STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PASCOAG UTILITY DISTRICT'S APPLICATION TO CHANGE ELECTRIC BASE DISTRIBUTION RATES	: : :	DOCKET NO. 4341

REPORT AND ORDER

I. Summary of Proceedings

On July 6, 2012, Pascoag Utility District ("Pascoag") filed with the Public Utilities Commission ("Commission") a request seeking to implement new rate schedules for effect January 1, 2013, designed to collect additional revenue in the amount of $584,145, or an increase of 28.97% for a total revenue requirement of $2,600,313, excluding purchased power expenses.[1] The Commission suspended Pascoag's filing on July 26, 2102. This represents Pascoag's first such rate filing since 2003, and second such filing since 1997. On November 28, 2012, in lieu of submitting a direct case, the Division filed with the Commission a Settlement Agreement entered into with Pascoag. The Settlement Agreement provided for $513,963 in additional revenues, or an increase of 25.4% for a total revenue requirement of $2,540,035, excluding purchased power expenses. In its cover letter, the Division recommended an effective date to coincide with Pascoag's reconciliation of standard offer, transmission, and transition rates for 2013, filed in Docket No. 4369.[2] Together, the combined effect of the two rate changes would result in a net

[1] Pascoag Utility District is a quasi-municipal electric distribution company owning no generation of its own. Pascoag purchases power on behalf of its customers and passes through the cost to customers. Pascoag's purchases power costs are adjusted on a semi-annual basis through any necessary adjustments to the transmission and transition charges. See R.I.G.L. §§ 39-1-27(g) (allowing the recovery of transition charges), 39-1-27.3 (requiring each electric distribution company to offer retail access from nonregulated power producers), 39-1-27.4 (authorizing transition charges). The remainder of Pascoag's non-purchased power costs related to distributing electricity and providing customer service and billing are recovered through Pascoag's distribution and customer charges.

[2] The standard offer, transmission and transition rates for 2013 were subsequently approved at a December 20, 2012 Open Meeting for effect on usage on and after February 1, 2013. Tr. 12/19/12 (Dkt. No. 4369).

decrease for Pascoag's customers, or a 7.3% reduction in the overall revenue requirement, including purchased power expenses.[3]

II. Pascoag's Filing

Pascoag submitted the Pre-Filed Direct Testimony of Judith R. Allaire, Assistant General Manager of Finance and Customer Service, Michael R. Kirkwood, General Manager/CEO, and David G. Bebyn, CPA, its consultant. Ms. Allaire provided an overview of various events requiring normalizing adjustments, including a period of decreased cash flow which reduced the availability of funds for restricted accounts, outages related to Tropical Storm Irene, and the payroll effect of past General Manager Theodore Garille's retirement.[4] She highlighted three tariffs that had been approved since Pascoag's last general rate filing including the Credit Card Payment tariff, the Public Street Lighting tariff changes, and the Net Metering Tariff.[5]

Ms. Allaire explained that Pascoag's filing is based on a Test Year ending December 31, 2011 to which she made six adjustments in order to normalize the Test Year. She also reviewed the prior five year period to determine if there were any revenues and expenses requiring additional adjustments to the Rate Year or Test Year.[6] Discussing salary, labor and benefit costs, Ms. Allaire noted that Pascoag currently has eighteen full-time employees in the electric department, two of whom will be eligible to retire within the next five years. It is Pascoag's intent to fill those positions. The employees contribute twenty percent (20%) of their health care, vision and dental costs. Pascoag pays life insurance, long term disability, and long term health care. Pascoag also offers a Defined Benefit Plan that contributes approximately ten

[3] Docket No. 4369, Letter from Judith Allaire to Luly Massaro, 12/12/12 at Schedule H-1 February. The revenue requirement including standard offer, transmission and transition charges is $7,754,096. Joint Exhibit 1 (Settlement Agreement) at 1.
[4] Pascoag Exhibti 1A (Pre-Filed Testimony of Judith R. Allaire) at 1-2.
[5] *Id.* at 2-4.
[6] *Id.* at 4-5.

percent (10%) of the employee's salary. Employees may also take part in a 401(k) plan entirely funded by employee contributions.[7] The total amount of salaries in 2011 was $1,150,105, with employee benefits adding an additional $300,699.[8] She noted that while those within the operations department of the Electric Department do not work for the Water Department, if they are needed to provide any support, the Water Department is billed for that actual time. The time, salary and benefits of administrative staff, conversely, are allocated between the two departments on a percentage basis.[9]

Addressing Pascoag's proposal to increase reconnection fees, Ms. Allaire first noted that Pascoag attempts to disconnect on Thursdays because the office is open until 7:00 p.m., allowing customers more time during the day to enter into payment agreements and also to allow them an opportunity to be reconnected at a rate calculated at straight time rather than overtime even in the evening. She calculated that the increase, based on the number of reconnections in 2011, would generate approximately $955 in additional revenue. More importantly, she stated, the costs associated with reconnection would be more equitably allocated to the customers causing the costs.[10]

Mr. Kirkwood discussed a proposed official Storm Fund, the capital budget, new Terms and Conditions, the loss of Pascoag's largest industrial customer, and a proposed Economic Development rate. Mr. Kirkwood indicated that Pascoag has contributed to an unofficial storm contingency account over several years and was fortunate to have approximately $38,000 in the account when Tropical Storm Irene caused damage and power outages in the amount of approximately $50,000 of which $35,600 was drawn from the storm contingency account and the

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[7] *Id.* at 6.
[8] *Id.*
[9] *Id.* at 7.
[10] *Id.* at 8.

remainder from FEMA (Federal Emergency Management Agency) funds.[11] According to Mr. Kirkwood, the major storm event underscored the need for an official Storm Fund. He proposed funding through rates of $2,500 per month, or $30,000 per year, with a goal of a fully funded Storm Fund at $150,000.[12]

Discussing Pascoag's Capital Budget, Mr. Kirkwood noted that because of cash flow issues over the most recent two year period, Pascoag had not been able to replace vehicles in accordance with previously approved schedules. Therefore, Pascoag developed a new five-year capital plan for this filing in order to maintain a reliable fleet of largely specialized vehicles needed for day-to-day operations.[13] Additionally, Pascoag plans to replace its customer information system and accounting software from a DOS based system to a system that will be more flexible and will allow an eventual move to smart grid technology, although because of a lack of federal funding, Pascoag has no definitive plans to implement smart grid at this time.[14]

Mr. Kirkwood advised that Pascoag will be losing its largest customer with sales in 2011 totaling over $925,000 for over 7.3 million kWh. Mr. Kirkwood expected a full loss of sales to the customer, Daniele Prosciutto, Inc. ("DPI") by the end of 2013.[15] As a result of this lost revenue, Mr. Kirkwood proposed an Economic Development rate that would be designed to encourage new commercial or industrial businesses greater than one megawatt in size to enter Pascoag's service territory. The rate would be designed so that eligible customers would receive a discounted rate structure such that they would not be charged the transition rate on their electric

[11] Pascoag Exhibit 1B (Pre-Filed Testimony of Michael R. Kirkwood) at 1.
[12] *Id.* at 2.
[13] *Id.* at 5.
[14] *Id.* at 6-7.
[15] *Id.* at 2-3, 7.

bills for a period of five years from commencement of service.[16] Eligible customers would be new industrial customers to Pascoag's service territory whose demand is greater than one MW.[17]

Mr. Bebyn filed testimony discussing the revenue requirement and rate design proposals. Mr. Bebyn noted that Pascoag's request for rate relief is primarily driven by increased costs since Pascoag's last general rate filing seven years prior and the loss of revenues expected from the departure of DPI from the service territory.[18] The reduction of revenues allocated to DPI was $127,137 from the demand/distribution revenue for the rate year.[19] Mr. Bebyn projected Rate Year Revenue at current rates, not including pass-through (purchased power) costs at $2,016,169.[20]

Turning to Rate Year expenses, Mr. Bebyn noted that several accounts were left at Test Year levels or were based on five year averages.[21] However, he highlighted the manner in which he projected other expenses, specifically related to Payroll and Benefits,[22] contractual expenses, taxes and insurance, and schools and seminars.[23] Mr. Bebyn also explained that Pascoag has an Administrative Expense Transfer which is used to properly allocate costs between electric and water departments without having to maintain two sets of payrolls for the various administrative and customer service employees.[24] Mr. Bebyn projected Rate Year expenses of $2,561,886, not including pass-through (purchased power costs).[25]

Mr. Bebyn also addressed Pascoag's proposed rate design citing the departure of DPI as a reason for the proposed change noting that the departure "will cause a major shift in allocations

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[16] *Id.* at 2-4.
[17] *Id.*
[18] Pascoag Exhibit 1C (Pre-Filed Testimony of David Bebyn) at 2-3.
[19] *Id.* at 6.
[20] *Id.* at 7.
[21] *Id.* at 9.
[22] *Id.* at 8-9, 12-14.
[23] *Id.* at 9-10.
[24] *Id.* at 10-11.
[25] *Id.* at DGB-3.

between customer classes."[26] Additionally, in accordance with the Commission's Order in Pascoag's last rate proceeding, Pascoag is attempting to continue the move toward rate classes matching their cost causation.[27] Mr. Bebyn indicated that he first functionalized the utility revenue requirement according to the type of cost and then calculated the rates for each rate class.[28] He explained that because streetlighting is a flat rate rather than a per kWh charge with power costs being set in the year-end reconciliation filing, the SL-P allocator for Street Lighting Power applies the costs from streetlighting to the demand/distribution rate as an offset.[29] The General ("G") allocator was calculated after all of the other allocators and included the cost of purchased power in order to avoid over-allocation of costs onto customer service.[30] The Demand/Distribution allocator was applied based on the peak month kWh sales from the Test Year after an adjustment for the loss of DPI.[31] Finally, the customer service charges were allocated based on the number of meters weighted for the amount of customer service attention that may be needed. Using the factors approved in Docket No. 3546, Pascoag's last general rate filing, Mr. Bebyn calculated a residential rate factor of 1, a commercial rate factor of 2.5 and industrial rate factor of 18.75.[32]

III. Settlement

On November 28, 2012, in lieu of submitting a direct case, the Division filed with the Commission a Settlement Agreement entered into with Pascoag.[33] The Settlement increase of $513,963 in lieu of Pascoag's request of $584,145 reflects certain adjustments made following the Division's investigation through discovery. The adjustments included a normalizing

[26] *Id.* at 17.
[27] *Id.*
[28] *Id.* at 17-18.
[29] *Id.* at 18.
[30] *Id.*
[31] *Id.* at 19.
[32] *Id.*
[33] A copy of the Settlement is attached hereto as Appendix A.

adjustment to revenues at present rates to reflect additional revenues Pascoag would have received if the outage related to Tropical Storm Irene in August 2011 had not occurred.[34] Also related to Tropical Storm Irene, the parties agreed to an adjustment to rate year expenses to remove incremental expenses incurred as a result of the storm.[35] The parties also agreed to eliminate a one-time accounting adjustment related to a transaction between the water and electric departments which reduced Rate Year expense.[36] Certain other expenses were reduced to reflect updated costs.[37]

The parties agreed to the creation of a new Storm Fund Reserve with annual funding of $20,000. The parties agreed that the storm fund reserve could be used by Pascoag if the total incremental storm costs from a weather event exceed $4,000, subject to a $2,500 deductible.[38] Pascoag is also required by the Settlement Agreement to notify both the Commission and Division within sixty (60) days of a weather event which leads Pascoag to use the Storm Fund Reserve.[39]

The parties agreed to certain changes to the availability of medical insurance to board members and to its outside legal counsel. Board members will be entitled to continue receiving health care coverage through the Pascoag Utility District as long as they serve on the Board. Any member not receiving health care insurance (medical and dental) through Pascoag Utility District will be allowed an annual stipend of $3,000 for service on the Board. Pascoag will no longer include in rates the cost of medical and dental insurance to its outside legal counsel.[40]

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[34] Joint Exhibit 1 at 2.
[35] *Id.* at 3.
[36] *Id.* at 4.
[37] *Id.* at 5.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 4-5.

Addressing the revenue loss Pascoag expects from the departure of DPI, the parties agreed that for purposes of the Settlement Agreement, the revenue increase and rates reflect that loss at the start of the rate year. "DPI will continue to be billed at the new rates from the time the rate increase approved in this proceeding goes into effect until DPI fully discontinues service. All base revenues collected from DPI at the new rates will be set aside in the purchased power reserve fund to help replenish that fund."[41] Pascoag will be required to make quarterly reports with the Commission and Division accounting for the revenues deposited into the purchased power reserve fund as a result of this provision.[42] This reserve fund may be used for the purposes of returning over-collections from the purchased power reconciling factor.[43] Finally, the parties agreed to the rate design proposed by Pascoag adjusted for the Division's adjustments to billing units as noted above.[44]

On November 29, 2012 and January 16, 2013, Pascoag submitted all of its current and proposed tariffs and settlement schedules for review by the Commission. The tariffs submitted in this docket include: Terms and Conditions for Electric Service (RIPUC No. 703), Terms and Conditions for Nonregulated Power Producers (RIPUC No. 801), Residential Service Rate Tariff (RIPUC No. 106), Small Commercial and Industrial Tariff (RIPUC No. 305), Large Commercial and Industrial Tariff (RIPUC No. 407), Large Commercial and Industrial Seasonal Tariff (RIPUC No. 502), Public and Private Street Lighting Tariff (RIPUC No. 605), Net Metering Tariff (RIPUC No. 901), and Waiver of Credit/Debit Card Payment Provision (RIPUC No. 3569).

IV. Hearing

[41] *Id.* at 5.
[42] *Id.*
[43] *Id.* at 6.
[44] *Id.*

On January 28, 2013, after due notice, the Commission conducted an evidentiary hearing at its offices at 89 Jefferson Boulevard, Warwick, Rhode Island. The following appearances were entered:

FOR PASCOAG:	William Bernstein, Esq.
FOR DIVISION:	Karen Lyons, Esq. Special Assistant Attorney General
FOR COMMISSION:	Cynthia G. Wilson-Frias, Esq. Senior Legal Counsel

Prior to calling their witnesses, Counsel to Pascoag and Counsel to the Division responded to a previously posed question from the Commission regarding the applicability of the Net Metering law codified at R.I. Gen. Laws § 39-26.4-2. Mr. Bernstein argued that because R.I. Gen. Laws § 39-26-1 et seq., the Renewable Energy Standard specifically excludes Pascoag, the utility is also excluded from the requirements of the Net Metering law. Ms. Lyons concurred, arguing that R.I. Gen. Laws § 39-26.4 specifically allows the reader to refer to R.I. Gen. Laws § 39-26 where definitional support is needed, Pascoag should be considered exempted.[45] Under questioning from the Bench, Ms. Lyons also agreed that where there are two statutes using the same term with differing definitions, the provisions must be read in harmony, not to conflict.[46]

Pascoag presented Ms. Allaire, Mr. Kirkwood, and Mr. Bebyn in support of the Settlement Agreement while the Division presented Thomas Catlin, its consultant from Exeter Associates. Addressing cash flow issues, Ms. Allaire noted that Pascoag recently realized $1 million in credit card transactions which has assisted in cash flow issues. She testified that Pascoag has met with credit card vendors in an attempt to control costs and expressed a willingness to review whether, as a quasi-municipal utility, it might be advantageous to

[45] Tr. 1/28/13 at 11.
[46] *Id.* at 12-13.

determine whether Pascoag could join in on the State of Rhode Island credit card vendor contract as Pawtucket Water recently did.[47]

Discussing lobbying expenses, Mr. Kirkwood described the DC Legislative Rally as part of an annual conference involving the Northeast Public Power Association in conjunction with the American Public Power Association where Pascoag has access to legislators, particularly those from Rhode Island. It is part of a planning process regarding issues unique to public power companies.[48] With regard to more day-to-day activities during the legislative session, Mr. Kirkwood acknowledged that Pascoag does use the services of a professional lobbyist at a cost of $6,500 per year. However, he testified that her services are primarily tracking legislation, acting as "the eyes and ears" for Pascoag at the Statehouse, and providing a daily log of bills or issues of interest to Pascoag and its ratepayers. Mr. Kirkwood then reviews the bills, develops a strategy with the lobbyist, and he drafts letters, attends committee meetings and testifies before committees. Discussing the 2012 legislative session, Mr. Kirkwood indicated that Pascoag's lobbyist alerted him to the contact voltage legislation that was pending and he was able to effectively educate the legislators as to why Pascoag should be exempt from the specific provisions of the bill, thus saving ratepayer dollars.[49]

Turning to cost allocation between the Electric and Water departments, Ms. Allaire clarified that for administrative personnel, the allocation of payroll and related costs between Electric and Water in the Rate Year will be a ratio of 70/30.[50] However, she also noted that neither the General Manager's nor Assistant General Manager - Operations's vehicle is allocated to the water department. Ms. Allaire indicated that she did not know the basis for the decision

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[47] *Id.* at 21.
[48] *Id.* at 24-26.
[49] *Id.* at 28-31.
[50] *Id.* at 22-23.

not to allocate those costs.[51] Mr. Catlin testified that the Division accepted the practice because of the minimal dollars involved. However, as a general rule, he agreed that it would be reasonable for the Commission to require prospectively for Pascoag to allocate these types of costs, including, for example, FICA taxes associated with the various administrative personnel, without adjusting the revenue requirement in this case. Pascoag's witnesses could think of no reason not to do this in future filings.[52]

Discussing changes to Pascoag's Terms and Conditions, Mr. Kirkwood stated that it was important to modernize them in order to be prepared in the event there is a need for non-utility related terms and conditions resulting from competitive supply arrangements. He indicated that where it was practical, Pascoag was influenced by National Grid's Terms and Conditions.[53] One tariff that was not changed was the Net Metering Tariff which Mr. Kirkwood explained allowed for residential net metering of systems no greater than 10 kW. He stated that Pascoag currently has two net metering customers, each with systems under 5 kW. He discussed the fact that because the size of Pascoag's system is approximately 12.8 MW, it would be unreasonable to expect Pascoag to be able to absorb net metering systems of 5 MW. He indicated that Pascoag's all time highest system peak was 12.8 MW, but he did not think Pascoag hit that in 2012.[54]

Turning to the departure of DPI, Mr. Kirkwood noted that while he did not have the kW demand figures, that customer used approximately 7.3 million kWh per year whereas the next largest customer, the Burrillville School System, used 2.2 million kWh per year for all of the accounts. Zambarano Hospital uses approximately 2.15 million kWh per year, with a "fairly

[51] *Id.* at 32-34.
[52] *Id.* at 36-38.
[53] *Id.* at 39-40.
[54] *Id.* at 40-41.

substantial" drop off in usage per customer after those customers.[55] He testified that Pascoag attempted to work with DPI to keep the customer within the system, but could not infringe on National Grid's service territory.[56]

Mr. Kirkwood stated that because of the loss of DPI, Pascoag was still interested in implementing an economic development rate although he acknowledged that a proposed tariff had not been filed with Pascoag's case. However, he believed a tariff adopting the language of his Pre-Filed Testimony could be provided to the Commission for its review prior to February 1, 2013.[57] Mr. Catlin testified that the Division had no objection to the tariff as described by Mr. Kirkwood's Pre-Filed Testimony and reiterated at the hearing.[58]

Addressing Board Member Compensation, Mr. Kirkwood testified that the cash compensation to Board Members is $25 per year with the option of receiving health care benefits as long as they pay the same premium co-share percentage as Pascoag's employees.[59] Mr. Kirkwood noted that the proposal to increase the annual compensation to $3,000 for Board Members not taking health care and for new Board Members, is the same as that offered to KCWA's Board Members through KCWA's enabling legislation.[60] Mr. Catlin testified that the compelling reason for him to agree to the proposal was the age of the Pascoag Board Members (67, 76, and 81). Mr. Kirkwood agreed that they are probably eligible for Medicare, but noted that the Chairman had two young dependents.[61]

V. Commission Findings

[55] *Id.* at 42.
[56] *Id.* at 43.
[57] *Id.* at 52-53.
[58] *Id.* at 52-55.
[59] *Id.* at 56, 60.
[60] *Id.* at 56-58.
[61] *Id.* 58-60.

At the conclusion of the hearing, the Commission considered the evidence presented and unanimously approved the Settlement Agreement. The Commission also requested Pascoag to file its proposed Economic Development Tariff for review by the Commisison. The Economic Development Tariff R.I.P.U.C. No. 457 and Compliance Tariffs were filed on January 28, 2013 and January 29, 2013, respectively. On January 29, 2013, the Division submitted an electronic memorandum from Stephen Scialabba, Chief Accountant, stating that it had reviewed the proposed Economic Development Tariff and did not object to its approval. At an Open Meeting held on January 31, 2013, the Commission reviewed the Economic Development Tariff and the Compliance Tariffs and approved all of them for effect on usage on and after February 1, 2013.

The Commission finds the revenue requirement and rate design to be appropriate to allow Pascoag a reasonable opportunity to recover its costs and provide electricity to customers. The Commission encourages Pascoag to research whether it could take advantage of the State of Rhode Island's contract with Hewlett Packard for the processing of credit card fees and, if so, whether that contract would provide a more attractive cost for credit card processing than Pascoag's current vendor. Pascoag should also start allocating all costs between the Electric and Water departments. While Mr. Catlin noted that he had not adjusted these costs, for example, the vehicles assigned to the General Manager and Assistant Manager and FICA taxes, in this filing because of the minimal rate impact, he testified that it would be appropriate prospectively to have Pascoag allocate those costs without adjusting the revenue requirement in this case. Pascoag's witnesses indicated that they could do this. Pascoag's legal counsel stated that the Company had no conceptual problem with it but that there may be a compelling reason not to. If there is a compelling reason not to allocate the costs, Pascoag should notify the Commission as soon as possible. There is no revenue adjustment related to this mandate.

With regard to the $6,500 in expenses paid to Pascoag's lobbyist, the Commission finds that Mr. Kirkwood's activities are the actual lobbying activities as set forth in Commission Order No. 18316 (In re: Kent County Water Authority Abbreviated Application to Change Rates). Furthermore, while Kent County Water Authority ("KCWA") is a water utility with a focus on only law related to one type of industry, Pascoag's General Manager and staff is responsible for both electric and water-related matters, including the tracking of related legislation. Therefore, it is reasonable for Pascoag to utilize the services of a consultant at a minimal expense to the utility (less than one-tenth of a percent of its total cost of service and less than a quarter percent of its distribution related cost of service) in order to track legislation, be in the State House regularly, and provide experience in strategy. However, it is important to note that Mr. Kirkwood appears to be the one doing the actual lobbying on behalf of Pascoag, including writing letters, attending and testifying at committee hearings and meeting with legislators.

With regard to the health care benefit for Pascoag Utility District Board Members, the Commission notes that, unlike Providence Water Supply Board[62] and KCWA, Pascoag's Board members have not been receiving a stipend of almost $3,000 per year; Pascoag's have been paid $25 per year. Therefore, the health care was provided in lieu of a stipend. Going forward, as the Pascoag Board members are replaced, new Board members will receive $3,000 per year with no health care benefits. This is a reasonable transition for this utility.

The Commission finds that the Net Metering law codified at R.I. Gen. Laws § 39-26.4-1 et seq. does not apply to Pascoag as a result of statutory construction and practical application.[63]

[62] Order No. 18496 at 12, 17 (issued January 11, 2006).

[63] The Commission has the authority to interpret the applicability of the Net Metering law to Pascoag pursuant to R.I. Gen. Laws § 42-35-8. Furthermore, the Rhode Island Supreme Court has held that the Public Utilities Commission is entitled to deference of its interpretation of its enabling statute "even when the agency's interpretation is not the only permissible interpretation that could be applied." *Pawtucket Power Associates v. City of Pawtucket*, 622 A.2d 452, 456-57 (R.I. 1993).

R.I. Gen. Laws § 42-140.2-2(c) contains a definition of "net metering" that specifically refers to billing or charging an "end-use customer". R.I. Gen. Laws § 39-26.4-2(8) provides a definition of "net metering" while R.I. Gen. Laws § 39-26.4-2(9) provides a definition of "net metering customer". In order to read the definitions of these different legal provisions in harmony, a net metering customer used in § 39-26.4-2(9) must be the same type of customer billed under R.I. Gen. Laws § 42-140.2-2(c), or an "end-use customer." An end-use customer is not defined in R.I. Gen. Laws § 39-26.4. Instead, R.I. Gen. Laws § 39-26-2(8) defines an "end-use customer" as a person or entity in Rhode Island that purchases electrical energy at retail from an obligated entity. In R.I. Gen. Laws § 39-26-2(16), Pascoag is specifically exempt from the definition of "obligated entity". Therefore, for purposes of the Net Metering law, Pascoag is not serving "end-use customers" and its net metering tariff is not subject to the provisions of the Net Metering law.

Additionally, a review of the Net Metering law suggests in its totality that it was never intended to be applied to Pascoag. For instance, the sizing of the facilities eligible for the Net Metering rate (a single facility can be sized up to 5 MW) is approximately 40% of size of Pascoag's 12.8 MW system. As Mr. Kirkwood testified, it would not be possible for Pascoag to absorb that type of load. Even the statutory reserve of 2 MW for small projects below 50 kW would be approximately 16 percent of Pascoag's system. The Net Metering law limits net metering to 3 percent of peak load which, for Pascoag, based on its all-time peak, would be no more than 0.38 MW, or 380 kW.

The Rhode Island Supreme Court has stated that it will not mechanically apply statutory language to produce an absurd result.[64] The requirements of the Net Metering Law were clearly designed for a system much larger than Pascoag's. Mr. Kirkwood testified that Pascoag cannot

[64] *Zannelli v. DiSandro*, 84 R.I. 76, 80-82 (1956), *In re Jones*, 122 R.I. 716, 718 (1980).

absorb systems sized according to the statute. Furthermore, applying the law as written would cause an internal conflict within the statute between the 2 MW reserve for small projects and the limit that net metering is limited to 3% of the peak load, a significantly smaller amount. Therefore, it seems clear that the Net Metering Law was not intended to apply to Pascoag.

Pascoag's Net Metering tariff which allows for facilities on residential properties sized up to 10 kW with a review for facilities that may be sized slightly larger, is reasonable given the size of Pascoag's entire system. Additionally, it is reasonable for Pascoag to use the Standard Offer Rate as the net metering credit to appear as a billing credit rolling over year-to-year with a customer option to request a check after a 24-month period. Pascoag's Net Metering Tariff appears largely consistent with the intent of Rhode Island's Net Metering law despite the fact that the specific statutory provisions do not apply to Pascoag.

Accordingly, it is hereby,

(20977) ORDERED:

1. Pascoag Utility District's General Rate Filing, made on July 6, 2012, is hereby denied and dismissed.
2. The Settlement Agreement filed by Pascoag Utility District and the Division of Public Utilities and Carriers on November 28, 2012, is hereby approved for usage on and after February 1, 2013. Pascoag's total cost of service, excluding purchase power related costs is $2,540,035.
3. Pascoag Utility District's Compliance Tariffs filed on January 28, 2013 are hereby approved for usage on and after February 1, 2013.
4. Pascoag Utility District's Economic Development Rate Tariff is hereby approved for usage on and after February 1, 2013.

5. Pascoag Utility District is not subject to the requirements of the Net Metering Law set forth in R.I. Gen. Laws § 39-26.4-1 et seq. As such, Pascoag Utility District's Net Metering Tariff (RIPUC No. 901) Effective June 1, 2010, is not in violation of the Net Metering Law.

6. Pascoag Utility District shall comply with all other instructions contained in this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND ON FEBRUARY 1, 2013 PURSUANT TO A BENCH DECISION ON JANUARY 28, 2013 AND AN OPEN MEETING DECISION ON JANUARY 31, 2013. WRITTEN ORDER ISSUED FEBRUARY 28, 2013.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Mary E. Bray, Commissioner

Paul J. Roberti, Commissioner

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.

APPENDIX A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PASCOAG UTILITY DISTRICT ELECTRIC DEPARTMENT RATE APPLICATION	)))))	DOCKET NO. 4341

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Pascoag Utility District – Electric Department ("PUD" or "Pascoag") and the Division of Public Utilities and Carriers ("Division"), referred to collectively as the "Parties," in order to resolve the issues pending in the above-captioned proceeding. The Parties jointly request approval of this Settlement Agreement by the Rhode Island Public Utilities Commission ("Commission").

I. RECITALS AND SETTLEMENT TERMS

Pursuant to R.I.G.L. § 39-3-11, on July 6, 2012, PUD filed with the Commission a Filing for Rate Change. In its filing, PUD requested approval of new rates designed to collect additional revenues in the amount $584,145 or 7.53% over total test year including pass-through items of standard offer, transmission and transition revenues. The filed adjusted test year total revenues were $7,754,096. Adjusting out the pass-through revenue items results in test year distribution system revenues of $2,016,169.

The filed distribution revenue increase of $584,145 is an increase of 28.97% over rate year distribution revenues at current rates. In its initial filing, PUD filed testimony and supporting exhibits and schedules by Michael R. Kirkwood, PUD's General Manager, Judith R. Allaire, Assistant General Manager, Finance and Customer Service for PUD, and David Bebyn, C.P.A.

In response to PUD's filing, the Division conducted an investigation of PUD's proposed rate changes and engaged utility expert Thomas Catlin of Exeter Associates to review the Pascoag filing and make a recommendation to the Commission. The Division submitted three sets of discovery to Pascoag, performed an analysis of the proposed revenue request of the PUD and engaged in discussions with Pascoag to discuss its proposed findings and recommendations. As a result, the Parties reached a settlement as to the revenue increase for the Pascoag Utility District. The Parties have agreed that Pascoag rate year revenues should be increased by $513,963 in lieu of the filed request of $584,145. The derivation of this increase is presented in the accompanying schedules and reflects the following adjustments to Pascoag's filed request:

A. <u>Revenue Loss Due to Tropical Storm Irene</u>.

As a result of Tropical Storm Irene, all District customers were without power for 56 hours and 30 minutes in August 2011. While outages occur from time to time in every year, this outage due to Tropical Storm Irene was clearly abnormal. Accordingly, the Division proposed to adjust revenues at present rates to reflect the additional revenues Pascoag would have received had this outage not occurred. As shown on Schedule TSC-3, this results in an increase in distribution revenues of $9,903.

B. Incremental Expenses Related to Tropical Storm Irene

During the 2011 test year, District employees worked 96 hours of overtime that was billed to National Grid and Norwich Public Utilities for mutual aid assistance. In addition, operations employees worked approximately 395 hours and administrative employees worked approximately 50 hours of overtime dealing with Tropical Storm Irene service restoration for District customers.[1] A review of historical overtime levels shows that overtime hours in 2011 were well in excess of levels in prior years. In 2011, a total of 1,810 overtime hours were worked compared to an average of 1,173 hours per year in 2007 through 2010. Based on this, the Division proposed adjusting overtime wages to exclude the overtime incurred for both mutual aid and in-District service restoration efforts.

In response to DIV 1-9, Pascoag indicated that it also incurred incremental expenses as a result of Tropical Storm Irene for outside tree contractors, flaggers and materials and supplies. Because Pascoag made a separate adjustment to normalize Miscellaneous General expense, the account to which the outside tree contractor and flagger expenses were charged, no adjustment to eliminate those expenses was proposed. However, the Division did propose excluding the incremental materials and supplies expense.
As shown in Schedule TSC-4, the total reduction in the rate year cost of service to remove incremental expenses incurred as the result of Tropical Storm Irene is $23,762. This includes $19,107 of overtime wages, $3,193 for materials and supplies and $1,462 of FICA taxes related to overtime labor.

C. Outside Services - Pension Expense.

[1] These hours were estimated based on reported overtime expense and average overtime wage rates per the responses to DIV 1-9 and DIV 2-6.

During 2011, Pascoag recorded an adjustment to Outside Services - Pension expense to reverse an overpayment made by the District Water Department in 2010 for its share of 2010 expense. This accounting adjustment results in the overstatement of 2011 test year Outside Services Pension expense and should be eliminated. As shown on Schedule TSC-5 eliminating this accounting adjustment reduces rate year expense by $5,160.

D. Storm Reserve Funding.

The Parties agree to an annual funding allowance of $20,000. The Parties agree that the storm reserve fund should only be used when significant incremental storm-related costs are incurred and not for the costs of more routine storms that occur on a more frequent basis. The Parties agree that the storm reserve may be utilized if the total incremental storm costs from a weather event exceed $4,000, subject to a deductible of $2,500. The reserve shall only be used to pay for incremental costs incurred as the result of the storm. Pascoag will notify the Division and Commission within sixty days of a storm event when it utilizes the storm reserve. The notification will include a brief description of the event, and an accounting of the amount charged against the storm reserve indicating the total storm costs and the application of the deductible.

E. Director's Medical Insurance

The Parties agree to exclude the cost included in the rate year for medical and dental insurance provided to the District's outside counsel. As shown on Schedule TSC-6, this adjustment reduces rate year expense by $17,124.

Pascoag also provided medical insurance to three members of its Board of Directors and dental insurance to four members. The Parties agree that as existing Board members are replaced on the Board, medical and dental insurance no longer be provided to new Board members.

F. Board Member Compensation

For those Board members not receiving medical or dental insurance, the Parties agree that Pascoag may provide annual cash compensation of $3,000 annually for service on the Board.

G. Life, Disability and Vision Insurance

The Parties agree that insurance expense will be reduced by $2,893, as shown on TSC-7, to reflect reductions in premiums from its carrier.

H. FICA Transfer

The Parties agree to reduce rate year payroll taxes by $6,448 to reflect the FICA taxes associated with the administrative salaries allocated or transferred to the Water Department. See TSC-8.

I. DPI Revenue Loss

For purposes of settlement, the settled revenue increase and rates are based on the assumption that a major industrial customer identified in the PUD filing as DPI and having been described as intending to leave the PUD system, has already left the system. This is subject to the following provision: DPI will be billed at the new rates from the time the rate increase approved in this proceeding goes into effect until DPI fully discontinues service. All base revenues collected from DPI at the new rates will be set aside in the purchased power reserve fund to help replenish that fund. Pascoag will report to the Division and Commission on a quarterly basis the revenues that are credited to the purchased power reserve fund as a result of this provision.

J. Over-collected Purchased Power Costs

In conjunction with the settlement of this rate case, Pascoag will return to ratepayers over 12 months the over-collected balance of purchased power reconciling factor (standard offer, transition, and transmission) beginning with the next effective change in the rates for standard offer transmission and transition factors. Pascoag will be allowed to draw the necessary funds from the purchased power reserve fund.

K. Rate Design

For settlement purposes, the Parties agree to determine rates using the District's cost allocation/rate design model adjusted for the Division's adjustments to billing units for Tropical Storm Irene and operating expenses.

After due consideration of the Pascoag's testimony, exhibits and other documentation included in the filing of PUD as well as the Division's review of the filing, discovery responses, and the settlement discussions, the Parties have agreed to the settlement terms described above which resolve all issues relating to PUD's Application. The Parties believe that this settlement, as a whole, constitutes a just and reasonable resolution of the issues in this proceeding, and jointly request its approval by the Commission.

II. ADDITIONAL TERMS OF SETTLEMENT

A. This Settlement Agreement is the product of negotiation and compromise. The making of this agreement establishes no principles or precedents. This agreement shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation.

B. The acceptance of this agreement by the Commission shall not in any respect constitute a determination by the Commission as to the merits of any issue in any subsequent rate proceeding.

C. In the event that the Commission (i) rejects this Settlement Agreement, (ii) fails to accept this Settlement Agreement as filed, or (iii) accepts the Settlement Agreement subject to conditions unacceptable to any party hereto, then this Settlement Agreement shall be deemed withdrawn and shall be null and void in all respects.

AS WITNESS WHEREOF, the parties agree that this settlement agreement is reasonable and have caused this document to be executed by their respective representatives, each being fully authorized to do so, on this 21 day of November, 2012.

DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By its attorney,

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PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Summary of Revenues and Expenses at Present and Proposed Rates
Rate Year Ended December 31, 2013

	Rate Year Amount Per Pascoag	Division Adjustments	Rate Year at Present Rates	Proposed Rate Increase	Rate Year at Proposed Rates
Revenue					
Demand/Distribution	$ 1,521,138	$ 9,903	$ 1,531,041	$ -	$ -
Customer Charge	306,897	-	306,897	-	-
Public Street Lights	33,950	-	33,950	-	-
Private Street Lights	40,804	-	40,804	-	-
Power Factor Adjustment	1,541	-	1,541	-	-
Other	111,839	-	111,839	-	-
Total Revenue	$ 2,016,169	$ 9,903	$ 2,026,072	$ 513,963	$ 2,540,035
Expenses					
Distribution Operating Expense	276,000		276,000	-	276,000
Customer Service Operating Expense	310,180		310,180	-	310,180
Administrative Operating Expense	969,256	(20,687)	948,569	-	948,569
Distribution Maintenance	385,000	(20,790)	364,210	-	364,210
General Maintenance	39,352		39,352	-	39,352
Miscellaneous General Expense	142,909		142,909	-	142,909
Payroll and Property Taxes	95,463	(7,910)	87,553	-	87,553
Other Interest Expense	7,525		7,525	-	7,525
Subtotal	$ 2,225,685	$ (49,387)	$ 2,176,298	$ -	$ 2,176,298
Capital Outlays	306,200		306,200	-	306,200
Storm Contingency	30,000	(10,000)	20,000	-	20,000
Total Expenses	$ 2,561,885	$ (59,387)	$ 2,502,498	$ -	$ 2,502,498
Operating Reserve	38,428	(891)	37,537	-	37,537
Total Cost of Service	$ 2,600,313	$ (60,278)	$ 2,540,035	$ -	$ 2,540,035
Revenue Surplus/(Deficiency)	$ (584,145)	$ 70,181	($513,963)	$ 513,963	$0

Docket No. 4341
Schedule TSC-2

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Summary of Division Adjustments to
Rate Year Expenses
Rate Year Ended December 31, 2013

Description		Amount	Source
Tropical Storme Irene Outage Revenues	$	9,903	Schedule TSC-3
Tropical Storm Irene Incremental Expense		(23,762)	Schedule TSC-4
Outise Services-Pension		(5,160)	Schedule TSC-5
Health Care Premiums-Outside Legal Counsel		(17,124)	Schedule TSC-6
Updated Life, Disability and Vision Pemiums		(2,893)	Schedule TSC-7
Board Member Compensation		6,000	See Note (1)
FICA Taxes Transferred to Water		(6,448)	Schedule TSC-8
Storm Reserve Funding		(10,000)	
Operating Reserve		(891)	See Note (2)
Total Expense Adjustments	$	(60,278)	
Total Division Adjustments to Income	$	70,181	

Note:
(1) Reflects Allowance of $3,000 per Board member not receiving health insurance.

(2) Based on 1.5% of total expenses as reflected on Schedule TSC-1.

Docket No. 4341
Schedule TSC-3

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Adjustment to Revenues to Reflect
Revenue Lost due to Tropical Storm Irene
Rate Year Ended December 31, 2013

	Residential	Commercial
Total kWh Sales (1)	3,106,190	313,942
Number of Hours Service Provided (2)	687.5	687.5
Sales Per Hour	4,518	457
Number of Hours Service Lost due to Irene (3)	56.5	56.5
Addtitional kWh Sales without Outage	255,272	25,800
Current Distribution Rate per kWh	$ 0.03464	$ 0.04110
Additional Distribution Revenue	$ 8,843	$ 1,060
Total Additional Revenue		$ 9,903

Notes:
(1) Per response to DIV 1-4.

(2) Based on 31 day month less 56.5 hours os servicee interruption to all customers.

(3) per responses to DIV 1-4 and 2-1. All customes were withour power for 56.5 hours.

(4) Per Schedule DGB-15, page 1 of 2.

Docket No. 4341
Schedule TSC-4

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Adjustment to Remove Incremental Expenses
Related to Tropical Storm Irene
Rate Year Ended December 31, 2013

		Test Year Amount (1)
Operations Department Overtime	$	14,161
Office/Administrative Overtime		1,510
Mutual Aid Overtime-National Grid (2)(3)		1,790
Mutual Aid Overtime-Norwich Public Utilities (2)(3)		1,646
Materials & Supplies charged to O&M		3,193
FICA Taxes on Overtime Labor at 7.65%		1,462
Adjustment to Rate Year Expense	$	(23,762)

Notes:

(1) Per response to DIV 1-9, except where noted.

(2) Per response to DIV 1-7, reflects 50 hours of overtime for mutual aid to National Grid and 46 hours for Norwich Public Utilities.

(3) Cost based on average overtime cost of $35.79 per hour for operations employees in 2011 per response to DIV 2-6.

Docket No. 4341
Schedule TSC-5

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Adjustment to Outside Services - Pension
Rate Year Ended December 31, 2013

		Adjustment
2011 Year End Adjustment to Reverse 2010 Water Department Overpayment	$	5,160
Amount Properly Included as Ongoing Expense		-
Adjustment to Expense	$	(5,160)

Note:
(1) Per response to DIV 1-21 and 2-4.

Docket No. 4341
Schedule TSC-6

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Adjustment to Eliminate Health Care Premiums
for Outside Legal Counsel
Rate Year Ended December 31, 2013

		Adjustment
Rate Year Health Insurance Premiums included for Outside Legal Counsel	$	17,124
Amount Recoverable in Rates per Division		-
Adjustment to Expense	$	(17,124)

Note:
(1) Per response to DIV 1-21 and 2-4.

Docket No. 4341
Schedule TSC-7

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Adjustment to Life, Disability and Vision Insurance
Premiums to reflect Swith in Insurance Providers
Rate Year Ended December 31, 2013

		Adjustment
Life, Disability and Vision Premiums under New Policy (1)	$	14,034
Amount per District (2)		17,196
Reduction in Premiums		(3,162)
Reduction in Admin Expense to Water (3)		(269)
Adjustment to Electric Expense	$	(2,893)

Notes:
(1) Per response to DIV 2-5. Amount for vision insurance reflects 20%. employee co-pay.

(2) Per Schedule DGB-5.

(3) Estimated based on perecntage of premiums attributable to Office/Admin

Docket No. 4341
Schedule TSC-8

PASCOAG UTILITY DISTRICT - ELECTRIC DEPARTMENT

Adjustment to Reflect FICA Taxes
Associated with Admin Transfer to Water Operations
Rate Year Ended December 31, 2013

		Adjustment
Rate Year Salaries Transferred to Water (1)	$	84,294
FICA Tax Rate		7.65%
Adjustment to Electric FICA Taxes	$	(6,448)

Note:
(1) Per Schedule DGB-7.