

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

IN RE: NARRAGANSETT BAY COMMISSION

DOCKET NO:

THE NARRAGANSETT BAY COMMISSION'S PETITION FOR DECLARATORY JUDGMENT

I. INTRODUCTION

Now comes the Narragansett Bay Commission (“NBC”) and seeks a declaratory order that interprets and applies statutes administered by the Rhode Island Public Utilities Commission (“PUC”) and declares whether, or in what manner, certain PUC rules apply to the NBC, pursuant to R.I.G.L. § 42-35-8 and Rule 1.11 of the PUC’s Rules of Practice and Procedure. In particular, the NBC seeks a declaratory judgment clarifying which of the PUC’s Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service apply to the NBC, and what jurisdiction the Rhode Island Division of Public Utilities and Carriers has over billing and service termination disputes between the NBC and its customers.

II. JURISDICTION

R.I.G.L. § 42-35-8 allows for the filing of a petition with a State agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner. Further, Rule 1.11 of the PUC’s Rules of Practice and Procedure provides for the filing of a Petition for Declaratory Judgment pursuant to R.I.G.L. § 42-35-8.

III. FACTS

1. On May 15, 2019, the PUC, through its legal counsel, informed the NBC that it had

received a customer complaint regarding a water service termination, as the customer claimed she did not see a water shut-off notice posted on their property.

2. Upon information and belief, the customer contacted the Rhode Island Division of Public Utilities and Carriers (“Division”) requesting a hearing after receiving the shut-off notice because she believed the NBC did not properly provide her notice of the water shut-off.
3. Upon information and belief, the Division declined to afford the customer a hearing on the basis that it has no jurisdiction over NBC matters due to specific provisions in the NBC’s authorizing legislation.
4. The Division’s position was summarized in a May 28, 2019 email from the Division’s Deputy Chief of Legal Services, William Lueker, to PUC Legal Counsel, Cynthia Wilson

Frias:

“The Division’s position is that it has not been granted any authority with respect to NBC disputes, and that the law explicitly prohibits us from deciding billing disputes; 46-25-21.1 makes it explicitly clear that NBC is the sole arbiter of disputes regarding its bills. A termination of service proceeding is, at its heart, a billing dispute – which only NBC can address. 46-25-22.1 does direct NBC to abide by the rules and regulations prescribed the PUC for termination of water utility service. Those rules and regulations include certain mandatory notice requirements, the right to informal review, and the right to a formal hearing. But 46-25-22.1 does not subject NBC to the DPUC’s (or PUC’s) authority with respect to adjudicating a billing dispute or any of the issues ancillary thereto. NBC is an agency of the state that does not fall under our jurisdiction. It does, however, have all of the statutory authority it needs to send out termination notices, hold its own informal reviews, and conduct its own hearings, including appointing its own informal review officers and hearing officers.”

5. As such, and upon information and belief, the customer turned to the PUC for relief.
6. In a May 15, 2019 email, PUC Legal Counsel raised the issue of which agency – the NBC or the Division – has jurisdiction to hear appeals of NBC matters, and more specifically,

those related to billing disputes, shut-off notices and service termination procedures.

7. As PUC Legal Counsel noted, there seem to be conflicts among two statutes referenced within the NBC's authorizing legislation; the PUC's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service; the NBC's own regulations; and, the shut-off notices issued by the NBC.

8. The two applicable statutes referenced in the NBC's authorizing legislation are:

a. **RIGL § 46-25-21.1** (which vests the NBC with the jurisdiction to hear customer disputes)(See Exhibit 1):

(a) Any person aggrieved on any ground whatsoever by any sewer use fee, charge, or assessment against him or her may within three (3) years after the first day designated for the payment of the sewer use fee, charge, or assessment, or the first installment thereof, if payable in installments, file an appeal with the Narragansett Bay water quality management district commission¹ and within sixty (60) days after a final decision of the commission appeal, where the person has timely appealed the assessment, file a petition in the superior court for the county in which the property lies for relief from the sewer use fee, charge, or assessment, to which petition the commission shall be made a party respondent; provided, however, that all such appeals must be made no later than six (6) months after the person assessed the fee has transferred the property to a third party.

(b) For the purpose of this section, an "aggrieved person" shall be the person who has been assessed the sewer use fee, charge or assessment that is being contested. The right to contest an assessment shall be personal to the person assessed and shall not be assignable or transferable.

(c) **This remedy shall be exclusive. Any person alleging an illegal, erroneous, incorrect, or void fee, charge, or assessment against him or her shall be confined to the remedies stated herein.** No petition shall, before judgment, stay any proceedings for collecting the sewer use fee, charge, or assessment. The Narragansett Bay water quality management district commission may promulgate regulations to effectuate this provision and to eliminate frivolous appeals. No appeal shall be heard if the appeal is based on the rates set by the public utilities commission. (emphasis added)

¹ The "commission" as referenced in both statutes refers to the Narragansett Bay Commission, not the Rhode Island Public Utilities Commission.

b. **RIGL § 46-25-22.1** (which allows the NBC to terminate service)(See Exhibit 2):

(a) Notwithstanding the provision of § 46-25-22, the commission is authorized to order any water supplier which services any person assessed by the commission pursuant to § 46-25-22 to terminate the water supply service of any person for nonpayment of sewer user fees, charges, and assessments. **The commission will abide by the rules and regulations of the public utilities commission governing water shut-offs.**

(b) Upon notification by the commission to terminate service, the water supplier shall within fourteen (14) days terminate said service and notify the commission that said termination has occurred. Upon notification by the commission, the water supplier shall restore the water supply in accordance with the water supplier's policy on water supply restoration. (emphasis added)

(c) The commission shall have the authority to assess any person any fees, charges and assessments affiliated with the shut off and restoration of service.

(d) When service is provided to a residence occupied by a tenant, the tenant may, after paying the fees, charges and assessments in order to restore or prevent termination of service, deduct the amount paid from the rent due the landlord. The tenant shall provide the landlord with a copy of the receipt from the commission when making a deduction from the rent.

9. The PUC's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service ("Termination Rules") provide (among other terms) as follows:

1.13 Review Procedures

A. Informal Review by the Division of Public Utilities

In the event of a dispute between the public utility and the customer which cannot be adjusted with mutual satisfaction after an initial consultation with an employee of the Consumer Section of the Division of Public Utilities and Carriers, the customer or the public utility may request a review by the Administrator of the Division of Public Utilities and Carriers or his designee who shall investigate the complaint, afford each party to the dispute a reasonable opportunity to be heard, and communicate his findings to the parties. During the pendency of such review the utility shall not discontinue service to the customer due to the circumstances out of which the dispute arose. The customer or the public utility may request a review of the disputed issue at any time and the request may be made in any reasonable manner including telephoning the Division of Public Utilities and

Carriers. (See Exhibit 3)

10. The NBC's Rules and Regulations (835-RICR-20-00-2) state:

2.18 Disputes

A. Dispute Procedure

1. If a customer believes that a specific charge on the sewer bill is incorrect, he or she must contact the NBC's Customer Service Department via telephone or in writing to dispute the charge. While a particular charge is in dispute, late charges will not accrue against the disputed transaction and the NBC will not attempt to collect that specific amount. The customer is required to pay the undisputed portion of the bill. The right to dispute a bill is personal to the person assessed and it is not assignable or transferable.

B. Appeals

1. If a customer is unable to resolve the dispute with the NBC, he or she may refer the matter to the PUC in accordance with R.I. Gen. Laws Chapter 39-1, as amended, by telephone or in writing for dispute resolution. While a dispute is under consideration by a PUC Review Officer, the NBC will cease collection action to obtain payment for the disputed charge(s).² (See Exhibit 4)

11. The NBC's shut-off notices state, in part,:

"You have the right to submit the matter to the Division of Public Utilities and Carriers...Services will not be disconnected pending proceedings before a reviewing officer..." (See Exhibit 5)³

III. REQUEST FOR DECLARATORY JUDGMENT

Because of the conflicting rules, regulations and statutes, the NBC requests that the PUC issue a declaratory judgment clarifying which of the PUC's Termination Rules apply to the NBC,

² The NBC acknowledges that this particular rule and regulation must be changed and will be amended in conformance with the decision ultimately rendered in this matter, as there is no statute, rule or regulation that provides for a direct appeal to the Rhode Island Public Utilities Commission.

³ It appears this notice was developed in conjunction with the Division in 1991 after RIGL § 46-25-22.2 was enacted (See Exhibit 6).

and what jurisdiction the Division has vis-à-vis the Termination Rules over billing and service termination disputes between the NBC and its customers.

As set forth above, the NBC's authorizing legislation (RIGL § 46-25-21.1), vests the NBC with the jurisdiction to hear customer disputes as it states:

“Any person aggrieved on any ground whatsoever by any sewer use fee, charge, or assessment against him or her may within three (3) years after the first day designated for the payment of the sewer use fee, charge, or assessment, or the first installment thereof, if payable in installments, file an appeal with the Narragansett Bay water quality management district commission...”

Thereafter, the statute provides that a customer has a right to appeal to the Superior Court. Furthermore, the statute states that: “This remedy shall be exclusive. Any person alleging an illegal, erroneous, incorrect, or void fee, charge, or assessment against him or her shall be confined to the remedies stated herein.” Thus, if this were the only applicable statute, there would not be much of an issue.

However, the NBC's authorizing legislation also allows NBC to order water suppliers who serve the NBC's customers to terminate service. This statute makes clear that the NBC must “abide by the rules and regulations of the Public Utilities Commission governing water shut-offs.” It is this statute that seemingly sets up a conflict because, among other things, the PUC's Termination Rules have very specific notice provisions, including requirements that customers be informed of their right to submit any dispute to the Division. (See 810-RICR-10-00-1, Section 1.5 and Appendix B) In addition, the rules and regulations specifically provide for a review by the Division. (See 810-RICR-10-00-1, Section 1.13, Review Procedures)

The Division has taken the position that “it has not been granted any authority with respect

to NBC disputes, and that the law explicitly prohibits us from deciding billing disputes...” This may be correct, but the NBC cannot sua sponte ignore RIGL § 46-25-22.1, which clearly states that it must “abide by the rules and regulations of the Public Utilities Commission governing water shut-offs”, which includes the right for customers to seek review by the Division.

When it comes to statutory construction, the Rhode Island Supreme Court has stated: “The clear preference is for the court to construe the statutes so that both may be given effect.”

Rhode Island Higher Education Assistance Authority v. Rhode Island Conflict of Interest

Commission, 505 A.2d 427, 430 (R.I.1986). “[E]very attempt should be made to construe and apply them so as to avoid the inconsistency...” *Asadoorian v. Warwick School Committee*, 691 A.2d 573, 580 (R.I.1997) In attempting to construe the two statutes – RIGL § 46-25-21.1 and RIGL § 46-25-22.1 – and the PUC’s Termination Rules, several reasonable conclusions can be reached. Unfortunately, NBC, cannot, on its own, decide which of these conclusions is correct, nor can it decide which of the PUC’s Termination Rules apply and which do not.

One conclusion that could be reached in harmonizing the competing statutes is that RIGL § 46-25-21.1 (direct appeal to NBC/Superior Court) would control all “billing disputes” between the NBC and its customers, while RIGL § 46-25-22.1 and the PUC’s Termination Rules only apply to disputes regarding the NBC’s compliance with the Termination Rules themselves. Under this interpretation, any “billing disputes,” including whether a NBC customer owes a sewer use fee, charge, or assessment, could only be reviewed by the NBC and then the Rhode Island Superior Court. The Division would have no jurisdiction over billing disputes, including whether a sewer use, fee, charge or assessment is owed by a customer. The Division’s only role would be to

review whether the NBC complied with the PUC's Termination Rules (e.g. whether NBC has followed all of the notice requirements provided for in the Termination Rules).

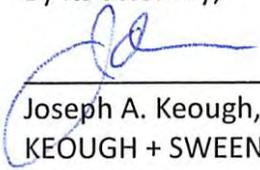
Another reasonable conclusion is that the Division has no jurisdiction to review *any* NBC matter, including whether the NBC followed the PUC's Termination Rules. Any appeals, be they related to billing disputes or the NBC's purported failure to follow the Termination Rules, could only be brought to the NBC and then the Superior Court pursuant to RIGL § 46-25-22.1.

Under either interpretation the NBC requests that the PUC delineate which Termination Rules it must follow so that the NBC can adapt its procedures and customer notices. For instance, Section 1.5 and Appendix B of the Termination Rules require that customers be informed of their right to submit any dispute to the Division. If the PUC decides the Division can only review issues regarding the NBC's compliance with the Termination Rules, then the notice must say as much. If the PUC decides the Division has no jurisdiction to review *any* matter involving NBC, then NBC needs relief from this particular rule.

IV. CONCLUSION

For the reasons stated herein, the Narragansett Bay Commission prays that the Rhode Island Public Utilities Commission issue a declaratory order clarifying which of the Rhode Island Public Utilities Commission's Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service apply to the Narragansett Bay Commission, and what jurisdiction the Rhode Island Division of Public Utilities and Carriers has over billing and service termination disputes between the NBC and its customers.

The Narragansett Bay Commission,
By its attorney,

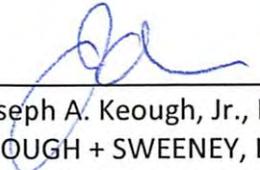


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CERTIFICATION

I hereby certify that on January 15, 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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