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March 1, 2019

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

**Re: *Docket No. 4890- The Narragansett Bay Commission
General Rate Filing***

Dear Ms. Massaro:

Enclosed please find an original and nine copies of:

1. The Narragansett Bay Commission's Objection to the Providence Apartment Association's Motion To Intervene Out Of Time.

Please note that an electronic copy of this filing has been provided to the service list and legal counsel for the Providence Apartment Association.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf

cc: Docket 4890 Service List and Matthew L. Fabisch, Esquire (*via electronic mail*)

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

IN RE: NARRAGANSETT BAY COMMISSION :
GENERAL RATE FILING : **Docket No. 4890**

**THE NARRAGANSETT BAY COMMISSION’S OBJECTION TO THE PROVIDENCE
APARTMENT ASSOCIATION’S MOTION TO INTERVENE OUT OF TIME**

I. INTRODUCTION

Now comes the Narragansett Bay Commission (“NBC”) and pursuant to the Rhode Island Public Utilities Commission’s Rules of Practice and Procedure (801-RICR-00-00-1, et. seq.) hereby objects to the Motion To Intervene Out Of Time filed by the Providence Apartment Association (“PAA”).

II. PROCEDURAL HISTORY

On October 10, 2018, the NBC filed a general rate filing that sought to generate increased revenue by increasing customer rates. This rate filing was publicly advertised in the Providence Journal and notices were sent to the NBC’s customers. On October 31, 2018, the Rhode Island Public Utilities Commission (“Commission”) established a procedural schedule that set a December 7, 2018 deadline for motions to intervene, and a February 20, 2019 deadline for the filing of direct testimony by interveners. Following the establishment of the procedural schedule, data requests were issued by the Commission and the Division of Public Utilities and Carriers, to which the NBC filed responses. On February 20, 2019 – the date intervener testimony was due – the PAA filed a Motion To Intervene Out Of Time.

III. INTERVENTION STANDARD

Intervention in proceedings before the Commission is governed by Rule 1.14 of the Commission's Rules of Practice and Procedure (801-RICR-00-00-1.14), which states:

"Subject to the provisions of these rules, any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Commission. Such right or interest may be:

1. A right conferred by statute.
2. An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission's action in the proceeding. (The following may have such an interest: consumers served by the applicant, defendant, or respondent; holders of securities of the applicant, defendant, or respondent.)
3. Any other interest of such nature that movant's participation may be in the public interest."

Rule 1.14.F addresses late intervention:

"Intervenors who are granted party status are bound by the agreements reached and orders entered in the proceedings prior to their intervention. The Commission will not allow the broadening of issues unless the public interest requires it and no undue prejudice or hardship will result to other parties to the proceeding."

IV. NBC'S OBJECTION TO THE PAA'S MOTION TO INTERVENE OUT OF TIME

The PAA has no statutory right to intervene and its motion must be examined pursuant to Rule 1.14.B.2. and 3. and part F. governing late intervention. It is the NBC's position that the PAA does not have a sufficient factual and legal basis to support its intervention request. Furthermore, the PAA's motion clearly evidences that it will not comply with the rule governing late intervention, which will cause undue prejudice and hardship to the parties in this proceeding.

A. INTERVENTION STANDARD – RULE 1.14.B.2. and 3

The PAA failed to demonstrate how and why its interests are not adequately represented by existing parties, nor did it provide any concrete support for the proposition that its intervention is in the public interest. In fact, the PAA failed to identify any specific interest that will be “directly affected” in this Docket “and which is not adequately represented by existing parties.”

The PAA’s motion goes to great lengths to address issues related to past dockets that are decades old (Dockets 3162, 3409 and 3432). These issues seemingly include costs related to the federally mandated Combined Sewer Overflow (“CSO”) Project. The PAA’s motion also states that “we wholly embrace and extend the arguments noted as points 9, 10 and 11” in the Rhode Island Treasurer’s Motion To Intervene Out of Time.” These “points 9, 10 and 11” all address Phase III of the CSO Project. However, as the NBC noted in its response to the Treasurer’s intervention motion, NBC is not requesting cost recovery for Phase III of the CSO Project in this Docket. (*See also*, NBC’s response to Division Data Request 1-58) Thus, the “interests” the PAA seeks to address will not be directly affected in this Docket.

Furthermore, the PAA has not demonstrated how its interests are “not adequately represented by existing parties” in this Docket. The gravamen of the NBC’s rate filing is a request to increase revenues for escalating operation and maintenance expenses; adjustments to customer consumption forecasts; and, updates to anticipated revenues from billings and miscellaneous sources. The Division of Public Utilities and Carriers (“Division”) has adequately addressed these issues in its role as the ratepayer advocate

in this Docket. Narragansett Electric Co. v. Harsch, 368 A.2d 1194 (RI 1977)(“Pursuant to R.I.G.L. §39-1-1 et seq., the Rhode Island Legislature has conceived a system whereby the Division, in addition to its broad regulatory powers, appears on behalf of the public to present evidence and make arguments before the Commission.”) In fact, the Division’s data requests and the testimony of its witness, Ralph Smith, CPA of Larkin & Associates, demonstrate that it has done a thorough job as the ratepayer advocate addressing the issues before the Commission in this Docket.

Finally, the PAA has not demonstrated how the public interest will be served by its participation. In fact, as examined below, the PAA’s late intervention will only serve to delay the completion of this docket and unnecessarily increase rate case expenses, which are ultimately borne by NBC’s customers.

B. LATE INTERVENTION – RULE 1.14.F

The PAA’s motion for late intervention is the third such motion filed in this Docket. However, unlike the motions filed by the Rhode Island Treasurer and the George Wiley Center, the PAA does not, and necessarily cannot, agree to be bound by the procedural schedule previously established. The PAA did not file its motion until February 20, 2019, the date direct testimony was due in this matter. And unlike the Rhode Island Treasurer and the George Wiley Center, the PAA did not submit direct testimony or a position paper in an effort to comply with the deadline.¹

¹ Although the Commission had not ruled on their motions for late intervention, the Rhode Island Treasurer submitted pre-filed written testimony, and the George Wiley Center submitted a Rule 1.15 statement signed by its attorney, on the February 20, 2019 deadline for intervener testimony. The parties made these filings to avoid any delay in the procedural schedule.

Rather, the PAA seeks to expand the procedural schedule to secure expert witnesses, which will prejudice the NBC. The hearing dates in this Docket are May 23 and 24, 2019, which is less than ninety days away. Further, the NBC is currently preparing rebuttal testimony in response to the direct testimony filed by the Division and the Treasurer, which is due in forty days on April 10, 2019. If the PAA is allowed to intervene and given time to file expert testimony, the procedural schedule will be drastically altered to the detriment of all parties involved in this Docket.

Furthermore, the PAA's motion plainly states that it will seek a "broadening of issues" in this Docket, which has been pending for over four months. Pages 5-7 of the PAA's motion list thirteen "predominate issues" it intends to raise. Virtually none of these issues are currently before the Commission in this Docket. In fact, many of the listed issues pertain to past dockets and/or the CSO Project. Allowing the PAA's late intervention will drastically alter the procedural schedule; raise issues that are not relevant to this Docket; will prejudice the existing parties; and, will cause unnecessary rate case expense that is ultimately borne by NBC's customers.

By contrast, if the Commission denies the intervention request, it will not be denying the PAA a voice in this proceeding. The PAA is still free to submit public comment. Therefore, a balancing of interests is achieved. The PAA can have a voice in the process, without derailing the proceedings, which are scheduled to conclude within ninety days.

V. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Narragansett Bay Commission objects to the Providence Apartment Association's intervention and participation as a party in this docket.

The Narragansett Bay Commission,
By its attorney,



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CERTIFICATION

I hereby certify that on March 1, 2019, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail and to Matthew L. Fabisch, Esquire via email at Fabisch@fabischlaw.com.

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