

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY NATIONAL GRID :
FOR CHANGE OF GAS DISTRIBUTION :
RATES :

Docket No. 3943

**MEMORANDUM OF GEORGE WILEY CENTER RE
LEGALITY OF LOW-INCOME DISCOUNT**

Introduction

George Wiley Center (the Center) seconds the arguments presented in National Grid's (NG's) *Memorandum Regarding Legal Basis of Low-Income Discount Rate*. The Center emphasizes the following legal points:

- Under G.L. § 39-2-5, NG can “grant special rates” on its own initiative as to any “special class or classes of persons” other than those listed specifically in § 39-2-5(1)-(13), as long as the distinction appears in the Commission’s discretion to be “just and reasonable, or required in the interests of the public, and not unjustly discriminatory.”
- The Commission has authority to grant a discount at a level higher than that proposed by NG as long as there is competent evidence that the rate differential improves allocation of the cost of service or is otherwise relevant to rate design.

The Center will discuss each of these points below.

Discounts Initiated by NG

G.L. § 39-2-5 creates certain exceptions to the anti-discrimination provisions of § 39-2-2 to § 39-2-4. Sub-section (2) of § 39-2-5 affirmatively authorizes NG to initiate “special rates” for “special classes of persons”, even if those classes are “not otherwise referred to in this

section,” as long as “the same shall seem to the division just and reasonable, or required in the interests of the public, and not unjustly discriminatory.”¹

Several principles inhere in this language. First, NG has broad authority to propose special rates for special classes. The utility has exercised that authority in a number of ways in this docket: It has proposed discounts for customers converting from oil to gas; it has differentiated rates for firm and non-firm classes; and it has proposed a new low-income discount on customer and distribution charges.

Second, it grants broad discretion to the Commission to approve these special rates. Although the statute appears to grant this authority to “the division” and not to the Commission, the Rhode Island Supreme Court has upheld the Commission’s exercise of this discretion, given the current allocation of authority between the Division and the Commission. Thus, in *Violet v. Narragansett Electric Company*, 505 A.2d 1149, 1152 (R.I. 1986), the Court upheld a discount approved by the Commission under § 39-2-5(2), stating that: “We endorse *the commission’s* conclusion that the discount plan then before it was just and reasonable and in the public interest.” (emphasis supplied).

The statute’s use of the word “division” is the product of the hoary vintage of the subsection (2). At the time this sub-part of § 37-2-5 was first enacted, the Commission was not yet in existence. The Commission was not created until 1969. Prior to that time, the Division was

¹ G.L. § 39-2-5(2) provides in relevant part that the anti-discrimination provisions are subject to the following exception: “With the approval of the division any public utility may ... grant special rates [for service] ... to any special class or classes of persons, not otherwise referred to in this section, in case where the same shall seem to the division just and reasonable, *or* required in the interests of the public, *and* not unjustly discriminatory.” (emphasis supplied).

the rate-setting authority. *See Narragansett Electric v. Harsch*, 368 A.2d 1194, 1199 (R.I. 1977), citing P.L. 1969, ch. 240, § 1.² Now the Commission fills this role.

Third, the Commission's authority to approve "special rates" for "special classes of persons" is broad. The Commission may approve any special rate proposed by NG which it deems to be either "just and reasonable" or "required in the interests of the public", as long as it is "not unjustly discriminatory." Thus, the rate can be "discriminatory" as long as the discrimination is "not unjust." And the Commission is expressly directed to consider the "interests of the public" when deciding whether to approve special rates. *E.g., Town of Narragansett v. Malachowski*, 621 A.2d 190, 196 (R.I. 1993)(among the factors the Commission should consider when deciding whether to approve a preferred rate is the value of the service to the community and the public benefit). The Commission need not be persuaded that a rate discount "will succeed" in achieving a public interest goal; it is sufficient that it concludes that it "may succeed." *Violet, supra* at 1152 (emphasis original).

Finally, there is nothing in sub-part (13) which limits the Commission's authority to approve a low-income discount here. Sub-part 13 of § 39-2-5 provides that a gas or electric company may provide low-income discounts under the Affordability Act § 42-141-5(d), and that "nothing herein shall prohibit the continuation of any low-income discounts approved by the commission prior to January 1, 2006, and in effect as of that date."

This sub-section is meaningless now that the Affordability Act has been repealed. Its final sentence cannot in any case be read as an implicit rejection of any low-income discounts proposed after 2006. Such a reading would work an implicit repeal of sub-part (2) of the same

² The Division has in any case interposed no objection to the proposed low-income discount.

statute, which unequivocally authorizes special rates “not otherwise referred to in this section” when such rates serve the public interest. Implicit repeals are never favored. *Such v. Rhode Island*, 950 A.2d 1150, 1156 (R.I. 2008). The rules of statutory construction mandate to the contrary that these provisions – particularly two provisions in the same statute – must be read in tandem: The Commission has discretion to approve proposed discounts under sub-part (2), and NG may continue to provide low-income discounts approved prior to 2006 under sub-part (13).

Here, the low-income discount has been initiated by NG under sub-part (2). Competent evidence has been presented that it serves the public interest and is not unjustly discriminatory:

- Due to extreme economic stress, low-income customers are different from other customers (*see Exhibits WC-2, WC-2 and attached appendices*);
- The impact on other residential and small and medium C & I customers is negligible (\$2.21 per year, \$3.05 per year and \$26.28 per year respectively)(*see Exhibit WC-3 at Data Request 1-8*);
- Large users represented by TEC-RI have interposed no objection to this discount;
- Discounts like these, passed on to other customers, are virtually universal among NG subsidiaries in other states, indicating that both NG and regulatory bodies in these states agree that such discounts are in the public interest (*see Exhibit WC-1 at pp. 6-7, citing Exhibit WC-1 at Data Request 1-1 and 1-2*);
- NG already provides a discount to its electric customers, initiated in 1978, which was approved by the Commission under this same statute (*see Exhibit WC-3 at Data Request 1-4*);

- The Commission also approved low-income rate assistance to customers of predecessor gas companies in 1997 and 1999 under this same statute (*see Exhibit WC-3 at Data Request 1-5*);
- To the extent that the discount helps low-income customers retain service, it reduces the cost of termination and restoration (totaling \$121 together) which must be passed on to other customers (*see Exhibit WC-4 at Data Request 2-3*);
- To the extent that the discount helps low-income keep current with their bills, it reduces uncollectible debt (*see Testimony of Bruce R. Oliver at 71-72*);
- The discount would help prevent society-wide costs of utility insecurity (hospital bills, lost work time, lost teaching time, fires caused by unsafe heating sources). *See Exhibit WC-1 at p. 9; WC-2 at p. 1 and App. 4.*

For all of these reasons, the Center submits that the Commission has authority to approve the proposed low-income discount under § 39-2-5.

Higher Discount Authorized

Although the Commission's authority to approve a discount not initiated by NG is more limited³, that authority does exist in the circumstances of this case. The Supreme Court has stated that "[w]e have no doubt about the commission's power to formulate a rate design that may differ substantially from that presented by the utility." *Rhode Island Chamber of Commerce v. Burke*, 443 A.2d 1236, 1237 (R.I. 1982). The goal in every case is "'just and reasonable rates and charges.'" *Id.*, quoting § 39-1-1. The Commission may adopt a discount that has not been

³ *See, e.g., Rhode Island Consumers' Council v. Smith*, 111 R.I. 271, 301-302, 302 A.2d 757, 775 (1973)(reversing Commission decision to adopt a discount for the elderly on the ground that the discount was not initiated by the utility as required by § 39-2-5(5)).

proposed by the utility if that discount “improve[s] the allocation of the cost of service.”

Blackstone Valley Chamber of Commerce v. PUC, 121 R.I. 122, 127, 396 A.2d 102, 105 (R.I. 1979).

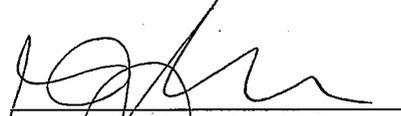
A more meaningful discount will improve the allocation of cost of service here. Low-income discounts have the capacity to reduce the costs borne by other customers, such as the high cost of termination and restoration, as well as the capacity to reduce uncollectible debt. Indeed, the greater the discount, the greater the potential reduction in these other costs.

It is therefore not surprising that the discount that NG affords to its Rhode Island electric customers is five times larger (50% of distribution charges). See *Exhibit WC-3* at Data Request 1-3. Nor is it surprising that the discounts that NG passes on to other customers in its other subsidiaries in other states are two (2) to four (4) times as great, even though these discounts are not required by statute. See *WC-1* at 6-7, citing *Exhibit WC-3* at Data Request 1-1 and 1-2.

The 10% discount proposed by NG is only \$54 per year on an average annual bill of \$1512. *Exhibit WC-3* at Data Request 1-7. When NG’s LIHEAP supplement is added, the total annual relief comes to \$154 per year. See *Exhibit WC-3* at Data Request 1-6. On a minimum wage salary of \$7.40 per hour (less than \$14,000 pre-tax per year), adding both the discount and the LIHEAP supplement together would still leave the average low-income household paying nearly 10% of their incomes for gas alone (\$1358. per year). A more substantial discount would be more likely to yield real benefits in the form of lower termination and restoration charges and lower uncollectible debt.

The Wiley Center asks that the Commission follow its own lead in setting the electric low-income discount, and that it adopt a low-income of 50% of customer and distribution charges.

Respectfully submitted,
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By its attorney,



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CERTIFICATE OF SERVICE

I certify that I sent this document to the service list by email on September 9, 2008.

