

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

IN RE: NARRAGANSETT BAY
COMMISSION GENERAL RATE
FILING

DOCKET NO. 4890

**THE PROVIDENCE APARTMENT ASSOCIATION (PAA) REPLY TO THE
NARRAGANSETT BAY COMMISSION'S (NBC) OBJECTION TO THE PAA'S
MOTION FOR INTERVENTION OUT OF TIME**

Were the issues in this docket limited to the prudence of the increased costs for treating ratepayer wastewater discharged to the NBC sewers, we could accept NBC's objections that the PAA's class interests would be aligned with all other ratepayers. The NBC, however, mistakes our "wholly embracing" the Treasurer's concern with costs of Phase III of the Combined Sewer Overflow project ("CSO" hereinafter) as wholly stating the focus of our proposed intervention. In fact, our predominate issue is "lack of equity in rate allocation", in other words, where costs fall amongst ratepayers as a matter of settled ratemaking principles. While we allege that this departure from normative user pays allocation of cost is principally related to the CSO infrastructure, Phase III and its recovery only promises to exacerbate that rate problem. Our objection is the allocation, *existing* in the general rate, of already sunk CSO costs, both capital *and operating*.

Further, NBC conceded in its February 14th response to the Treasurer's Motion to Intervene Out of Time: "customer impacts and affordability are part of any general rate filing before the Commission", so we cannot see how rate designs to mitigate customer impact to those shouldering a disproportionate burden are not subsumed thereunder, even should their ambit extend not solely to allocation of those particularized increased costs. It is axiomatic that money

is fungible¹; thus unavoidable increases to a class of customers as a result of prudently recoverable expenses are plausibly mitigated not simply with regard to those increases but the allocation of the rump as well.

This leaves only for us to demonstrate that the present parties to the docket are not likely to vindicate our rate design concerns. Both the NBC and the Division express a regard for our class much the same as Willie Sutton was reputed to hold for banks, *i.e.*, “that’s where the money is”. Additional delay in addressing the PAAs concerns can only compound 15 years of accumulated imbalance in the rate structure. When, indeed, might the existing rate design ever be challenged but in a general rate hearing?

Though the complexity of rate design for the unprecedented expense posed to sewer ratepayers for stormwater service has previously been segregated for greater focus, *e.g.*, Docket #3432, it is fully appropriate to consider within the context of this docket as under the existing general rate structure these costs fall particularly heavily without cause on the multi-family ratepayer base. Since Docket #3432 was inconclusive, rate increases for NBC, whether “general” or “debt service” related, instead of reflecting the Commission’s understanding that the Division and NBC would guard against inappropriate stormwater rate allocation and work toward consensus on that question², appear to have proceeded on the basis of Charles Handy’s management theory of the slowly boiling frog.³ Fifteen years of constant modest rate increases have masked the over reliance on multi-family dwellings to cover the costs of stormwater collection and treatment. Now comes NBC to say that the frog must stay in the pot playing its fabled role, as this docket contemplates but one more small increase.

¹ as Danny Devito famously said in Mamet’s character of Mickey Bergman (Heist 2001) : “that’s why they call it money”.

² see, generally, remarks of Commissioner Racine in Transcript of the January 14th Hearing, Docket #3432, pp. 146,147, calling this encouragement *in dicta* “as good as any kind of order”.

³ Handy, Charles, *Age of Unreason*, Boston, Harvard Business School Press, 1990, p. 9

We think the NBC's admission that customer impact and affordability are always at issue in a general rate increase docket is clearly dispositive of the cause for our intervention and, as a corollary, makes rate design an issue in any such docket by its very nature. Indeed, the NBC itself in filing this docket proposed the creation of a hardship fund, see testimony of Harold Smith prefiled October 10th, p. 2, a form of rate relief for unforeseen difficulties that might be faced by some few of its ratepayers.

Likewise, whatever his concerns in regard to CSO Phase III costs, the Treasurer by his testimony on February 20th quite clearly demonstrated the purpose of his intervention is one of rate design. No objection has been made that the proposal of the Treasurer for some form of rate, rebate or discount to assist low and moderate income ratepayers as outside the scope of this docket. We cannot see in any way how our own proposal is anything but to accomplish for our class of ratepayers precisely what the Treasurer proposes for low and moderate income ratepayers: "to work with NBC, the DPUC and others through the spring to identify a good model that will create a fair and equitable system for distributing ratepayer costs going forward." Pre-filed Direct Testimony of Seth Magazine, General Treasurer, p. 10.

The PAA is amenable to the alternative of the Commission opening a separate docket on NBC rate design should this be deemed a more efficient use of the resources of the Parties and the Commission, if rate design is altogether removed as a consideration from the present docket. Virtually all examples of rate abatement for low and moderate income ratepayers as proposed by intervenors to the present docket increase the allocation of costs to every ratepayer who falls just above that line, wherever it is set. The PAA finds particularly objectionable the notion that the Commission might entertain a limited rate design undertaking proposed by the Treasurer and the

George Wiley Center which may affect the PAA's interests while excluding the PAA on the contradictory theory that rate design is not an issue in this docket.⁴

Wherefore, the PAA renews its request that the Commission grant its Motion for Intervention Out of Time in the present docket or, alternatively, forswear the consideration of rate design in the present docket and create a rate design docket to contemplate the proper allocation of NBC costs amongst its ratepayers.

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⁴ The NBC has additionally distinguished PAA's proposed intervention out of time as marred by the failure to file testimony in accordance with the procedural schedule for this docket. The intention of filing our Motion For Intervention Out Of Time as of that testimonial filing date was to fully announce the theory of our intervention coordinate with those substantive filings. The majority of our argument rests on previous and present evidence already filed before the Commission and its proper interpretation. While we had sought to retain the opportunity to introduce economic testimony to accentuate the common sense case made by the George Wiley Center in its Comments filed on February 20th, 2019 about the general relationship between landlord costs and apartment rents irrespective of supply of apartments, this is not essential to our intervention. We invite the Commission to exclude or limit the introduction of such testimony given our failure to comply with the schedule and potential prejudice alleged by NBC. Although, should the Docket continue to examine the travails of low-income ratepayers, we fail to see how such evidence would not be required for such rate design to be effective, since it is intuitively reasonable to suggest that most low-income users are only vicariously ratepayers. Whether introduced by the PAA or other party, this could not be considered broadening a docket that has, of date, already admitted of its appropriate inclusion of this rate design issue.