STATE OF RHODE ISLAND PROVIDENCE PLANTATIONS
BEFORE THE
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID GAS APPLICATION TO IMPLEMENT NEW RATES **DOCKET NO. 3943**

REPLY BRIEF OF THE RHODE ISLAND OFFICE OF ENERGY RESOURCES

Rhode Island Department of Energy Resources
By Its Attorney,

John R. McDermott
27 East Street, Unit 2
Providence, RI 02906

November 10, 2008

STATE OF RHODE ISLAND PROVIDENCE PLANTATIONS
BEFORE THE
PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID GAS APPLICATION TO IMPLEMENT NEW RATES **DOCKET NO. 3943**

REPLY BRIEF OF THE RHODE ISLAND OFFICE OF ENERGY RESOURCES

I. INTRODUCTION

In this matter, initial briefs were filed by National Grid ("NG"), the Division of Public Utilities and Carriers ("Division"), Attorney General Patrick Lynch ("AG"), Environment Northeast ("ENE"), the Conservation Law Foundation ("CLF"), the Energy Council of Rhode Island ("TEC-RI") and others. In the following reply brief, the Office of Energy Resources will supplement its original arguments on the issue of decoupling by addressing various points made in some of these initial briefs, in the hope that a vigorous discussion among the parties will provide the Commission with a sound evidentiary and theoretical basis for its decision.

As noted in its initial brief, OER intervened in this proceeding to address this decoupling issue, because of its importance to Rhode Island's energy future. After reviewing the initial briefs in this case, and for the reasons set forth hereinafter, OER remains convinced that the record and the arguments of the parties do not provide either a logical or a legal basis for adopting the proposed decoupling adjustment at this time.

II. ARGUMENT

On the record in this case, the adoption of NG's proposal would be a radical departure from long-established principles of public utility regulation in Rhode Island. Moreover, it would embed in this state's regulatory framework notions ranging from the merely unproven to the clearly wrong.

A. National Grid's claimed disincentive does not justify its decoupling proposal.

In its initial brief, NG argues that, as a result of an anticipated decrease in the volume of gas delivered as a result of NG's execution of the Legislatively and Commission mandated energy efficiency plan, it would face a "…strong financial (dis)incentive …to pursue customer-level conservation opportunities in a manner that is aggressive, innovative and with full engagement of the Company's internal resources,…". NG Brief, p.62. The Company also felt that it could not "put its full enterprise resources to work on behalf or its customers in seeking ways to reduce energy usage" if it could not eliminate this disincentive. Id. The Company further stated that:

> The record also shows that disincentives have a significant influence on utility policies and that utilities are key players in promoting conservation. The implementation of decoupling will encourage the Company to use its full expertise and resources to reduce customer usage.

NG Brief, p.71. Finally, NG offers that, if decoupling is not approved, it "…will conduct a state-mandated program to the best of its ability, (but) it has a disincentive to go beyond the confines of that program to promote conservation on a creative or aggressive basis." NG Brief, p.72. These and other similar statements, e.g. on pp. 72-73 of NG's brief,

provide no empirical evidence to define the weight and nature of the claimed disincentive. Moreover, the formulation of the scope of the alleged loss to the ratepayer seems to change with every page. Clearly, even NG does not really know what level of harm it is that this Commission and ratepayers should fear. It is simply impossible to determine whether or not the disease is, or is not, worse than the cure.

ENE and CLF support NG's claims of the pernicious effect of this disincentive, with ENE describing the disincentive as "powerful" and "counterproductive – and costly". ENE Brief, pp. 1,20. But they, likewise, do not offer any empirical evidence to define or support their claims.

NG presently receives an incentive for its gas DSM program. In its Brief, however, NG indicates that this incentive is ineffective to properly motivate NG to promote the gas DSM program in the face of the claimed disincentive proposed to be cured by decoupling. As NG concedes: "Also, the incentive the Company receives for its gas DSM program is relatively small in terms of removing the Company's concern about revenues on a system-wide basis." NG Brief, p. 72.

As OER stated in its Initial Brief, OER believes that there is no substantive evidence in the record of any such actual effects and that the claimed disincentive is entirely theoretical, given that the program is legally required and that funding for the program is provided by the ratepayers.[1] Moreover, OER believes that NG has the management team, skills and resources to properly motivate the appropriate NG personnel so as to overcome any such disincentive.

[1] A number of the arguments claiming the existence of the ill affects of the disincentive were based on the assumption that the decision to commit resources was a discretionary one to be made by NG's management, which might not do so if it believed a revenue reduction would result. Of course, NG's management has no such discretion where the funds are supplied by ratepayers.

However, as ENE notes in its Brief, NG has wide discretion to propose specific programs and spending allocations among such programs. ENE Br. P. 13. Given the apparent strength of NG's convictions about its inability to overcome this disincentive, and the concerns of others such as ENE and CLF about NG's ability to overcome this obstacle, the Commission may have to consider whether or not NG is able to give these energy efficiency programs the level of effort and support that these important initiatives deserve. Indeed, Commission Staff raised this very concern during the hearing.

NG also bases its need for decoupling on reductions in volumes in prior years. NG Brief, p. 62. But those reductions, plus an allowance that NG requested for future reductions, are already reflected in the volumes upon which rates are to be set. Moreover, natural gas is in a favorable market position vis-à-vis other heating fuels to increase sales volumes, to be consumed at an energy efficient level, of course.

Moreover, NG, ENE and CLF frequently argue as though only NG controlled ratepayer demand for energy efficiency and reduced volumes. In fact, particularly in these troubled times, it is the ratepayers who will be actively seeking energy efficiency rather than NG persuading them to pursue it. This will further dilute or eliminate the effect of any "disincentive" to NG's promotion of energy efficiency.

In conclusion, the exaggerated level of anxiety about this "disincentive" is like nothing seen since the days of concern about the XYY Syndrome. In that case, boys with an extra Y chromosome, or an XYY chromosome, were once believed to be doomed to lives of aggressive or violent criminal behavior. Subsequently, however, this belief was refuted. NG controls its destiny.

B. The Company's request for guaranteed revenues is contrary to long-standing precedent.

It is important to keep in mind the relationship between ratemaking, rates and revenues. Certain historical and projected costs and revenues are used in the ratemaking process to develop a rate for a particular service. Once the rate becomes final, the particular costs and projections upon which it is based have no further identity as individual components of that rate. They have no further relevance to the rates customers pay. Instead, that rate remains final until it is superseded by a new rate through the ratemaking process. This is why, for example, public utility commissions generally disfavor single issue rate cases, i.e. where a rate change is proposed based on only one component, because it is impossible to determine the reasonableness and justice of a rate where only one of the thousands of underlying assumptions is proposed to be changed, as opposed to reviewing a new snapshot of a public utility's overall costs and revenues.

Also, such rates are the lawful tariffs that a public utility is authorized to charge. Whereas, revenues are the monies actually collected by the public utility resulting from its filed rates and the actual volumes provided to ratepayers.

TEC-RI and the Division estimate that the proposed decoupling adjustment, during the past four year period would have guaranteed NG approximately $34 million. TEC-RI Brief, p. 13; Division Brief, p. 50. This is a substantial wealth transfer to take place without Commission review for possible offsetting savings.

NG may argue that the Commission can always initiate a rate case. While this is technically correct, the burden of proof in such a case shifts from the company to the

Commission. This can be a significant disadvantage, given the relative disparity of the parties' resources.

NG's Mr, Stavroppolous testified that NG was not guaranteed a return on its investment, but only an opportunity to earn a fair return on its investment. TR. 10/22/08, p. 118, ll. 8-14. . ENE also seeks a way to avoid calling the revenues to be obtained under decoupling "guaranteed" revenues. ENE Brief, pp. 16-17. But NG now concedes that the proposed decoupling adjustment <u>will</u> guarantee some revenues. NG Brief, p. 64. A guarantee of revenues is the same as a guaranteed return, at least to the extent of the guaranteed revenues.

NG says at one point that its main reason for seeking decoupling is not, in any event, earnings but, rather, to do a better job than it otherwise would on pursuing energy efficiency. As the Company states:

> The Company's main intention with decoupling, which is not to maintain earnings, but rather to break the link between sales and recovery of the approved revenue requirement so that the Company is empowered to pursue energy conservation as a business matter.

NG Brief, p. 69. This is a surprising statement, given that it is the Company, not this Commission, that controls the level of effort the Company actually makes on energy efficiency.

<u>C. Other Comments</u>

It is worth observing that no customers support this decoupling proposal. The Commercial and Industrial customers and the low-income customers have convinced NG to exclude them from decoupling, on what appear to be reasonable grounds. The remaining customers, represented by the Division, do not support this proposal. If these

customers really believed that removing this alleged disincentive was in their interest or in the public interest as NG claims, wouldn't at least some of them have supported NG's proposal?

Also, would decoupling send the right price signals to ratepayers? Ratepayers on the system next year would save only part of what they expected to save and would have to make up the share of customers who were no longer on the system.

NG argues that the financial community likes decoupling, meaning it sees reduced risk, but NG concludes that no adjustment to its return on equity is necessary to reflect the reduced risk. NG Brief, pp. 75-76, 78.

III. SUMMARY AND CONCLUSION

Based on all of the foregoing, OER requests that the Commission reject the proposed Decoupling adjustment. Should the Commission decide to approve the proposed Decoupling adjustment, OER requests that such approval only be granted on such terms and conditions and with such modifications as may be necessary to eliminate OER's concerns and objections regarding the adverse consequences to ratepayers and to the regulatory process that would result from Commission approval of the Decoupling adjustment as originally proposed.

The Office of Energy Resources
By its Attorney

//John R. McDermott//
John R. McDermott #1713
27 East Street, Unit 2
Providence, RI 02906
401-269-1198

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2008, I emailed a copy of this document to all parties on the service list for this docket providing email addresses. In addition, a hard copy of this document was sent by regular mail to all attorneys who appeared at the hearing and to any parties on the service list who have not provided email addresses.

//John R. McDermott//

Appendix A - Reply to Selected Proposed Findings of Fact

National Grid

2. There is no evidence, beyond its own self-serving statements, that NG is unable, as opposed to unwilling, "to take all reasonable business efforts to promote conservation by customers."
3. NG concedes that the financial community perceives decoupling as reducing risk, but NG also claims that there is no risk reduction to be reflected in its cost of equity.

Environment Northeast

6. Customers incentive will be reduced by any amounts to be paid to NG, including amounts owed by departing customers.
7. Sam as for 6.

11. Decoupling will tend to increase the interval between NG rate cases.

15. Decoupling would guarantee revenues for the company. These could be either reduced losses or increased profits.