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February 14, 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 Response to the Motion To Intervene Out Of Time By The George Wiley Center.
2. The Narragansett Bay Commission's Response to the Motion To Intervene Out Of Time By The Rhode Island General Treasurer.

Please note that an electronic copy of these filings have been provided to the service list.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf

cc: Docket 4890 Service List (*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 RESPONSE TO THE MOTION TO INTERVENE  
OUT OF TIME BY THE RHODE ISLAND GENERAL TREASURER**

**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 responds to the Motion To Intervene Out Of Time filed by the Rhode Island General Treasurer, Seth Magaziner (“Treasurer”).

At the outset, the NBC states that it does not oppose the Treasurer’s participation as a party in this matter subject to the limitations of Rule 1.14. However, the NBC’s lack of opposition is specific to this docket and does not establish any precedent as the NBC does contest portions of the stated basis for the Treasurer’s intervention.

**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”/“PUC”) established a procedural schedule that set a December 7, 2018 deadline for motions to intervene. Following the establishment of the deadline, data requests were issued by the PUC and

the Division of Public Utilities and Carriers, to which the NBC filed responses. On February 4, 2019, the Treasurer 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 RESPONSE TO THE TREASURER'S MOTION TO INTERVENE OUT OF TIME**

#### **A. The Statutory Basis For Intervention**

The Treasurer's motion cites several statutes including R.I.G.L. §42-10.1-1, et. seq., the Rhode Island Public Finance Management Board Act; R.I.G.L. §46-25-58, which authorizes NBC to issue revenue bonds; and, R.I.G.L. §46-25-40, which allows the

Treasurer to advance funds to the NBC in anticipation of the NBC issuing notes or bonds. The Treasurer's motion also states that intervention "is necessary as a matter of right..." (See, Treasurer's Motion, ¶ 17)

The NBC disputes that any of these statutes afford the Treasurer a statutory right to intervene. Furthermore, the NBC does not seek rates in this docket for debt service and no funds have been advanced by the Treasurer to the NBC. Rather, on October 3, 2018, the NBC submitted a filing under the debt service compliance filing mechanism approved by the PUC. In that filing (Docket 4885), the NBC sought a rate increase for debt service to fund its ongoing capital improvement program, including projects related to Phase III of the federally mandated Combined Sewer Overflow ("CSO") Project. The Commission approved the NBC's request on December 4, 2018 and new rates went into effect on January 1, 2019.

The NBC's lack of objection to the Treasurer's participation as a party in this docket does not equate to an agreement that the Treasurer has a statutory right to intervene. Furthermore, the NBC's lack of objection is limited to this docket and does not establish any precedent for future dockets.

## **2. The Factual Basis For Intervention**

The Treasurer's motion states that the NBC's general rate filing contains "revised rate schedules for the purpose of raising revenue to partially support Phase III of the combined sewer overflow project." (See, Treasurer's Motion, ¶ 8) This is inaccurate. As set forth in the NBC's response to Division Data Request 1-58, "NBC is not requesting cost recovery for the CSO Program Phase III in this general rate filing."

Furthermore, the Treasurer's motion indicates that "NBC defined Phase III as being affordable if annual rates do not exceed 2% of annual income for more than 33% of ratepayers within the total NBC service area and also do not exceed 2% of annual income for more than 50% of ratepayers within any of the municipalities within the service area." (See, Treasurer's Motion, ¶ 9) This too is inaccurate. The NBC has not "defined" Phase III as being affordable, and the applicable affordability criteria was not created by the NBC.

As set forth in the testimony of Kathryn Kelly, NBC is required to implement the federally mandated CSO Project under a Consent Agreement with the Rhode Island Department of Environmental Management ("RIDEM"). (See, Direct Testimony of Kathryn Kelly, p.3) Furthermore, the affordability analysis conducted by NBC's consultant is "based on Environmental Protection Agency (EPA) criteria." (*Id.*) Thus, the NBC did not make its own independent determination that the CSO Project was affordable and proceed to voluntarily undertake it based on its "affordability."

### **3. The Scope of Late Intervention**

In the Treasurer's motion, he "agrees to be bound by the procedural schedule already established in this docket" as required by Rule 1.14.F. In addition, the NBC requests that if the PUC allows the Treasurer's late intervention that it limit the Treasurer's participation and not allow a "broadening of issues" in this docket, which has been pending for four months.

Certainly, customer impacts and affordability are part of any general rate filing before the Commission. However, as set forth above, the NBC does not seek any funds

related to Phase III of the CSO Project in this docket. Furthermore, the NBC's obligation to undertake the CSO Project is not a part of this filing. Any issues related to the NBC's obligations to undertake the CSO Project and related affordability criteria are governed by the RIDEM Consent Order and the EPA's federal mandate.

## **V. CONCLUSION**

Wherefore, for the reasons set forth herein, the Narragansett Bay Commission does not object to the Treasurer's participation as a party in this docket, subject to the following conditions:

1. That the NBC's failure to object not be deemed an assent to any claim by the Treasurer of a statutory right to intervene or to set precedent for any future docket;
2. That the Treasurer's participation as a party in this docket be subject to the Commission's Rules of Practice and Procedure, including, but not limited to, Rule 1.14;
3. That the Treasurer's participation not "broaden the issues" in this docket; and,
4. That the Treasurer be bound by the procedural schedule previously established in this docket.

The Narragansett Bay Commission,  
By its attorney,



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## CERTIFICATION

I hereby certify that on February 14, 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.

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