



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

May 16, 2011

Ms. Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

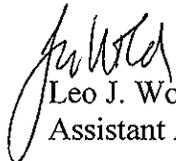
Re: Docket No. 4206

Dear Ms. Massaro,

Enclosed for filing with the Commission, please find the Division's Motion to Strike which is self-explanatory. In connection with another pre-hearing issue, the Division observes that on April 18, 2011, National Grid filed a "Brief Regarding Proposed Limitations on Annual RDM Reconciliations," which was not authorized by the Commission, and, therefore not permitted under the Commission's Rules. Rules of Practice and Procedure, Rule 1.25(a)(1) (authorizing parties to file Briefs only "at the close of the taking of the testimony in each proceeding, or at such time during the proceeding as the Commission shall deem appropriate"). Even though National Grid's Brief was filed in violation of the Commission's Rules, the Division does not object to the Brief. Rather, the Division will submit its own Post-Hearing Brief as permitted by Rule 1.25 and requests that such Brief (along with Post-Hearing Brief of any other party) be due no earlier than thirty (30) days after receipt of the transcript of hearing in the above matter.

Thank you for your attention to this matter.

Very truly yours,


Leo J. Wold
Assistant Attorney General

cc: Service List

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

IN RE: NATIONAL GRID’S PROPOSED REVENUE) DOCKET NO. 4206
DECOUPLING MECHANISM)

DIVISION’S MOTION TO STRIKE

The Division of Public Utilities and Carriers moves to strike the following testimony of William H. Ferguson in the above-entitled matter:

Direct Testimony:

Cover Page
Page 1, lines 1-26
Page 2, lines 1-26
Page 3, lines 1-14, 16-26
Page 4, lines 1-28
Page 5, lines 1-24
Page 6, lines 1-7
Page 17, lines 8-24
Page 18, lines 1-14

Rebuttal Testimony:

All

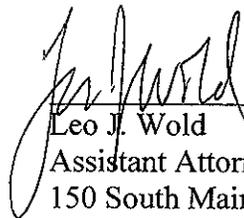
In support of its motion the Division states that on May 6, 2011, TEC-RI withdrew from Docket No. 4206. The above testimony may not be taken or considered by the Commission as evidence because only “written testimony, when properly authenticated by the witness under oath, may be transcribed *into the record* or admitted as an exhibit.” Rules of Practice Rule Practice and Procedure, Rule 1.20(e)(1) & (f) (1998) (emphasis added). Since TEC-RI has withdrawn from the proceeding, the above testimony is wholly unauthenticated by Mr. Ferguson under oath, and is therefore barred from inclusion in the Record in any manner (including as public comment). See N.L.R.B. v. Beverly Enterprises-Massachusetts, Inc., 174 F.3d 13, 23 n.

2 (1st Cir. 1999) (the requirement that agency action not be arbitrary or capricious includes a requirement that the agency adequately explain its result, and respond to “relevant” and “significant” public comments); G.L. 42-35-9(g) (findings of fact shall be based *exclusively* on the “evidence” and matters officially noticed).

Just and importantly, under the Commission’s Rules and the Administrative Procedures Act the Division possesses the right to cross-examine Mr. Ferguson. Rules of Practice and Procedure, Rule 1.20(e)(3) & (f) (1998); G.L. § 42-35-10(3). As TEC-RI has withdrawn from the proceeding, Mr. Ferguson will not appear (and will be ineligible to appear) at hearing to sponsor his testimony. The Division will be unable to exercise its right of cross-examination, a right possessed by the Division under the Commission’s Rules even if the testimony is admitted into the Record as “public comment” only. It follows the above-designated testimony of Mr. Ferguson must be stricken *entirely* from the Record of Docket No. 4206.

DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorneys,

PETER F. KILMARTIN
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CERTIFICATE OF SERVICE

I certify a copy of the within motion was forwarded to the Service List in the above-entitled matter on the 16th day of May, 2011.

