

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: NARRAGANSETT ELECTRIC --
APPLICATION TO IMPLEMENT NEW
RATES

Docket No. 4065

POST-HEARING MEMORANDUM OF LAW
OF CONSERVATION LAW FOUNDATION

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INTRODUCTION

Conservation Law Foundation (CLF) respectfully submits its post-hearing Memorandum. Herein, CLF addresses one issue only: National Grid's (Grid) proposal for revenue decoupling (decoupling). CLF takes no position on the other issues presented in this docket, including Grid's proposed capital tracker.

CLF supports Grid's decoupling proposal in this Docket. The record evidence in this case provides multiple public-policy reasons why the Public Utilities Commission (PUC or the Commission) should approve decoupling. This, combined with the absence of evidence in support of arguments against decoupling, should be dispositive.

Grid's proposed decoupling mechanism presents an issue of public policy that is committed to the sound discretion of the PUC. R. I. Gen. Laws §§ 39-1-1(b); 39-1-11.

During the course of this proceeding, public-policy arguments in favor of decoupling were made by several parties and witnesses: Grid and its expert witness, Dr. Susan F. Tierney; CLF and its expert witness, Shanna Cleveland, Esq.; and the Energy Efficiency and Resource Management Council (EERMC) and its expert witness, Dr. Mark Lowry.

Public-policy arguments against decoupling were made by the Division of Public Utilities and Carriers (the Division) and its expert witness, Mr. Bruce Oliver; and by The Energy Council of Rhode Island (TEC-RI), and its expert witness, Mr. John Farley.

It is the task of the Commission to consider and weigh the competing public-policy arguments in order to formulate sound public policy in the matter of whether or

not to adopt decoupling. Providence Gas Co. v. Burke, 119 R.I. 487, 497, 380 A.2d 1334, 1339 (1977).

In Part I of this Memorandum, CLF examines and discusses the extensive evidence in the record of this Docket that supports adoption of Grid's decoupling proposal. That evidence relies, in significant part, on the prior experience of 28 gas utilities and 12 electric utilities in 17 states that have already adopted decoupling mechanisms.

In Part II of this Memorandum, CLF discusses three major ways in which this proposal differs from the decoupling proposal rejected by the Commission in Docket 3943.

In Part III of this Memorandum, CLF examines and discusses the policy arguments against decoupling, and demonstrates by reference to the record that these arguments are largely unsupported by record evidence in this Docket.

CLF is not asserting that the absence of record evidence to support the anti-decoupling arguments raised in this case is alone sufficient for the Commission to approve Grid's decoupling proposal. Instead, CLF is asserting that the persuasiveness of the extensive evidence in the record supporting decoupling, combined with the absence of evidence supporting the anti-decoupling arguments presented, supports approval of Grid's decoupling proposal.

I. THE RECORD EVIDENCE SUPPORTS DECOUPLING AS SOUND PUBLIC POLICY

This first section of CLF's Memorandum respectfully directs the Commission to the record evidence in this case that supports the following propositions: (1) Energy efficiency reflects the public policy of Rhode Island as announced by the General Assembly; (2) Energy efficiency has been and is strongly supported by the PUC; (3) Energy efficiency provides multiple benefits for all rate payers; (4) Decoupling is a critically important tool for achieving energy efficiency; (5) The reason that decoupling is an important tool for achieving energy efficiency is that it properly aligns incentives; (6) There is a high correlation between states that have decoupled and states that have achieved the most energy efficiency; (7) Energy efficiency and decoupling are connected in important ways to the larger issues of climate change; and (8) There is extensive evidence in the record in the form of multiple, detailed studies of the jurisdictions that have decoupled; the evidence shows that: (a) rate impacts are miniscule; and (b) rate impacts go both ways.

(1) Energy efficiency reflects the public policy of Rhode Island as announced by the General Assembly.

In making its public-policy decision about decoupling, the Commission should and, respectfully, must be guided by prior public-policy pronouncements of the Rhode Island General Assembly. In the Comprehensive Energy Conservation and Affordability Act of 2006 (2006 Comprehensive Energy Statute), the General Assembly expressly announced that Rhode Island public policy is to achieve all cost-effective energy

conservation and energy efficiency. Specifically, the General Assembly stated that “energy conservation and energy efficiency have enormous, untapped potential for controlling energy costs and mitigating the effects of the energy crisis for Rhode Island residents and the Rhode Island economy.” R. I. Gen. Laws § 42-140.1-2(b).

Moreover, just the sort of decoupling which is before the PUC in this Docket was expressly contemplated by the General Assembly in the 2006 Comprehensive Energy Statute. In what now appears at R. I. Gen. Laws § 39-1-27.7(d), the General Assembly said that if requiring Grid to purchase energy conservation and energy efficiency caused an under-recovery for Grid, then the PUC “may establish a mandatory rate adjustment clause . . . in order to provide for full recovery” In other words, the decoupling mechanism in this Docket comes to the PUC at the instruction of the General Assembly, and in aid of what the General Assembly has announced is the public policy of Rhode Island -- support of energy conservation and efficiency. September 15 Pre-Filed Testimony of Cleveland, page 20, lines 3-20.

There is no evidence in the record of this Docket that contradicts CLF’s assertion that the decoupling mechanism proposed by Grid in this Docket is fully consistent with the General Assembly’s public-policy pronouncement regarding establishment of a “mandatory rate adjustment clause . . . in order to provide full recovery.” How could there be? No such evidence exists -- and no such evidence was introduced in this case by any witness or any party.

(2) Energy efficiency has been and is strongly supported by the PUC.

Members of this Commission are well aware of the importance of achieving energy efficiency. At an Open Meeting of this Commission on December 23, 2009,¹ Chairman Germani stated, on the record:

[I]f there's an area in which everybody should agree or can agree on is the most effective way of reducing consumption is efficiency. It's certainly less expensive than any other renewable, and therefore, I think we should encourage these [efficiency] programs.

Transcript of December 23, 2009 PUC Open Meeting, page 19, lines 7-12.

At the same hearing, Commissioner Roberti stated, on the record: "I do think these [efficiency] programs have brought huge value to Rhode Island." *Id.*, page 20, lines 15-16.

(3) Energy efficiency provides multiple benefits for all rate payers.

As the record in this docket shows (and as this Commission is well aware), energy efficiency has multiple direct benefits to all ratepayers. One such benefit is reduced energy costs as a result of reduced overall energy demand and, especially, reduced peak load demand. September 15 Pre-Filed Testimony of Cleveland, page 4, lines 10-14 ("[P]eak electricity generating plants tend to produce the most expensive electricity"); June 1 Pre-Filed Testimony of Tierney, page 24, lines 15-16.

¹ The December 23, 2009 Open Meeting was held in Dockets 4050, 4069, 4041, 4111, *et al.* As such, the comments of Commissioners at that Open Meeting are not in the record of this Docket. Nevertheless, under PUC Rule of Practice and Procedure 1.22(c), it is entirely proper for the Commission to take administrative notice of these comments as fairly and accurately reflecting the views of the Commissioners who spoke on the record.

Other direct benefits to the entire public from increased energy efficiency include improved productivity, improved energy security, and reduced congestion on the electric transmission and distribution systems. June 1 Pre-Filed Testimony of Tierney, page 4, lines 11-21.

(4) Decoupling is a critically important tool for achieving energy efficiency.

Decoupling is a critically important tool for realizing energy efficiency. June 1 Pre-Filed Testimony of Tierney, page 4, lines 7-9 (“[R]evenue decoupling has become a key ingredient of rate structure for many utilities that are aggressively pursuing increased energy efficiency”); September 15 Pre-Filed Testimony of Cleveland, page 6, lines 16-17 (“[D]ecoupling is a necessary (and even an important) condition for increased energy efficiency”); September 15 Pre-Filed Testimony of Lowry, page 5, lines 10-13 (Decoupling is “key” to achieving efficiency); “The Role of Decoupling Where Energy Efficiency Is Required By Law,” Regulatory Assistance Project Newsletter, September 2009, attached to October 6, 2009 Rebuttal Testimony of Dr. Susan F. Tierney, as Schedule NG-SFT-R-2, at page 5 of 8 of Exhibit, column 2 (“Decoupling. . . is a key policy tool” for achieving efficiency). See also September 15 Pre-Filed Testimony of Lowry, Exhibit B, “Revenue Decoupling: Standards and Criteria, June 30, 2008 Report to Minnesota PUC by The Regulatory Assistance Project, at page 4 of Exhibit (“[D]ecoupling is a regulatory tool designed to separate a utility’s revenue from changes in energy sales. The purpose of decoupling is to reduce a utility’s disincentive to

promote energy efficiency.” (Quoting, in part, Minnesota Statute on decoupling; internal quotation marks omitted; emphasis supplied)).

(5) The reason that decoupling is an important tool for achieving energy efficiency is that it properly aligns incentives.

There is extensive evidence in the record explaining in some detail the precise nature of the connection between efficiency and decoupling. June 1 Pre-Filed Testimony of Tierney, page 31, line 18 - page 32, line 18; September 15 Pre-Filed Testimony of Cleveland, page 3, line 16 - page 6, line 6.² That connection is as important as it is simple.

Traditional utility regulation creates a disincentive for utilities to promote energy efficiency and conservation or to support policies that advance efficiency and conservation because any reduction in sales inevitably causes a reduction in revenue and profits for the utility. This puts the utility on the horns of an untenable dilemma: the utility is bound by its fiduciary duty to shareholders to maximize commodity through-put at the same time that it is bound by legislation and sound public policy to reduce commodity throughput. September 15 Pre-Filed Testimony of Cleveland, page 9, lines 9-13 (“The utility cannot simultaneously be legally obligated both to reduce and to increase electricity consumption. I am reminded of the pig, Wilbur, in E. B. White’s famous children’s book, Charlotte’s Web, who complained that he could not simultaneously run uphill while he was running downhill.”) Decoupling eliminates this problem by aligning

² Importantly, this issue was also addressed by the Division’s expert witness, Bruce Oliver. For a discussion of Mr. Oliver’s views on this central issue, see infra, at 18.

the utility's pecuniary interest with the public interest in fostering efficiency and conservation.

The nature of this connection between energy efficiency and decoupling appears repeatedly in the record evidence in this case. For example:

Mounting evidence that efficiency is the least-cost, least-risk energy resource is leading to increasingly aggressive savings requirements. . . . However, neither requirements in law nor third-party administration of programs negate efficiency's fundamental conflict with the traditional utility business model, where earnings fall disproportionately with declining energy sales. Decoupling, which eliminates the conflict, is therefore a key policy tool

"The Role of Decoupling Where Energy Efficiency Is Required By Law," Regulatory Assistance Project Newsletter, September 2009, attached to October 6, 2009 Rebuttal Testimony of Dr. Susan F. Tierney, as Schedule NG-SFT-R-2, at page 5 of 8, column 2 (emphasis supplied).

(6) There is a high correlation between states that have decoupled and states that have achieved the most energy efficiency.

Nationwide, there is a very high correlation between states that are ranked highest in achievement of energy efficiency (such as Massachusetts, California, Oregon, and Vermont) and states that have instituted decoupling. December 2 Hearing Transcript (Cleveland Testimony), page 139, line 17 - page 140, line 22.

(7) Energy efficiency and decoupling are connected in important ways to the larger issues of climate change.

Energy efficiency also has major environmental implications and benefits as well. As Ms. Cleveland stated in her testimony:

In climate change, the world is facing an unprecedented global disaster. If unchecked, climate change will cause sea level rise (flooding many of the most densely populated areas on earth, including significant portions of Rhode Island); droughts (with concomitant famines and social upheavals); and the extinction of thousands of species. The 2007 report of the Intergovernmental Panel on Climate Change (IPCC) makes clear that climate change is real; it is anthropogenic, and it is accelerating. The IPCC was the co-recipient of the Nobel Peace Prize for its “efforts to build up and disseminate greater knowledge about man-made [sic] climate change, and to lay the foundations for the measures that are needed to counteract such change.”

In the short-term, energy efficiency will be the single most effective way that human society will be able to achieve reductions in the greenhouse gas emissions that cause climate change. Although in the longer term, many other things will also be necessary -- including development of new, non-polluting, renewable-energy sources -- in the next few years, achieving greater energy efficiency is the most important single tool we can use to help slow climate change. And implementing decoupling removes a major barrier to maximizing energy efficiency.

The relevance of the global climate change crisis to this Docket should not go unremarked. The Commission can, in this Docket, take a step that, while small, is nevertheless truly significant in addressing climate change. The Commission can approve electricity decoupling in this Docket, thereby removing an important disincentive to achieving efficiency.

September 15 Pre-Filed Testimony of Cleveland, page 18, line 18 - page 19, line 17.

The importance of the IPCC Report on Climate Change was emphasized during the hearing when Commissioner Roberti asked CLF to put the Report into the record.

December 2 Hearing Transcript (Cleveland Testimony), page 152, lines 3-16. (On

December 16, CLF complied with Commissioner Roberti’s request.)

The above-cited testimony in the record concerning the relationship of the narrower public-policy issue in this Docket of decoupling to the wider problem of climate change was unchallenged and uncontested by any party in this docket. Neither of the two witnesses that opposed decoupling (Messrs. Oliver and Farley) addressed this issue in

any way. In a civil action in a state or Federal court, credible testimony, which is, as here, uncontradicted, unchallenged, and unimpeached, must be taken as true and would be dispositive of the outcome of the case. Beaupre v. Dynachem Corp., 324 A.2d 621, 623 (R.I. 1974) (collecting cases). Here, where the matter before the Commission is an issue of public policy and not a question of fact, such unchallenged and undisputed testimony may not be dispositive, but must surely carry special weight.

(8) There is extensive evidence in the record in the form of multiple, detailed studies of the jurisdictions that have decoupled; the evidence shows that: (a) rate impacts are miniscule; and (b) rate impacts go both ways.

The witnesses in favor of decoupling have significantly aided the Commission by providing detailed information on the experience from other jurisdictions that have decoupled.

Dr. Tierney's Schedule NG-SFT-3 (attached to Dr. Tierney's June 1 Pre-Filed Testimony) is a chart compiling data from 19 other states, all of which have decoupled electricity prices in one way or another. Column 1 of this Schedule lists the states in alphabetical order for ease of reference (starting with California, Colorado, Connecticut, and running through Vermont, Washington, and Wisconsin). Column 2 provides the date that electricity decoupling went into effect in that state. Column 3 references the utility commission order or state statute that effected electricity decoupling in that state. Column 4 provides a summary, in narrative form, of the precise contours of electricity decoupling in that state. Column 5 names the utilities affected. The conclusion from Dr.

Tierney's Schedule NG-SFT-3 is inescapable: there is nothing new, novel, or untested about decoupling.

Ms. Cleveland's Exhibit A (attached to Ms. Cleveland's September 15 Pre-Filed Testimony) is a 35-page study entitled "Rate Impacts and Key Design Elements of Gas and Electric Utility Decoupling: A Comprehensive Review," by Pamela G. Lesh (the Lesh Report). This report was based on a survey of 28 natural gas utilities and 12 electric utilities in 17 states that have operative decoupling mechanisms. September 15 Pre-Filed Testimony of Cleveland, at page 17, line 21 - page 17, line 1.³ Ms. Cleveland cited two specific findings in the Lesh Report in her testimony. First, "Decoupling adjustments tend to be small, even miniscule. Compared to total residential retail rates, including gas commodity and variable electricity costs, decoupling adjustments have been most often under two percent, positive or negative, with the majority under 1 percent."⁴ *Id.*, at page 16, lines 18-21.⁵ Second, "Decoupling adjustments go both ways, providing both refunds and surcharges to customers . . . Regardless of the particular combination of causes for any given adjustment, no pattern of either rate increases or decreases emerges." *Id.*, at page 17, line 17 - page 18, line 4.

³ The Lesh Report is in evidence a second time, as Dr. Tierney's Schedule NG-SFT-R-3 (attached to Dr. Tierney's October 6, 2009 rebuttal testimony).

⁴ Conceptually it is easy to understand why decoupling adjustments are always small -- and this, too, is reflected in record evidence. Decoupling applies only to the distribution part of a ratepayer's bill, which is only about a quarter of the bill. The remaining three-quarters of a ratepayer's bill, the commodity portion, is not directly affected by decoupling. September 15 Pre-Filed Testimony of Cleveland, at page 17, lines 5-7.

⁵ In fact, upon cross-examination, Dr. Tierney testified that among electricity utilities that have decoupled there were no outliers whatsoever where the annual price adjustments -- upward or downward -- had exceeded 3%. November 4 Transcript, page 91, line 7 - page 92, line 22.

Dr. Lowry's Exhibit B is a report by the Regulatory Assistance Project entitled "Revenue Decoupling: Standards and Criteria" (dated June 30, 2008). This Report examines the decoupling experiences of California, Washington, Oregon, Idaho, Utah, Maryland, North Carolina, New Jersey, and Vermont. September 15 Pre-Filed Testimony of Mark N. Lowry, Exhibit B, pages 42-47.

Dr. Tierney's Exhibit NG-SFT-R-1, attached to her October 6 Rebuttal Testimony, is a September 2009 newsletter report published by the Regulatory Assistance Project entitled "The Role of Decoupling Where Energy Efficiency Is Required By Law." The report begins by reviewing present and anticipated state and Federal energy-efficiency mandates. NG-SFT-R-1, pages 1-2. The report then discusses decoupling as a general, conceptual matter. *Id.*, at 3-4. Finally, the report draws the direct connection between energy efficiency mandates and decoupling. *Id.*, at 4-5.

In sum, the record in this Docket contains voluminous information, tabulations, reports, and analyses of the experience in many states that have instituted decoupling of utility prices. In this context, it is notable that the witnesses who opposed decoupling presented virtually no contrary evidence. TEC-RI's expert witness, Mr. Farley, did not even mention in passing this vast compilation of detailed information on decoupling from sister jurisdictions -- either in pre-filed testimony or on the witness stand. The Division's witness, Mr. Oliver, addressed the issue but only in passing. Mr. Oliver was asked, "Should this Commission be compelled by the decisions of Commissions in certain other jurisdictions to implement revenue decoupling?" September 15 Pre-Filed Testimony of

Oliver, page 20, lines 18-20 (emphasis supplied). Mr. Oliver answered “No.” *Id.*, at line 21. But neither the question nor Mr. Oliver’s answer help the Commission make its decision on decoupling. No party in this Docket ever suggested that the Commission is “compelled” to adopt decoupling because another jurisdiction has done so. Parties to this Docket provided the Commission with multiple published studies on the positive experiences of other jurisdictions with decoupling in order to aid the Commission in coming to a wise public-policy decision concerning whether or not to order decoupling in Rhode Island.

In opposing decoupling in this Docket, the Division and TEC-RI failed to put into the record any meaningful evidence to rebut the extensive positive evidence in the record about the beneficial effects of decoupling in other jurisdictions. The PUC can and, respectfully, should draw an adverse inference from this failure by the Division and TEC-RI. *Benevides v. Canario*, 111 R.I. 204, 208, 301 A.2d 75, 77 (1973); *Singh v. Gonzales*, 491 F.3d 1019, 1024 (9th Cir. 2007) (collecting cases for the proposition that “The adverse inference rule is a generally accepted principle of law” [internal quotation marks omitted]).

II. THE PRESENT DECOUPLING PROPOSAL IS DISTINGUISHABLE FROM THE PROPOSAL MADE IN DOCKET 3943 IN SEVERAL KEY RESPECTS

This Docket is not the first time decoupling has been presented to this Commission. Last year, in Docket 3943, the Commission rejected a proposal from Grid

to decouple gas prices. However, the decoupling proposal presented in this Docket is substantially different from the decoupling proposal rejected in Docket 3943. More to the point, to Grid's credit, the decoupling proposal in this Docket fixes all three major objections to decoupling that were raised by the Division and TEC-RI in Docket 3943. See generally, September 15 Pre-Filed Testimony of Cleveland, page 24, line 10 - page 32, line 5.

First, in Docket 3943, parties objected that decoupling would increase time between rate cases and thus reduce review and oversight by the Commission. For example, Mr. Oliver, in his Direct Testimony, said if there were decoupling that "problems are likely to grow as the time periods between rate cases expand."⁶ In the opening statement of TEC-RI's lawyer in Docket 3943, the attorney argued that increasing the time between rate cases was a reason to oppose decoupling: "[T]he company could avoid a new rate case for a longer time period, and we agree with Mr. Roberti, rate cases promote the effective function of regulation. Without them [Grid] coming in with a rate case, we believe this Commission cannot effectively regulate the company."⁷ September 15 Pre-Filed Testimony of Cleveland, page 25, line 11 - page 26; line 11.

However, the Revenue Decoupling Mechanism proposed in the current Docket requires that the Company come before the PUC annually for a revenue reconciliation

⁶ July 25, 2008, Direct Testimony of Bruce Oliver in Docket 3943, page 16, lines 6-7.

⁷ August 27, 2008, Hearing Transcript in Docket 3943, page 197, lines 18-21, Opening Statement of Michael McElroy, Esq., representing TEC-RI.

process. June 1, 2009 Pre-Filed testimony of Tierney, pages 89 to 92. Importantly, these annual reviews can be as detailed or cursory as the Commission believes is necessary and appropriate given the totality of the then-prevailing circumstances. Year by year the Commission can decide how extensive and detailed that year's true-up proceeding should be. If one year the Commission believes that extensive review is needed or appropriate, the annual true-up review can be extensive. For example, this might be the case if an annual rate adjustment were of an unexpected magnitude. On the other hand, at another time, and at the discretion of the Commission, the annual revenue reconciliation hearing could be much briefer. The concern voiced in Docket 3943 about the possible lack of regulatory oversight would be eliminated by the proposed annual revenue reconciliation process in this Docket.⁸

Second, in Docket 3943, parties argued (correctly) that Grid's proposal to base its entire decoupling mechanism on a revenue-per-customer basis provided the opportunity for windfall profits for the utility if the number of utility customers increased. Mr. Oliver said that the proposal "provides the Company opportunities for growth in allowed distribution revenue between rate cases if the number of customers served continues to grow."⁹ Mr. Farley said, "[A]ll this comes down to is the company . . . is allowed to collect its target revenue per customer times the number of customers in the class.

⁸ At the same time, two related points were undisputed at the hearing. First, the adoption of decoupling as proposed in this Docket would not increase the time between full-blown rate cases. Oliver September 15 Pre-Filed Testimony, page 53, line 31 - page 54, line 2. Second, this is a desirable thing from the standpoint of ratepayers because rate cases are "generally cost-effective activities . . ." Id., at page 54, lines 4-11.

⁹ July 25, 2008, Direct Testimony of Bruce Oliver in Docket 3943, page 15, lines 2-4.

Whenever that number of customers goes up, it's [the company is] allowed to collect more revenue."¹⁰ September 15 Pre-Filed Testimony of Cleveland, page 28, lines 1-17.

However, this perceived problem has also been completely fixed in the very different decoupling proposal now before the Commission. In the current Docket, there is no revenue-per-customer concept whatever. Instead, Grid's decoupling is based on something entirely different: Annual Target Revenues (ATR). This is not based on individual customers or even classes of customers. Instead, it is based on ATR for the entire Company. June 1, 2009 Pre-Filed Testimony of Tierney, page 73, line 15 - page 79, line 9. Thus, the problem perceived last year by these witnesses for the Division and TEC-RI -- that Company revenue could grow beyond the ROE allowed by the Commission if the number of customers increased -- is simply not a problem and not an issue in this Docket. September 15 Pre-Filed Testimony of Cleveland, page 29, lines 1-8.

Third, in Docket 3943, parties argued (also correctly) that Grid's decoupling proposal in that docket could have a large, disadvantageous effect on small, heterogeneous customer classes. As Mr. Farley put it last year, "The Large and Extra Large rate classes have a relatively small number of customers in each, and those customers are relatively heterogeneous, meaning that their loads and revenues are highly diverse. Under the Company's revenue per customer decoupling proposal, customers in such a small count, heterogeneous rate class can be unduly impacted by events such as

¹⁰ Transcript of September 29, 2008, in Docket 3943, testimony of John Farley, page 34 line 22 to page 35 line 3 (speaking in response to question from Commissioner Holbrook (at page 32 lines 9-11)).

customer migration or significant reductions in load due to aggressive implementation of demand resources by other customers in the same rate class. For example, revenues could drop dramatically when an extremely large commercial customer migrates from firm to non-firm service, and this would result in the remaining customers in that rate class seeing a disproportionate increase in rates as a result of the decoupling true-up.”¹¹ The reason Mr. Farley was correct last year is that Grid’s decoupling proposal in last year’s gas case was based on a revenue-per-customer concept on a rate-class-by-rate-class basis. September 15 Pre-Filed Testimony of Cleveland, page 30, line 4 - page 31, line 8.

However, in the decoupling proposal in this Docket, there is no revenue-per-customer concept and the annual true-ups are not done on a rate-class-by-rate-class basis. Instead, Grid’s proposed decoupling mechanism in this Docket is based on Annual Target Revenues for the entire company. Thus, Grid has obviated the potential problem of having major impacts based on small changes in rate classes that have very few members. September 15 Pre-Filed Testimony of Cleveland, page 31, lines 11-16. See also Grid’s Response to Division Data Request 6-4, page 2, final paragraph.

As this Commission knows, CLF participated in Docket 3943, and supported Grid’s decoupling proposal in that Docket. On balance, CLF believed that the positive benefits to be had from decoupling outweighed the narrower problems with the specific decoupling mechanism proposed in that Docket. Nevertheless, it is undeniable that there

¹¹ July 25, 2008, Direct Testimony of John Farley, page 32 line 16 to page 33 line 5.

were valid criticisms of decoupling raised in Docket 3943. It is equally undeniable that, as discussed herein, those shortcomings and problems with the specific decoupling mechanism proposed last year have been corrected or eliminated in the decoupling proposal now before the Commission in this Docket.

III. THE ARGUMENTS MADE AGAINST DECOUPLING WERE UNSUPPORTED BY RECORD EVIDENCE

As discussed in Section I, supra, the parties and expert witnesses that support decoupling in this Docket created a lengthy record concerning the benefits of decoupling; that record is based on detailed and extensive information from many jurisdictions over many years.

In this context, the lack of any similar evidence in the record from the witnesses that oppose decoupling is notable.

Several examples will serve to illustrate this point.

In his direct testimony, Division witness Oliver testified, point-blank, that “revenue decoupling [will] adversely impact customer initiated energy efficiency.”

September 15 Pre-Filed Testimony of Oliver, page 56, lines 19-21.

Yet Mr. Oliver cited no example from any individual jurisdiction that has decoupled to support his bald assertion. Mr. Oliver could not do so, because no such examples exist.

Mr. Oliver cited no studies of decoupling across jurisdictions to support his assertion, because no such studies exist.

Indeed, on cross-examination, Mr. Oliver was asked directly if he had any basis at all for his unsupportable assertion. December 1 Transcript, page 198, line 16 - page 202, line 23. Mr. Oliver was forced to admit that he had no fact, no study, and no analysis to support his assertion. Id., page 202, lines 16-23.¹²

Similarly, Mr. Oliver testified that “the Company’s [decoupling] proposals could actually serve to increase rate volatility.” There is in the record of this case detailed information from 28 natural gas utilities and 12 electric utilities in 17 states that have implemented decoupling. Yet Mr. Oliver cited no example from any state or utility that has decoupled to support his assertion. Mr. Oliver made a serious allegation, but Mr. Oliver could not and did not cite a single example from the real world to support his bald assertion.

A key argument of the opponents of decoupling in this Docket is the assertion that decoupling is a one-way ratchet, always providing rate increases, which inevitably inure to the detriment of ratepayers and to the benefit of the utility. For example, TEC-RI’s witness, Mr. Farley, testified: “[T]he plan would allow a broad range of automatic rate adjustments that would result in rate increases There is no down side to the Company. The only down side is to the ratepayers.” September 15 Pre-Filed Testimony

¹² In the same section of transcript, Mr. Oliver was asked, “What is the basis of that conclusion . . . ?” December 1 Transcript, at page 204, line 23. Mr. Oliver replied that he could not respond on the stand, but would take the inquiry as a data request. Id., at page 201, lines 1-9. Unfortunately, neither Mr. Oliver nor the Division has responded to this data request.

of Farley, page 27, line 17 - page 28, line 5. Notably, Mr. Farley could not and did not cite to any example from any utility or any state to support his assertion. Mr. Farley referred the Commission to no study of decoupled utilities to support his assertion. Significantly, there is in the record a detailed study of decoupling across jurisdictions that has rigorously analyzed the question of whether decoupling only provides for rate increases. The Lesh Report addressed this precise question and found that “Decoupling adjustments go both ways, providing both refunds and surcharges to customers . . . Regardless of the particular combination of causes for any given adjustment, no pattern of either rate increases or decreases emerges.” Lesh Report, at page 4.¹³

Mr. Farley asserted that decoupling would result in rate increases for ratepayers and benefits only for the utility. But Mr. Farley provided no evidence to support his bald assertion.

Nevertheless, despite significant evidence to the contrary, the unsupported notion that decoupling provides only rate increases lingers. During the cross-examination of Ms. Cleveland, a skeptical PUC Staff Attorney inquired whether the witness could “identify any instances in states that have adopted decoupling mechanisms where a refund has been provided to ratepayers?” December 2 Transcript, page 112, lines 16-18. In response, the witness made reference to the Lesh report and recited multiple examples of multiple utilities providing a refund to ratepayers as a result of decoupling. *Id.*, at page

¹³ As discussed in note 3, *supra*, the Lesh Report appears in the record twice -- as Exhibit A to Ms. Cleveland’s September 15 Pre-Filed Testimony, and as Schedule NG-SFT-R-3 to Dr. Tierney’s October 6 Rebuttal Testimony.

112, line 19 - page 113, line 9. The PUC Staff Attorney remained skeptical and inquired further: “Okay. But nothing within the last 10 years?” Id., at page 113, line 10. In response, the witness recited multiple examples within the past 10 years of utilities providing a refund to ratepayers as a result of decoupling. Id., at page 113, lines 11-22.¹⁴

The parties to this Docket that oppose decoupling had ample opportunity to introduce evidence of ill effects of decoupling from any of the many jurisdictions that have implemented decoupling. They did not do so, and the Commission should draw an adverse inference from that failure. Singh v. Gonzales, supra, 491 F.3d 1019.

Respectfully, CLF urges the Commission to base its ruling on decoupling in this Docket on the record evidence, not on bald assertions unsupported by record evidence.

CONCLUSION

Energy efficiency is the announced public policy of Rhode Island, and is supported by members of this Commission. Decoupling is closely linked to achieving energy efficiency; decoupling is desirable because it removes a disincentive for the utility to do all it can to promote energy efficiency. Decoupling is not aimed at influencing consumer behavior, but is aimed at influencing utility behavior. While decoupling is not alone enough to achieve significantly increased energy efficiency, it is a necessary and important step in the right direction.

¹⁴ Ms. Cleveland’s responses to these questions provided selected examples of decoupling providing refunds, not rate increases, to ratepayers. The Lesh Report, from which Ms. Cleveland was taking her examples, cites many additional cases of decoupling resulting directly in rate decreases.

Decoupling is not an untried or novel concept. There is in the record of this Docket extensive evidence from 28 natural gas utilities and 12 electric utilities in 17 states that have decoupled. That experience of those utilities has been widely studied and the results of those studies, which are in the record of this Docket, show multiple benefits from decoupling. The evidence in this Docket shows that decoupling adjustments are always small and work in both directions -- providing both small rate increases and rate decreases.

Significantly, there is scant evidence in the record of this Docket that challenges the foregoing facts and conclusions about the benefits of decoupling.

WHEREFORE, CLF urges the Commission to approve Grid's decoupling proposal in this Docket. CLF has no objection to the Commission setting a 10% annual cap on any rate adjustments that might result; CLF supports the Wiley Center's request that the A-60 rate class be excluded from decoupling.

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CERTIFICATE OF SERVICE

I hereby certify that an original and nine copies of the within Memorandum were hand-delivered to Lully Massaro, Commission Clerk, Public Utilities Commission, 99 Jefferson Blvd., Warwick, RI 02888. In addition, electronic copies only were transmitted to all of the persons on the PUC's Service List for this Docket, transmitted by Lully Massaro on January 4, 2010. I hereby certify that all of the foregoing was done on the 22nd day of January, 2010.


