STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE:	NATIONAL GRID'S REVENUE DECOUPLING MECHANISM PROPOSALS	))	DOCKET NO. 4206

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

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INTRODUCTION

The Division of Public Utilities and Carriers (the "Division") submits this post-hearing brief to address legal issues contained in the brief of The Narragansett Electric Company, d/b/a National Grid (the "Company") dated April 18, 2011 or that arose during the proceeding. The absence or omission of any argument in this post-hearing brief regarding any issue in Docket No. 4206 should not be construed as a waiver by the Division as to its position with respect to that issue. The Division's position with respect to each issue contained in Docket No. 4206 is reflected in the Direct and Surrebuttal Testimony of Bruce R. Oliver, as well as in his testimony at hearing, all of which is restated and incorporated herein by reference.

ARGUMENT

I. THE ACT DOES NOT DIVEST THE COMMISSION OF ITS PLENARY RATEMAKING AUTHORITY WHICH INCLUDES THE AUTHORITY TO CAP AND DEFER REVENUE RECONCILATION ADJUSTMENTS.

The Division has recommended that the Company should be required to cap revenue reconciliation adjustments billed to customers ±5% of authorized base revenue for each rate class. Oliver Direct at 49. Amounts in excess of the rate cap for any rate class should be deferred with interest for recovery in future periods. Id. In its April 18, 2011 brief, the Company contends that the Division's recommendation "runs contrary to the stated intent" of G.L. § 39-1-27.7.1 (the "Act"). Company Brief at 1-2. The statute implements a revenue decoupling mechanism ("RDM") that reconciles "annually" the revenue requirement allowed in the Company's base distribution rate case to revenues actually received. Id. According to the Company, the statute does not expressly authorize the Commission to implement a "cap" on reconciliation adjustments and then provide that over-collections be credited or under-collections be collected in future periods. Id. The Company's contention is severely flawed. It ignores both

the Commission's existing authority to set just and reasonable rates which includes the power to implement a cap and deferral mechanism, and it ignores well-accepted principles of statutory construction.

A. By Statute, The Commission Is Vested With The Authority To Set Just And Reasonable Rates Which Includes The Power To Implement A Cap And Deferral Mechanism In Order To Prevent Rate Shock And To Achieve Rate Stability.

No debate exists that in the absence of the Act, the Commission, by statute, possesses the power to fix "just" and "reasonable" rates. G.L. § 39-1-1(c); § 39-2-1; In Re: Narragansett Bay Comm'n General Rate Filing, 808 A.2d 631, 635 (R.I. 2002). According to the Rhode Island Supreme Court this existing authority is "plenary," East Providence Water Co. v. Public Utilities Comm., 128 A. 556, 558 (R.I. 1925), and is not founded upon the application of any "particular formula." In Re: Woonsocket Water Dept, 538 A.2d 1011, 1014 (R.I. 1988). Rather, "[w]hat is important, and indeed decisive, in a rate case, is not the methods or formulae utilized, but whether the end result, irrespective of the formula used, is just and reasonable." E.g., Rhode Island Consumers' Council v. Smith, 302 A.2d 757, 764 (R.I. 1973); United States v. Public Utilities Comm'n, 635 A.2d 1135, 1141 (R.I. 1993). In all events, the power to set just and reasonable rates requires "balancing investor and consumer interests." Narragansett Electric Co. v. Harsch, 368 A.2d 1194, 1208 (R.I. 1977); Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

Time and again, the Commission has exercised its plenary ratemaking power to ensure just and reasonable rates. The Commission's exercise of its authority in this regard has included implementations of rate mechanisms that defer utility recovery of an under-collection so as to avoid rate shock and further rate stability. In New England Gas Co. Gas Cost Recovery Charge,

Docket No. 3696, Order No. 18521, 9 (R.I.P.U.C. 2006), for example, the Commission recognized that it has "deferred gas cost undercollections for extended periods in order to avoid rate shock." In so ruling, the Commission held:

> Eliminating an under-collection is an appropriate regulatory goal but it is not the only or the primary regulatory goal of this Commission. It is a goal which is to be balanced against other goals such as the goal of avoiding rate shock. In weighing between eliminating a reasonable amount of under collection and avoiding rate shock, the goal of avoiding rate shock will usually triumph.

Id. This ruling is not unique. The Commission has a storied history of implementing novel ratemaking mechanisms to ensure implemented rates are just and reasonable. See Island Hi-Speed Ferry, LLC, Docket No. 2802, Order No. 15816, 28-29 (R.I.P.U.C. 1999) (where the Commission placed a restriction on the total revenues of a start-up utility with uncertain ridership levels and required any excess to "be applied to the benefit of ratepayers as ordered by the Commission"); In Re: Financial Accounting Standards Board Statement No. 106, Docket No. 2045, Order No. 14088, 16-17 (R.I.P.U.C. 1992) (where the Commission phased-in an increase over a three-year period with the shortfall to be made up over the next seven (7) years out of deference to the concepts of gradualism and rate shock); In Re: Pascoag Fire District Capacity Cost Adjustment Clause, Docket No. 1685, Order No. 13288, 3 (R.I.P.U.C. 1990) (where the Commission deferred a billing increase one month in order to help mitigate possible rate shock to customers); In Re: Newport Electric Corporation Application to Change Rate Schedules, Docket No. 2036, Order No. 14039, 25 (R.I.P.U.C. 1992) (where the Commission accepted a stipulation that limited "class rate increases to no more than two times the overall revenue increase granted so that classes will not experience 'rate shock'"). Regardless of the methodologies employed by the Commission, the Rhode Island Supreme Court invariably has upheld the Commission's exercise of its power so long as the overall end result is just and

reasonable. See e.g., In Re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1246 (R.I. 2000) (upholding the Commission's decision to implement revenue caps to ensure just and reasonable rates even though the methodology was divergent from previous rate-setting approaches); U.S. v. P.U.C., 635 A.2d 1135, 1140-43 (R.I. 1993) (the Commission could properly take into consideration factors such as rate shock and rate continuity in order to set just and reasonable rates).

B. The Act Does Not Divest The Commission Of Its Plenary Authority To Impose A Cap And Deferral Mechanism On The Company To Achieve Just And Reasonable Rates.

It is a universally accepted principle of statutory construction that the General Assembly is presumed to know the law when it enacts legislation. E.g., State v. Greenberg, 951 A.2d 481, 491 (R.I. 2008); Rachal v. O'Neil, 925 A.2d 920, 927 (R.I. 2007); Shelter Harbor Fire District, 835 A.2d 446, 449 (R.I. 2003). It is also a universally accepted principle of statutory construction that repeal by implication of a known or express power is not favored. E.g., Berthiaume v. School Committee of the City of Woonsocket, 397 A.2d 889, 893 (R.I. 1979); Shelter Harbor, 835 A.2d at 449. Application of these principles of statutory construction leads to the inescapable conclusion that the Act does not divest the Commission of its authority to impose a cap and deferral mechanism on the Company as part of its plenary power to set just and reasonable rates.

When the Act became law in June of 2010, the General Assembly was legally presumed to have been aware of the Commission's existing, "plenary" authority to set "just" and "reasonable" rates—a power that was not dependent on the implementation of any particular ratemaking approach but rather required the Commission to balance investor and consumer interests. See e.g., Greenberg, 951, A.2d at 491 (Legislature is presumed to know the law when

it enacts legislation); Rachal, 925 A.2d at 927 (the same). Moreover at this time, the General Assembly was legally presumed to have knowledge that the Commission possessed the plenary ratemaking authority (and in fact had exercised this authority) to defer the collection of a utility's full revenue reconciliation adjustment from one period to another in order to achieve just and reasonable rates. E.g., FASB No. 106, Docket No. 2045, Order No. 14088 at 16-17; Pascoag Fire District, Docket No. 1685, Order No. 13288 at 3; Newport Electric, Docket No. 2036, Order No. 14039 at 25.

Passage of the Act did not change this legal framework. Nowhere does the Act expressly provide that the Commission's authority under Title 39 to set "just" and "reasonable" rates is suspended, repealed or revoked or use any language to that effect. Had the General Assembly intended to alter the Commission's existing authority it could have easily so provided. Bishop v. Jaworski, 524 A.2d 1102, 1104 (R.I. 1987). Since the Act does *not* expressly divest the Commission of its existing authority to set rates utilizing any methodology that will produce just and reasonable rates (including the cap and deferral methodology recommended by the Division), the Commission retains its authority to do so. See Berthiaume, 397 A.2d at 893 (divestment of existing authority by implication is not favored); Shelter Harbor, 835 A.2d at 449 (the same).

State v. Greenberg has particular relevance to the case before the Commission. Prior to 2007, the General Assembly had vested the Family Court with exclusive jurisdiction over juveniles charged with a crime. Greenberg, 951 A.2d at 490-91. By statute, only after the Family Court had undertaken a waiver hearing could the Court be divested of jurisdiction over a juvenile who would then be subject to criminal prosecution in the Superior Court. Id. at 491.

In 2007, the General Assembly passed an amendment to this legal framework. In effect the amendment provided that any person arrested and charged with a criminal offense between July 1, 2007 and November 8, 2007 and who had attained the age of seventeen "shall be referred to the court that would have had jurisdiction if the juvenile were an adult." Id. at 488-92. After the amendment's enactment, the State prosecuted Greenberg (who was 17 at the time) for second degree murder. Id. at 484. Greenberg was convicted in the Superior Court and subsequently sought review of his conviction in the Rhode Island Supreme Court on the ground (among others) that despite the 2007 amendment, he should have been given a waiver hearing in the Family Court. Id. at 484. The State contended that the 2007 amendment's language "shall be referred" did not reflect the prerequisite of a probable cause hearing, and therefore, divested the Family Court of its jurisdiction to undertake a waiver hearing. Id. at 492.

On appeal, the Rhode Island Supreme Court held that the State's argument was "without merit." Id. The amendment was "completely silent" with respect to how the Family Court may waive jurisdiction over a child even though the Legislature, by the amendment, "intended to expand those instances where [the Family Court] was mandated to waive its jurisdiction over juvenile offenders." Id. Since the Legislature was legally presumed to have known of the Family Court's existing exclusive jurisdiction over juveniles when it enacted the amendment, the absence of a hearing requirement in the amendment led to the conclusion that the Family Court "was not divested of jurisdiction over seventeen-year olds accused of conduct that would be criminal if committed by an adult." Id. at 492.

The Court's legal analysis in Greenberg is highly relevant to the pending matter. As in Greenberg, the Act constitutes an amendment to an existing statutory scheme that allegedly impacts that the exclusive or plenary jurisdiction of a decision-making body, such as the

Commission. In both Greenberg and the pending matter, the existing jurisdiction of the Family Court and the Commission, respectively require each decision-making authority to balance competing interests in order to arrive at a result in the best interest of the public. Compare Hope, 320 U.S. at 603 with Greenberg, 951 A.2d at 491. In Greenberg, the amendment was silent on the issue of the necessity of a waiver hearing but was intended to expand areas where waiver was mandated. Id. at 492. So too here the Act is silent regarding the Commission's existing ratemaking authority (including the power to impose a cap and deferral mechanism) but expands the area of rate recovery for the Company.

Given these similarities and existing overwhelming judicial precedent, it highly likely that the Rhode Island Supreme Court (were it to consider the issue) would conclude that the General Assembly is legally presumed to have known of the Commission's existing plenary ratemaking authority including the power to implement a cap and deferral mechanism at the time the Act became law. The Act's complete silence regarding this authority, the Court would most likely reason, compels the conclusion that the Act does not divest the Commission of jurisdiction to implement a cap and deferral mechanism Id. at 492. See also Bishop, 524 A.2d at 1104; Berthiaume, 397 A.2d at 893; Shelter Harbor, 835 A.2d at 449. [1]

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[1] The evidence on the Record reflects that eight jurisdictions possess decoupling mechanisms (electric or gas) with some form of cap mechanism in place to prevent the imposition of unjust and unreasonable rates. See Exhibit BRO-3. In post-hearing legal research, the Division has been able to document that two other jurisdictions (Wisconsin and Connecticut) have implemented decoupling with a form of cap mechanism. Application of Wisconsin Public Service Corp for Authority to Adjust Electric and Natural Gas Rates, 6690-UR-119 (February 23, 2009 & October 15, 2008) (utility "shall return to ratepayers, or recover in rates, any over or under collection of utility's aggregate sales revenue . . . subject to a rate adjustment cap approximately equivalent to 100 basis points over or under collection of $12 million for electric operations and $4 million for natural gas operations..."); In Re: Application of the United Illuminating Co to Increase Its Rates and Charges, Docket No. 08-07-04, 132 (February 4, 2009) ("a decoupling rate will not be applied to customer bills if the under or over-recovery of the allowed revenue requirement does not exceed $1 million and the difference will be deferred for inclusion in a future decoupling adjustment filing or rate case proceeding, whichever occurs

C. Implementing A Cap And Deferral Mechanism Will Not Undermine Energy Efficiency In Any Manner.

Failing to support its position based on explicit statutory language, the Company advances a second argument contending that "a primary goal" of the statute is to eliminate "disincentives to support energy efficiency programs." Company Brief at 3. Deferring the collection of under-recoveries, the Company contends, will create a lag in the Company's annual recovery of its revenue target, which, in turn, will undermine energy efficiency—a stated statutory goal. Id. at 2-3. The Company's argument, however, assumes that: (i) deferral of every reconciled under-collection will serve as a disincentive for every energy efficiency program, and (ii) by virtue of a "lag" in the Company's recovery of its annual target, the Company is precluded from making appropriate investments in energy efficiency. Neither assumption is valid.

Even though the General Assembly has declared one of eight general purposes of the Act is to eliminate disincentives to support energy efficiency programs, the Commission has repeatedly found that ratepayers generally will not engage in more energy efficiency if decoupling is in place. In Re: The Application of the Narragansett Electric Co. d/b/a National Grid for Approval of a Change in Electric Base Distribution Rates, Docket No. 4065, Order No. 19665A, 134-35 (R.I.P.U.C. 2010). "Commodity costs . . . have a greater impact on a customer's incentive to conserve because of reduced usage." Id. at 137. See also In Re: Application for

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first"). Of all of the documented jurisdictions which impose a reconciliation adjustment cap, the Division has been able to identify three States (Washington, Utah and Connecticut) that have legislation in place generally authorizing decoupling but silent on the issue of caps. Utah Code § 54-4-4.1 (1990); Wash. Rev. Code § 80.28.260 (1990); Conn. Gen. Stat. § 16-19tt (2007). Despite the silence of the legislative bodies in these states on the issue, commissions in these jurisdictions have nonetheless issued ratemaking decisions that temporarily restrict the amount of a revenue adjustment a utility may recover from its ratepayers in the applicable period in order to ensure just and reasonable rates.

Rate Change Pursuant to R.I.G.L. §§ 39-3-10 and 39-3-11 of Narragansett Electric d/b/a National Grid, Docket No. 3943, Order No. 19563, 68-70 (R.I.P.U.C. 2009). Given the tenuous nature of the link between decoupling and energy efficiency, the deferral of a reconciliation adjustment amount (when a designated cap is exceeded) cannot rationally be perceived as materially undermining one of the Act's stated purposes.

The Company's second assumption rests on even less firm ground. Nothing in the Division's recommendation precludes the Company from making any appropriate investments in energy efficiency. The Company may spend all budgeted and Commission approved amounts under its annual Energy Efficiency Plan. Reconciliation adjustment amounts are deferred for recovery in future periods and accrue interest during the period of deferral. 5/17/2011 Tr. at 137-38. Thus, the economic effect of the dollars deferred to the next period is completely maintained. Id. No basis exists to support the Company's contention that the Division's recommendation somehow discourages the Company from making investments in energy efficiency.

II. ALL OF THE EVIDENCE ON THE RECORD SUPPORTS THE CONCLUSION THAT THE COMPANY'S PROPOSAL TO USE A SINGLE ADJUSTMENT FACTOR FOR ITS ELECTRIC AND GAS RDMS WILL UNLAWFULLY CREATE CROSS-SUBSIDIES BETWEEN RATE CLASSES.

It is beyond debate that a utility possesses the burden to establish that its rate proposal is non-discriminatory. New England Tel & Tel Co v. Public Utilities Comm'n, 446 A.2d 1376, 1383 (R.I. 1982); Blackstone Valley Chamber of Commerce v. Public Utilities Comm'n, 396 A.2d 102, 126 (R.I. 1979); United States v. Public Utilities Comm'n, 393 A.2d 1092, 1094 (R.I. 1978). When the Record reflects conflicting evidence on an issue, the Court has held the Commission must rule that the utility has failed to satisfy its burden of proof as to that issue.

Narragansett Electric Co. v. Harsch, 368 A.2d 1194, 1210 (R.I. 1977); In Re: Application for Rate Change Pursuant to R.I.G.L. §§ 39-3-10 and 39-3-11, Docket No. 3943, Order No. 19563 at 62. Incorrect assignment of the burden of proof constitutes reversible error. Michaelson v. New England Tel. & Tel., 404 A.2d 799, 806 (R.I. 1979). Application of these principles to the case before the Commission leads to the inescapable conclusion that the Company has failed to satisfy its burden to prove that use of a single RDM adjustment factor will produce non-discriminatory rates.

The Company has proposed to use a single adjustment factor for its electric and gas RDM proposals to collect or refund any over or under billing of the ATR over the applicable 12-month period. Feinstein & Lloyd Direct at 11-13. However, in advancing this approach, the Company concedes "that a uniform RDM adjustment factor may result in rate class revenue distributions that differ from those established in the last rate cases (Docket No. 3943 (gas), or Docket No. 4065 (electric)), (Oliver at 42)..." Feinstein & Lloyd Rebuttal at 9-10. Even more remarkably, the Company admits that absent performing an allocated cost of service study, under the Company's proposal "it is simply not possible for the Commission to make any informed decision on issues of cross-subsidization." Id. at 10. The Division's expert consultant, Bruce R. Oliver, drew this very conclusion in his direct and surrebuttal testimony. Despite Company claims that revenue shifts resulting from use of a single RDM adjustment factor will not be "inappropriate or unfair," the Company, Mr. Oliver testified, had failed to provide "any analytic support" or "criteria" to support its conclusion in that regard. Oliver Surrebuttal at 9.[2]

[2] All of the other evidence on the subject that could conceivably support the Company's proposal was stricken from the Record at hearing, 5/17/2011 Tr. At 10. The Commission may not use stricken evidence in rendering its decision. G.L. § 42-35-9(g) (findings of fact shall be based exclusively on the evidence). See Rhode Island Consumers' Council v. Smith, 302 A.2d 757, 774 (R.I. 1973) (precluding consideration of information that did not qualify as legal evidence under the APA).

The Company's direct case, however, was not only utterly deficient from an evidentiary perspective, the Record itself supports the conclusion that use of a single RDM adjustment factor will, in all probability, produce unjust and unreasonable rates. Mr. Oliver observed that the Commission had made determinations regarding fair and reasonable adjustments to class revenue requirements in each of the Company's last base rate proceedings, Docket Nos. 3943 and 4065. He then testified:

> In the absence of the performance of a new class cost of service study, the most appropriate action for the Commission is to attempt to minimize shifts of base revenue requirements among classes between rate cases. ***Such minimization of revenue shifts clearly cannot be achieved under the Company's proposal to apply a single RDM factor to all classes.***

Oliver Surrebuttal at 10 (emphasis added). When asked whether the Commission could conclude that using a single RDM factor for all classes would be reasonable and appropriate, Mr. Oliver concluded:

> No. The Company's representations regarding the reasonableness and appropriateness of changes in revenue requirements by rate class under its RDM proposals . . . ***substantially undermine the role of the Commission in determining just and reasonable rate levels for various sizes and types of customer that the Company serves.***

Oliver Surrebuttal at 11 (emphasis added).

All of the evidence on the Record shows that the Company has failed to prove that its proposal to use a single RDM adjustment factor for all rate classes will produce non-discriminatory rates. As a matter of law, the Commission is required to reject the Company's proposal. New England Tel & Tel, 446 A.2d at 1383; Blackstone Valley, 396 A.2d at 126; Public Utilities Comm'n, 393 A.2d at 1094.

III. THE COMMENCEMENT DATE FOR THE COMPANY'S PROPOSED RECONCILIATION PERIOD (APRIL 1, 2011) VIOLATES THE RULE AGAINST RETROACTIVE RATEMAKING.

The Rhode Island Supreme Court has held as a general principle that the Commission is barred from engaging in retroactive ratemaking. In Re: Island Hi-Speed Ferry, LLC, 852 A.2d 524, 528 (R.I. 2004). The rule against retroactive ratemaking, however, is subject to several narrow exceptions one of which generally permits recovery of expenses retroactively that are part and parcel of an existing federal or state reconciliation tariff. Blackstone Valley Electric Co. v Public Utilities Comm'n, 542 A.2d 242, 245 (R.I. 1988). This narrow exception, however, does not have any application when a reconciliation provision has not been in place and the appropriate regulatory authority has not approved the proposed provision. State of Missouri, ex rel., AG Processing, Inc. v. Public Service Comm'n, 311 S.W.3d 361, 365 (Mo. Ct. App. 2010). Rather, in such circumstances the rule against retroactive ratemaking retains its vitality; the reconciliation period for recovery under the provision can only commence from and after the date of regulatory approval. Id. at 367 (recovery for utility services consumed during reconciliation period commencing prior to the effective date of the commission's Order approving the newly enacted adjustment clause "clearly constitutes retroactive ratemaking"). See also Associated Gas Distributors v. FERC, 893 F.2d 349, 356 (D.C. Cir. 1989) (Order of FERC recognizing new deficiency allocation mechanism issued for entire base period and half of the deficiency period used to calculate deficiency did not provide sufficient notice to customers of subsequent surcharge, and therefore, the surcharge constituted a retroactive change in rates that violated the Filed Rate Doctrine). Analogously, where a utility attempts to collect fuel costs during the transition between two different methods for setting those costs (*e.g.*, two different types of fuel cost adjustment clauses ("FCACs")), the overwhelming weight of judicial authority

holds that the utility is barred from imposing a surcharge under the new method to recoup costs that the utility failed to recover under the old method. Public Service Co. New Hampshire v. FERC, 600 F.2d 944, 960 (D.C. Cir. 1979). See also Detroit Edison Co. v. Attorney General, 331 N.W.2d 159, 161 (Mich. 1982) (utility's attempt to collect costs for January, 1974 through a FCAC only effective in February, 1974 "meant [utility] was collecting more for January than was authorized under rate structure in effect in January, the clearest possible kind of prohibited retroactive ratemaking").

In the case before the Commission, the Company has proposed an initial reconciliation period for both its electric and gas RDMs of April 1, 2011 through March 31, 2012. 5/17/2011 Tr. at 55. The Company would file its initial electric RDM filing on June 1, 2012 with an implementation date of July 1, 2012. Feinstein & Lloyd Direct at 11. The Company would file its initial gas RDM filing on August 1, 2012 with an implementation date of November 1, 2012. Id. at 13. Subsequent filings would adhere to the same reconciliation, filing, and implementation dates. Id. at 11-13. As initial schemes instigated by the Act's passage in June of 2010, the Company's proposed electric and gas RDMs obviously are not in place and have not been approved by the Commission. Based on the aforementioned precedent, the Company simply cannot reach back to recover from ratepayers any under-collection of revenues relating to a reconciliation period prior to the effective date of the Commission's decision approving the RDMs. E.g., AG Processing, 311 S.W.3d at 365; Public Service, 600 F.2d at 960. Such an attempt "clearly constitutes retroactive ratemaking" and is unlawful. Associated Gas, 893 F.2d at 356. Of course, this is precisely the conclusion reached by Mr. Oliver at hearing:

Q. Mr. Oliver, Commissioner Roberti earlier inquired about the appropriateness of the April 1st, 2011 date for revenue tracking with respect to its RDM electric [and] gas plans. What's your opinion about that date?

A. ...as we've seen in other proceedings, in retroactive rate-making in the context of adjustment mechanisms, they've been fairly loose upon how that's applied. ***But here we have a situation not where you already had a mechanism in place but where you're retroactively applying a mechanism.***

5/17/2011 Tr. at 148 (emphasis added).

The effective date of any Commission decision approving any form of electric and gas RDM, at the earliest, will be known when the Commission conducts and rules at open meeting regarding the merits of the Company's RDM proposals. In order to rectify the retroactive ratemaking problem, the Division has recommended that the Company's initial reconciliation period for its electric and gas RDMs commence after the Commission renders its open meeting decision and run through March 31, 2012.[3] Oliver Direct at 47. This initial reconciliation period constitutes "a reasonable means of transitioning to a first full RDM Year of April 1, 2012 – March 31, 2013." Id. Nothing in the Act precludes the Commission from establishing such an initial measurement period to avoid a clear violation of judicial precedent and accepted regulatory principles. Thus, the Division's recommendation accords with sound and accepted principles of statutory construction.[4] E.g., Estate of Gervais, 770 A.2d 877, 880 (R.I. 2001)

[3] In its testimony, the Division recommended an initial reconciliation date of July 1, 2011 based on the assumption that the Commission would render an open meeting decision concerning this docket in late June, 2011. On June 23, 2011, the Commission established July 5, 2011 as the deadline for the parties' to file post-hearing briefs. In order to avoid the retroactive ratemaking problem under this new briefing schedule, the initial reconciliation period would now run from the day after the Commission's open meeting decision (which will presumably occur sometime in July, 2011) through March 31, 2012, rather than from July 1, 2011.

[4] Under the Division's recommendation, the Company would file its electric RDM plan annually on June 1 with an annual implementation date October 1 rather than July 1. The Company would file its gas RDM plan annually on July 1 with an annual implementation date of November 1. Oliver Direct at 48. This schedule provides the additional benefit of affording both the Division and the Commission a reasonable time to review the Company's filings.

(statutes should not be construed to attribute to the Legislature an intent that produces absurd results); Landrigan v. McElroy, 457 A.2d 1056, 1060-61 (R.I. 1983) (the same). It follows that the Commission should reject the Company's proposal to commence its initial reconciliation period for its electric and gas RDM proposals on April 1, 2011 and adopt the dates for the initial period proposed by the Division.

CONCLUSION

For the reasons set forth in this post-hearing brief, and in the direct, surrebuttal and hearing testimony of Bruce R. Oliver, the Commission should adopt all of the recommendations of the Division.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the within post-hearing brief was forwarded by e-mail to the Service List in the above docket on the 5th day of July, 2011.

Meghan Corey