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June 14, 2006

VIA EMAIL AND OVERNIGHT DELIVERY

Luly Massaro, Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket No. D-06-13 Joint Petition of Southern Union Company and The
Narragansett Electric Company

Dear Ms. Massaro:

Attached are the original and four copies of the Objection of Southern Union Company to the Second Motion to Compel of the Attorney General in the above-referenced docket.

Please note that the Company's Objection includes (at pp. 2-3) revised language for stipulation by Southern Union to resolve issues raised by the Attorney General and others in this proceeding. The revised stipulation is an expansion of the previous stipulation submitted by Southern Union, and directly addresses and resolves issues (and related discovery disputes) discussed at the discovery conference conducted by the Hearing Officer in this proceeding on June 8, 2006. This expanded language was submitted to both Attorney Wagner and Attorney Roberti for their consideration but the Company was unable to secure their comment on, or agreement with, the expanded stipulation.

Thank you for your attention to this matter.

Sincerely,

Cheryl M. Kimball
R.I. Bar # 6458

cc: Service List

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: JOINT PETITION OF THE NARRAGANSETT)
 ELECTRIC COMPANY AND SOUTHERN)
 UNION COMPANY FOR APPROVAL OF)
 PURCHASE AND SALE OF ASSETS) Docket D-06-13

**OBJECTION OF SOUTHERN UNION COMPANY TO
THE ATTORNEY GENERAL'S SECOND MOTION TO COMPEL**

I. INTRODUCTION

Petitioner, Southern Union Company ("Southern Union") objects to the Second Motion to Compel of the Attorney General of the State of Rhode Island ("Attorney General") seeking "more responsive" answers and the production of documents in response to its Data Requests 2-4, 2-6, 2-7, 2-8, 2-9, 2-10 and 2-11.

As set forth in Southern Union's objection to the Attorney General's first motion to compel, the Division has ruled that the only relevant aspect of the "Tiverton" matter is whether this transaction ["the proposed asset sale"] will negatively impact Southern Union's ability to pay for a cleanup if it is found liable. Like his first Motion to Compel, the Attorney General's second motion seeks information wholly irrelevant to this limited area of permissible inquiry. Moreover, the Attorney General's motion is replete with innuendo and conjecture grounded neither in fact nor law.

The Division should deny the Attorney General's motion because, like his first set of data requests and subsequent Motion to Compel, the second set of data requests and accompanying motion seek information bearing no relationship to whether this proposed asset sale will impact Southern Union's ability to pay for a cleanup of the Bay Street Area of Tiverton. Further, because under applicable law Southern Union cannot evade

potential liability through an assignment to a Massachusetts subsidiary, the claimed "real and substantial" concern expressed by the Attorney General that Southern Union will "attempt to utilize the corporate form in a 'restructuring' or 'reorganization' to avoid" this liability, is fundamentally wrong as a matter of law (see Second Motion to Compel at 4).

Moreover, Southern Union has offered to stipulate (without any quid pro quo from any other party) that neither the approval of the Joint Petition, nor the subsequent Massachusetts Transfer of assets to a subsidiary will alter (i) Southern Union's liability, if any, for environmental issues associated with Tiverton or (ii) Southern Union's legal obligation, if any, to satisfy a final (following all appeals) enforceable judgment entered against it arising out of the Tiverton actions. Although the stipulation was sufficient to address any claimed concern regarding the Massachusetts Transfer, Southern Union now goes further and agrees (again, with no quid pro quo from any other party) to confirm both its acquisition of Fall River Gas Company's liabilities, and that it will not contend that Southern Union's corporate form or structure or that of its future Massachusetts subsidiary shall shield it from the alleged liabilities at issue, as follows:

(a) Upon its merger with Fall River Gas Company ("FRGC") in 2000 (the "Merger"), Southern Union acquired and succeeded to whatever potential legal liabilities FRGC had at that date relating to environmental contamination that may have existed in the "Bay Street Area" of Tiverton, Rhode Island (the "FRGC Tiverton Liabilities");

(b) Neither the approval of the Joint Petition in this proceeding, nor the potential transfer of Southern Union's Massachusetts assets to a wholly owned subsidiary ("Massachusetts Transfer") shall alter: (i) Southern Union's liability for the FRGC Tiverton Liabilities; or (ii) Southern Union's legal obligation to satisfy a final (following all appeals) enforceable judgment entered against it arising out of the FRGC Tiverton Liabilities;

(c) Southern Union shall not assert in any judicial, administrative or other legal proceeding that by reason of the form or structure of its present or planned Massachusetts corporate organization it is not liable for the FRGC Tiverton Liabilities; and

(d) Nothing in this agreement shall be taken or construed as an admission that FRGC before the Merger, or Southern Union after the Merger, is or was liable or responsible for the environmental issues in the Bay Street Area.

Given this further stipulation, the Attorney General's persistence in pressing for irrelevant (and moot) discovery confirms that this discovery is sought by the Attorney General only to support his quest to litigate environmental liability issues that are not properly before the Division and to extract concessions from Southern Union regarding the underlying Tiverton dispute. For these reasons, as well as the reasons discussed below, the reasons stated in Southern Union's Objection to the Attorney General's first Motion to Compel, and those stated on the record during the discovery hearing held on June 8, 2006, the Division should deny in its entirety the Attorney General's Second Motion to Compel, as well as the Attorney General's related motion to delay these proceedings.

II. ARGUMENT

a. Data Request 2-4

Data Request 2-4 seeks information relating to "the reasons" why Southern Union did not include its Massachusetts assets in the proposed asset sale. Although this data request sought information that is, among other things, irrelevant and not reasonably calculated to lead to the discovery of relevant information, Southern Union nevertheless provided a comprehensive answer. Specifically, Southern Union explained that the decision to sell its Rhode Island assets, but retain its Massachusetts assets, was driven by a desire to structure the sale in a way that would produce the maximum level of value to offset the Sid Richardson Energy Services, Ltd. acquisition while also ensuring that the

sale would be approved and Southern Union could complete the transaction within the time required for gaining the benefit of a "like-kind" exchange.

The Attorney General does not like this answer. Instead, the Attorney General conjectures that the real reason why Southern Union "carve[d]-out" its Massachusetts assets from the asset sale is Southern Union's "desire to limit [its] environmental liability," through the incorporation of a subsidiary where Southern Union can "segregate assets and associated liabilities" and "utiliz[e] the corporate form and associated CERCLA defenses to avoid [Southern Union's] responsibility for the liability" (Motion to Compel at 3-5). Even if this were true, which it categorically is not, the issue is completely irrelevant to the sale of the Rhode Island assets.

First, as set forth in Southern Union's objection to the Attorney General's first Motion to Compel, this Data Request has no bearing upon, nor relationship to, the limited issue posed by the Division, which is whether the proposed asset sale will negatively "impact Southern Union's ability to pay for remedial actions in the even it is found liable for any of the contamination in Tiverton" (Order on Intervention at 16). The reorganization of the Massachusetts operating division into a subsidiary is permitted by Massachusetts law, subject to the approval of the Massachusetts Department of Telecommunications and Energy. Therefore, Southern Union could seek and obtain approval of this reorganization regardless of and without any connection to the ownership of the Rhode Island assets. The Division has no authority to prohibit or restrict this reorganization because it has no relation to operations under the Division's supervision and jurisdiction. Therefore, the Request is not designed to elicit information that is probative of any determination that the Division could properly render in this proceeding.

Second, the decision to exclude the Massachusetts assets from the asset sale will have no impact upon Southern Union's ability to pay for any remedial actions. Further, since, under applicable law, Southern Union cannot escape liability, if any, for the cost of the remediation through the assignment of that liability to a subsidiary, and has repeatedly agreed to so stipulate, the very premise of the Attorney General's purportedly "real and substantial" concern is not grounded in the law.

For these reasons, the Attorney General's Motion to Compel a further response to Data Request 2-4 should be denied.

b. Data Request 2-6

The Attorney General contends that Southern Union should be compelled to provide a further response to Data Request 2-6, which seeks "all documents related to any due diligence with respect to environmental matters conducted by" Southern Union relating to its acquisition of the Fall River Gas Company ("FRGC"). According to the Attorney General, this information "may provide a basis for a cost estimate to clean up the Tiverton site" and may "reveal" whether Southern Union's "averment that [FRGC] did not cause the contamination possesses a substantial factual underpinning or is merely pretextual in nature" (Motion to Compel at 6-7).

The Attorney General's Motion to Compel a further response to this data request should be denied. This request, which concerns whether Southern Union was aware of the alleged environmental contamination in Tiverton before it acquired FRGC, has nothing to do with whether this transaction will negatively impact Southern Union's ability to pay for a cleanup. Moreover, since Southern Union has stated on the record that it was not aware of the alleged contamination in Tiverton at the time of its

acquisition of FRGC, there are no documents relating to Southern Union's due diligence that could possibly help the Attorney General estimate the cost of a clean up in Tiverton. As for documents that might "reveal [whether Southern Union's] averment of non-culpability is pretextual," such documents go directly to the issue of liability not to the cost of remediation. Therefore, the Attorney General's Motion to Compel a further response to Data Request 2-6 should be denied.

c. Data Requests 2-7 and 2-8

Data Requests 2-7 and 2-8 seek more information relating to Southern Union's efforts to work with the Rhode Island Department of Environmental Management regarding the testing and possible remediation of Bay Street Area in Tiverton. As such, these Requests have no bearing on the issue of whether the proposed asset sale will negatively impact Southern Union's ability to pay for a cleanup of the alleged contamination. Furthermore, Southern Union has repeatedly stated on the record that it has made no estimates of the costs of remediation, and therefore, can provide no further information even if required. For these reasons, the Attorney General's Motion to Compel further responses to Data Requests 2-7 and 2-8 should be denied.

d. Data Requests 2-9 and 2-11

In its Motion to Compel further responses to Data Requests 2-9, the Attorney General contends that "[i]nsurance recovery is an obvious, potential source of funding for [Southern Union's] liability" relating to Tiverton, and therefore Southern Union's "correspondence with insurance carriers is critical for establishing the availability of such funding." Again, the Attorney General is off base in terms of the limited scope of inquiry relating to Tiverton in this proceeding. Although there is no dispute that insurance

recovery often provides a source of reimbursement upon a finding of liability, the availability or non-availability of insurance money has no bearing whatsoever upon the determination of whether the sale of the Rhode Island assets will negatively affect the Company's ability to pay any eventual judgment. The record shows that Southern Union has over \$5 billion in assets and is not relying on even \$1 of potential insurance proceeds to demonstrate its financial wherewithal to satisfy any eventual judgment arising from the Bay Street Area. As insurance proceeds are therefore completely irrelevant to this proceeding, the Attorney General's Motion to Compel a further response to Data Request 2-9 (and 2-11) should be denied.

e. Data Request 2-10

Data Request 2-10 seeks "all pleadings, filings and other documents related to" a number of litigation matters pending against Southern Union in connection with Tiverton and another environmental matter. In response to this data request seeking many hundreds of pages of litigation papers, Southern Union noted that all of the materials requested could be found in public filings, and that if the Attorney General had a specific request for specific documents, Southern Union would provide the Attorney General with copies.

In response to Southern Union's offer, the Attorney General has not requested any document or category of documents, because the Attorney General apparently has no idea what it is looking for on this "fishing expedition." The Attorney General's Motion to Compel contends that the requested documents should be produced because they could conceivably reveal whether Southern Union has "devised strategies for shielding liability or limiting [its] liability." and that such documents are "[i]nvariably . . . stored and

maintained by [Southern Union] on computer software" (Second Motion to Compel at 12-13). The Attorney General's contentions are legally improper and factually wrong. This request has no imaginable relationship to whether the proposed asset sale will negatively affect Southern Union's ability to fund a remediation of Bay Street Area. The Arriaga matter involves a release of mercury and has absolutely no relation to the Tiverton situation or any other issue concerning this transaction. Furthermore, contrary to the Attorney General's contentions, the requested information is not maintained on compact disc or a computer database; such filings are therefore no more accessible to Southern Union than the Attorney General. For these reasons, the request to compel a further response to Data Request 2-10 should also be denied.

III. CONCLUSION

For all the foregoing reasons, and those set forth on the record during the June 8 discovery conference, the Attorney General's Second Motion to Compel should be denied in its entirety.

SOUTHERN UNION COMPANY

By Its Attorneys,



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Dated: June 14, 2006

CERTIFICATION

I hereby certify that I mailed a copy of the within to counsel of record, as set forth on the attached Certification List, via e-mail and first class mail on the 14th day of June, 2006.

