

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

IN RE: NARRAGANSETT BAY COMMISSION :
GENERAL RATE FILING : **DOCKET NO. 4026**

**POST-HEARING BRIEF OF THE DIVISION OF PUBLIC
UTILITIES AND CARRIERS**

During the hearing in the above-entitled matter that that occurred on June 9, 2009, the Narragansett Bay Commission (“NBC”) submitted NBC Exhibit 3 which provided a summary of the parties’ respective positions regarding NBC’s revenue requirement as of the date of the hearing. NBC agreed to the adjustments proposed by the Division of Public of Utilities and Carriers (“Division”) relating to Personnel Expenses (\$213,874), Health Benefits (\$111,138) and Electricity Costs (\$151,271).¹ The only outstanding contested issue in this matter is the Division’s proposed adjustment (\$377,776) to NBC’s Operating Reserve. Consistent with the Commission’s decision in two previous rate cases, the Division calculated NBC’s Operating Reserve at 1% of total expenses, excluding debt service expense and personnel costs. In Re: NBC Application for General Rate Relief, Docket No. 3979, Order No. 19062 at 33-35; In Re: NBC General Rate Filing, Docket No. 3905, Order No. 19380 at 16-17. See also Direct Testimony of Lafayette K. Morgan at 10. No factual or legal basis exists for altering the calculation of the Operating Reserve, 6/9/2009 Tr. at 19-20 (where NBC’s expert consultant concurs that the Division’s calculation of NBC’s Operating Reserve in the pending matter is consistent with the Commission’s calculation of that reserve in Docket No. 3905, Order

¹ The Division agrees with NBC’s proposal to convert customers from quarterly to monthly billing. Catlin Direct Testimony at 5. NBC agrees with the Division’s proposal to recover the pending rate increase through an increase in the dwelling unit and meter service charges. Edge Rebuttal Testimony at 5.

No. 19380 and Docket No. 3979, Order No. 19062), and the policy underpinning the Commission's adopted methodology is even more applicable today than it was in Docket No. 3979, when the Commission did not permit funding of a Revenue Stability Fund. The testimony at the June 9, 2009 hearing substantiates this conclusion:

THE CHAIRMAN: Can you tell me what it is about NBC which leads you to recommend an operating reserve of only one percent where you've recommended a higher operating reserve?

MR. CATLIN: In this case we've simply continued to accept the Commission's decision in the last several dockets . . . I would point out that the Division agreed in the last case and the Commission adopted establishing an operating reserve for revenue stability fund that none of the other water utilities, the municipal utilities, which all happen to be water that I'm familiar with in Rhode Island, have,...

6/9/2009 Tr. at 47-49.

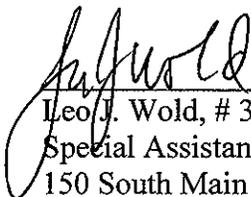
Believing that the Commissioners (Chairman Germani and Commissioner Bray), in the pending docket, could possibly reach an impasse concerning the manner of calculating NBC's Operating Reserve, Chairman Germani, at hearing, directed the parties to brief the practical effect that such conflicting rulings might have on NBC's requested rates. 6/9/2009 Tr. at 35. In Rhode Island, the law is clear: a tie vote results in a denial of the relief sought. Richard v. Zoning Bd. of Review, 47 R.I. 102 (1925) (superceded on the issue of what constitutes a quorum but still good law as to effect of a tie vote); Coventry Fire District v. Rhode Island State Labor Relations Bd., 2005 WL 2883170 (R.I. Super. Ct. 2005) (tie votes results in denial of relief sought). Thus, if one Commissioner were to vote to continue to apply the methodology approved by the Commission in Order Nos. 19380 and 19062 and the other Commissioner were to vote to give NBC a greater Operating Reserve (*e.g.*, 1.5% of all operating expenses, excluding

debt service) as requested by NBC in this case, the effect of such impasse would be to deny NBC's request for an Operating Reserve greater than 1% of operating expenses, excluding debt service and personnel services costs. The Operating Reserve, then, would be calculated in a manner that is consistent with current Commission practice and advocated by the Division in the pending matter.

For the foregoing reasons, the Commission should adopt position of the Division as reflected its Direct and Surrebuttal Testimonies.

Respectfully submitted,

DIVISION OF PUBLIC UTILITIES
AND CARRIERS,
By its attorneys,



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CERTIFICATE OF SERVICE

I certify that a copy of the within document was forwarded by e-mail to the Service List in Docket No. 4026 on the 25th day of June, 2009.