed an application for a change in gas distribution rates pursuant to R.I.G.L. § 39-3-10 and § 39-3-11. The Commission established a deadline for petitions to intervene of May 27, 2008. The Commission received petitions to intervene from The Conservation Law Foundation, SilentSherpa Energy Consulting and Professional Services Inc., the George Wiley Center, Environment Northeast, the Energy Council of Rhode Island, the Rhode Island Office of Energy Resources, the Rhode Island Hospital, NEGWA and Attorney General Patrick C. Lynch. The Company discusses certain considerations relating to NEGWA's petition for intervention below.

II. LEGAL STANDARD

To intervene in a proceeding under Commission Rule 1.13, a party must establish that its right to intervene is either conferred by statute or that the petitioner has met one of two other criteria for intervention status. Specifically, Commission Rule 1.13(b) states that a petition to intervene must demonstrate that one or more of the following three criteria is met:

- (1) A right conferred by statute.
- (2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission's action in the proceeding. (The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent.)
- (3) Any other interest of such a nature that movant's participation may be in the public interest.

See, e.g., The Narragansett Electric Company d/b/a National Grid, Order No. 18794 (December 27, 2006). The Commission has reiterated that it will be cautious in granting intervenor status and will work to ensure that a movant actually meets one of the three criteria established in Commission Rule 1.13(b). Narragansett Electric Company, Docket No. 3739, Order No. 18794, at 12 (December 27, 2006) (citing, Narragansett Elec. v. Harsch, 117 R.I. 395, 404 (1977)). See, also, Block Island Ferry, Docket No. 3655, Order No. 18157 (February 18, 2005); Pawtucket Water Supply Board, Docket No. 3452, Order No. 17515 (July 21, 2003); Island Hi Speed Ferry, Docket No. 3495, Order No. 17452 (May 9, 2003).

III. LEGAL ANALYSIS

A. Response to NEGWA Petition to Intervene

After reviewing NEGWA's petition to intervene, National Grid believes that NEGWA has not demonstrated that it satisfies any of the Commission's criteria for intervention. As the basis for intervention, NEGWA claims that "[its] affiliates and their respective members have an interest which may be directly and specifically affected by this proceeding" because of the Company's proposal to implement the Accelerated Replacement Program ("ARP") (NEGWA Petition at 2). In addition, NEGWA claims that its affiliates and members:

have an interest which may be directly affected in ensuring that [the Company's] Request for Change of Gas Distribution Rates does not result in any degradation in service quality and system safety and reliability for Rhode Island consumers and, in fact, that service quality and system safety and reliability are, at the very least, maintained, if not improved, as a result of the changes (if any).

Id. NEGWA further claims that its affiliates and members have an interest which may be directly affected in the Commission's inquiry into the impact of the proposed changes in

distribution rates on customer service (id.). Specifically, NEGWA claims that implementation of the ARP will “likely have a substantial impact on members’ working conditions and may ultimately degrade customer service” (id. at 2-3). NEGWA further claims that its members are “substantially and specifically” affected because they are customers of National Grid (id. at 3). Lastly, NEGWA claims that it should be granted intervention because it is in a “unique position” to provide evidence concerning the effects that the National Grid proposal will have on its members working conditions as well as the effects of various “oversight mechanisms” that the Commission may implement as a result of this investigation (id.). NEGWA claims that its interests are not adequately represented by other parties in this docket (id.).

However, for the reasons discussed below, these claims appear to fall short of satisfying the Commission’s criteria for intervention. National Grid is concerned that, without a solid basis for intervention, NEGWA would be allowed to participate in a manner that would undermine the administrative efficiency of the proceeding and would provide NEGWA with the opportunity to gather information for its own benefit in terms of negotiating future collective bargaining agreements with the Company, rather than assisting in the development of the record and protecting the interests of customers, as claimed in its petition. NEGWA’s petition for intervention appears to fall short of the Commission’s criteria for intervention for the following reasons:

First, NEGWA has not cited to any statutory basis for its intervention and, in fact, there is no such statutory right conferred by Rhode Island law.

Second, NEGWA has not stated an interest that may be directly affected by the Commission’s decisions in this proceeding. In that regard, the “interests” that NEGWA

has outlined are limited to (1) the working conditions of NEGWA members resulting from the Commission's consideration of the Company's rate proposals, and (2) public interest considerations such as safety, reliability and customer service. Neither of these interests provided an adequate basis for intervention.

As an initial matter, the Commission's decision on the total revenue adjustment granted to the Company in this proceeding or its decision to adopt, reject or modify the Company's proposed ARP will have no direct impact on NEGWA's members. NEGWA members will in no way be bound by any decision of the Commission in this proceeding on these issues. NEGWA's members work for the Company pursuant to collective bargaining agreements negotiated with the Company under the mandates and requirements of federal law. The Company is bound to those agreements and nothing in this proceeding will have an impact on or change any provision of those agreements. In fact, no action undertaken by the Commission in this proceeding could or would affect the existing collective bargaining agreements, or the "working conditions" of employees covered by those agreements. Therefore, NEGWA members cannot be directly affected by the outcome of this proceeding.

To that end, it should be noted that matters arising under the existing agreements or negotiations of future agreements are within the exclusive jurisdiction of the National Labor Relations Board. In fact, this area of law has been federally preempted through the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157 and 158. NLRA § 8 (a)(5) imposes a duty on employers to bargain in good faith with their employees' collective bargaining representatives regarding material changes to their terms of conditions of employment. Labor organizations are similarly required to bargain in good faith

pursuant to NLRA § 8 (b)(3). The obligation to adhere to, and honor, the terms of existing labor contracts are contained in NLRA §§ 8(a)(5) and (d). Thus, even if the Commission were to find a factual basis for considering NEGWA's "working conditions" or other issues of interest to NEGWA members, the Commission does not have the authority to order any relief that may affect the rights under the collective bargaining agreement. See, Wisconsin Department of Industry, Labor and Human Resources v. Gould, 475 U.S. 282 (1986); San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

Moreover, any changes to wages, hours or working conditions of NEGWA members as a result of rate changes or ARP implementation are subject to the discretion of management. It is well established that the ability and authority of utility management to negotiate terms of employment with their employees falls squarely within management prerogative. See, Providence Water Supply Board v. PUC, 708 A.2d 537, 543 (R.I. 1998) ("broad regulatory powers of the [Public Utility Commission] ordinarily do not include authority to dictate managerial policy"). Accordingly, National Grid respectfully submits that NEGWA's interest in participating in the development of the evidentiary record on the Company's proposed rate changes and ARP because of an alleged impact on the working conditions of NEGWA members is not an interest that can be properly addressed by the Commission in this proceeding.

Alternatively, NEGWA claims that it has an interest in "ensuring" that the safety and reliability of the system is not degraded for Rhode Island consumers because of the changes to the Company's rates or the implementation of the ARP, and that "customer service" is maintained. However, the interest of NEGWA's members is a private interest

not a public interest. In this docket, the interests of National Grid customers and the general public are well protected by the Rhode Island Division of Public Utilities and Carriers (the “Division”) and the Rhode Island Attorney General. NEGWA’s members are neither charged with, nor properly responsible for the public interest in having a safe and reliable system or adequate service levels for customers. Thus, to the extent that there is an issue in this docket regarding the public interest of safety, reliability and customer service, the interests of consumers and the general public are adequately and fairly represented by the Division and the Attorney General, not NEGWA members. See, Joint Petition for Purchase and Sale of Assets By The Narragansett Electric Company and the Southern Union Company, Order No. 18591 (May 4, 2006) (denying intervention of United Steel Workers, Local 13421).

Lastly, NEGWA appears to fall short of satisfying the third criteria set forth in Commission Rule 1.13(b), which requires that the petitioner for intervention demonstrate “any other interest of such a nature that movant’s participation may be in the public interest.” In that regard, NEGWA claims that its intervention will “ensure” the Commission’s investigation “has access to relevant information on the impact that the proposal, as well as any oversight mechanisms,” will have on NEGWA’s membership, as well as evidence concerning National Grid’s current distribution safety and reliability and customer service functions (NEGWA Petition at 3). As stated above, the impact on NEGWA’s membership is not a public interest. Moreover, the impact of allowing NEGWA’s participation as a full party will be to increase the administrative complexity and cost of the proceeding, not for the benefit of ratepayers or the general public, but for the benefit of NEGWA’s private interests in future collective bargaining activities. This

is not generally a proper basis for intervention, nor is it fair to the Company or other participants in the proceeding who will be affected by the administrative burdens. If, as stated by NEGWA, its interest is in protecting the public interest and in simply assisting the Commission in doing its job, this is an interest that is adequately represented in this docket by the Division and the Attorney General and does not necessarily warrant or justify the additional assistance of NEGWA and its members.

In short, NEGWA members have no interest that will be directly, or even indirectly, affected by the outcome of this proceeding. In any event, to the extent that there is any impact on NEGWA members in the future that may result from the Commission's decisions in this docket, it is both within the discretion of management and subject to pervasive federal regulation. Accordingly, these factors lead the Company to conclude that NEGWA's petition has not met the Commission's standard for intervention, especially given the Commission's findings in previous cases that the Rhode Island Supreme Court requires cautious and diligent application of the criteria for intervention to protect the interests of fairness and administrative efficiency. See, Narragansett Electric Company, Docket No. 3739, Order No. 18794, at 12. For these reasons, we believe the Commission should deny full intervenor status to NEGWA.

If, however, the Commission is inclined to grant intervention to NEGWA based on one or more of their claimed interests, the Company believes it would be imperative for the Commission to limit the scope of the intervention to only those issues which the Commission finds are legitimate for inquiry in a rate case of this kind. Absent such a limitation,, National Grid has serious concerns that NEGWA's intervention would provide a platform for NEGWA to gather information for its own use and benefit in

future collective bargaining agreements rather than assisting in the development of the evidentiary record relating to the merits of the Company's proposals. Thus, the Company respectfully requests that the Commission, in granting any intervention status, make it clear from the outset that the scope of NEGWA's intervention is limited in terms of the issues that may properly be the subject of discovery and cross-examination. Specifically, through the course of the proceeding, NEGWA should not be allowed to gather information that is not directly and reasonably related to the Company's specific proposals in this proceeding. In the alternative, the Commission could limit NEGWA's participation to limited participant status, which would provide NEGWA with the opportunity to monitor the proceeding and file written comments on the Company's proposal through the briefing process.

WHEREFORE, the Company respectfully requests that the Commission decline NEGWA's request for full intervenor status. Alternatively, if intervention is granted, the Company respectfully requests the Commission limit the scope of that participation as appropriate in the Commission's discretion.

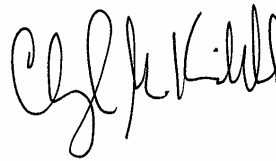
Respectfully submitted,

NATIONAL GRID

By its attorneys,



Thomas R. Teehan, Esq.
National Grid
280 Melrose Street
Providence, RI 02907
(401) 784-7667



Cheryl M. Kimball, Esq. (RI #6458)
Keegan Werlin LLP
265 Franklin Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: June 6, 2008