STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888

IN RE: Joint Petition for Purchase and Sale of Assets By The Narragansett Electric Company and the Southern Union Company	: : : :	Docket No. D-06-13

ORDER

On March 16, 2006, the Narragansett Electric Company ("Narragansett") and the Southern Union Company ("Southern Union") (together, the "Petitioners") filed a joint petition with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking approval of the Division for the purchase by Narragansett of the assets associated with the regulated gas distribution business owned and operated by Southern Union Company in Rhode Island as the New England Gas Company. In anticipation of an August 25, 2006 closing date, and based upon a legally established 30-day deadline for appeal, the Petitioners requested a ruling by the Division by June 30, 2006.

In furtherance of starting the process of adjudicating the petition request, the Division established a filing deadline of April 10, 2006 for all motions to intervene in the docket. Notification of the joint filing and the prescribed deadline for intervention was published in the Providence Journal on March 30, 2006. The Division indicated in the notice that all motions would be considered in accordance with the requirements contained in Rule 17 of the Division's "Rules of Practice and Procedure."

The notice also directed the Petitioners to submit responsive pleadings by April 21, 2006. The notice additionally indicated that the Division would conduct a motion hearing to hear all intervention-related issues and arguments at 10:00AM on Tuesday, April 25, 2006 in the Division's Hearing Room, located at 89 Jefferson Boulevard in Warwick, Rhode Island.

In response to the published notice of deadline to intervene, the Division received timely motions to intervene from the Rhode Island Department of Attorney General ("Attorney General"); the Rhode Island Department of Environmental Management ("RIDEM"); the City of Providence ("Providence"); the City of East Providence ("East Providence"); the Town of Tiverton ("Tiverton"); the United Steel Workers, Local 13421 ("Union"); the George Wiley Center ("Wiley Center"); the Energy Council of Rhode Island ("TEC-RI")[1]; and a group of 129 Tiverton residents collectively seeking relief from Southern Union with respect to soil contamination located on their properties that they contend resulted from the improper disposal of contaminants by a Southern Union-owned facility located in bordering Massachusetts ("Tiverton Residents") (collectively, the "Movants").

After receiving copies of these formal intervention requests, the Petitioners filed timely individual written responses and objections. In short, the Petitioners argue that, with the exception of the Attorney

[1] TEC-RI subsequently withdrew its motion to intervene.

General, none of the Movants have satisfied the intervention standards set forth in Rule 17, supra.

In response to the objections raised by Narragansett and Southern Union, the Division conducted a duly noticed public hearing on April 25, 2006, for the limited purpose of hearing oral arguments on all disputed intervention-related issues. The following counsel entered appearances:

For Narragansett:	Laura S. Olton, Esq.
For Southern Union:	Gerald J. Petros, Esq.
For the Attorney General:	William K. Lueker, Esq. Special Asst. Attorney General
For the Division's Advocacy Section[2]:	Leo J. Wold, Esq. Special Asst. Attorney General
For RIDEM:	Brian A. Wagner, Esq.
For Providence:	Adrienne G. Southgate, Esq.
For East Providence:	W. Mark Russo, Esq.
For Tiverton:	Jean Scott, Esq.
For the Wiley Center:	B. Jean Rosiello, Esq.
For the Union:	James A. Musgrave, Esq.
For the Tiverton Residents:	Robert J. McConnell, Esq.

The Division has carefully considered the arguments proffered by the Movants and Petitioners regarding the pending intervention motions.

[2] The Division's Advocacy Section, an indispensable party, also entered an appearance in this docket.

Summaries of the Movants' rationale for intervention and the Petitioners' responses and objections are outlined below:

1. RIDEM

a. RIDEM's Arguments in Support of Intervention

In its motion, RIDEM relates that it has identified Southern Union as a "Responsible Party" in accordance with the *Rhode Island Industrial Property Remediation and Reuse Act*[3], for extensive soil contamination located in the Town of Tiverton. RIDEM adds that Southern Union also has potential liability for this contamination under the *United States Comprehensive Environmental Response, Compensation and Liability Act* ('Superfund')[4]; the *United States Resource Conservation and Recovery Act* ('RCRA')[5]; and the common law of nuisance and strict liability.

RIDEM argues that its intervention in this docket is in the public interest in order to "ensure that any sale of Rhode Island-based assets by Southern Union does not negatively impact its remedial responsibilities in Tiverton, or divest Southern Union of local resources that could be used to pay for necessary remedial actions".

b. Petitioners' Objections

Southern Union argues that RIDEM has no standing to intervene in this proceeding, as it would be improper to address an "environmental cleanup" claim in the context of a "utility service" case. Southern Union

[3] R.I.G.L. §§23-19.14-3(a) and 23-19.14-6.
[4] 42 U.S.C. §9601, et seq.
[5] 42 U.S.C. §6901, et seq.

relates that the alleged contamination in Tiverton is the subject of an extensive administrative action currently pending before RIDEM, which has independent authority to pursue any combination of administrative and judicial enforcement actions if it determines that sufficient evidence exists to compel Southern Union to remediate any alleged contamination. Southern Union argues that the Division should not permit RIDEM "to use this proceeding to bypass the requirements under the law for establishing liability". Southern Union contends that RIDEM must pursue "those claims in the appropriate forums" and that Southern Union must be afforded a "full and fair opportunity to defend those claims."

Narragansett acknowledges that RIDEM has issued an enforcement letter against Southern Union, but observes that such letter "does not definitively establish legal responsibility for the contamination, and Southern Union vigorously disputes the assertion that it is legally responsible." Narragansett argues that the Division should not allow "this proceeding...to become a forum for the litigation of environmental issues relating to legal responsibility for claims that are being asserted in other agency processes or litigated elsewhere". Narragansett stresses that "those issues simply cannot be resolved in this case." Notwithstanding this position, Narragansett also states that it does not object to RIDEM being allowed to intervene on a limited basis for the sole purpose of seeking assurances "that Southern Union will be capable of paying for

clean up costs in the event that Southern Union is actually found responsible in court for such clean up."

2. Providence

a. Providence's Arguments in Support of Intervention

In its motion, Providence expressed an interest in intervening in this docket in order to explore whether National Grid (Narragansett's parent company) plans to expand operations at an existing LNG facility in Providence, known as the KeySpan facility, an expansion that Providence opposes. Providence opined that National Grid would be in a better position to expand operations at the LNG facility after Narragansett acquires Southern Union's assets, which includes property located adjacent to the LNG "footprint" in Providence.

During the hearing, however, Providence asked the Division to consider only a limited intervention for Providence "so that we continue to receive copies of pleadings and the information that is disclosed during the hearings."

b. Petitioners' Positions

While both Petitioners initially objected to Providence's intervention in this case, as reflected in their written objections, the Petitioners later verbally supported Providence's request for limited intervention during the hearing and agreed to include Providence on the document and pleadings service list.

3. East Providence

a. East Providence's Arguments in Support of Intervention

Like Providence, East Providence similarly raises concerns regarding the possibility of an expansion at the LNG facility in Providence if the Division approves the proposed asset purchase agreement. East Providence observes that the LNG site is less than one mile from the East Providence "Waterfront Development District". East Providence also indicates that it has "environmental" concerns and redevelopment interests regarding another parcel of land that Southern Union owns within the City's Waterfront Development District.

b. Petitioners' Objections

Southern Union objected to East Providence's motion to intervene, arguing that East Providence's concerns are "far beyond what we are here for in this proceeding".

Narragansett argues that East Providence's motion to intervene must be denied because the LNG facility issue is a federal matter, beyond the jurisdiction of the Division and the State. Narragansett argues that to the extent East Providence has "objections to the LNG proposal, their remedies currently reside at the Federal [Energy] Regulatory Commission ("FERC"), who has exclusive jurisdiction over the matter." Narragansett added that all other issues regarding East Providence's waterfront must be addressed in other forums.

4. Tiverton

a. Tiverton's Arguments in Support of Intervention

Tiverton cites the environmental contamination issue raised by RIDEM as the basis for its request to intervene. Tiverton relates that not only have approximately one hundred homes been affected by the contamination, but several businesses and several Town of Tiverton public streets are impacted as well. Tiverton characterized the harm caused by the contamination as a "public interest" matter, which Tiverton contends supports its intervention request. With respect to relief, Tiverton demands "an approved remediation plan to be in place prior to the sale of any assets".

b. Petitioners' Objections

Southern Union argues that Tiverton's motion to intervene "covers the same ground as that covered by...RIDEM, and should be denied for the same reasons". Southern Union observes that Tiverton bases its request to intervene on contentions that Southern Union violated a 'lawful order' of RIDEM relating to the alleged contamination, and that Tiverton's intervention is warranted so that the Division can 'hear the arguments and protests of Tiverton." However, Southern Union argues that neither contention provides a valid basis for Tiverton's intervention in this proceeding. Southern Union asserts: "this is not the forum to determine whether Southern Union has violated a 'lawful order' by RIDEM."

Southern Union further asserts that Tiverton may be permitted an opportunity to 'protest' in this docket without being granted party status.

Narragansett's objection to Tiverton's request to intervene was generally comparable to its objection against RIDEM's intervention motion. Narragansett particularly objected to Tiverton's demand that the Division mandate that an approved remediation plan be in place prior to the sale of the assets. Narragansett maintained that this "request is outside of the jurisdiction of the Division in reviewing the transaction."

As an alternative position, and as suggested with respect to RIDEM's motion to intervene, Narragansett does not object to Tiverton being allowed to intervene on a limited basis to seek assurances "that Southern Union will be capable of paying for clean up costs in the event that Southern Union is actually found responsible in court for such clean up."

5. The Wiley Center

a. Wiley Center's Arguments in Support of Intervention

The Wiley Center, which describes itself as an advocate for low-income people throughout the State, offered no rationale for its requested intervention in its formal pleading. During the hearing, however, the Wiley Center argued that it ought to be permitted to intervene in this matter, "in the public interest", primarily because the "people that are at low-income are uniquely affected by anything that affects public utilities." As an example, the Wiley Center expressed concern that "the merger [may]

affect the way the ultimately merged entity handles arrearages." The Wiley Center related that it would like to participate in the proceeding to explore whether low-income ratepayer protections ought to be incorporated as conditions of the merger.

b. Petitioners' Objections

Southern Union argued that the Wiley Center's ground for intervention involves rate and service issues, which "are more than adequately represented by the Division and Attorney General", and more appropriately addressed in a subsequent rate case before the Public Utilities Commission. Based on this contention, Southern Union asserted that the Wiley Center's motion to intervene must be denied.

Narragansett offered no position on the Wiley Center's motion.

6. The Union

a. The Union's Arguments in Support of Intervention

The Union based its request to intervene in this docket on its belief that the proposed merger "contemplates substantial changes to the wages, hours and working conditions for members of the Union." The Union relates that "testimony submitted in support of the petition...indicates that... [Narragansett] anticipates large scale restructuring, including the elimination of jobs." In response to this likelihood, the Union argues that "the pending docket will invariably affect the rights and responsibilities of the Union and the Company under the existing collective bargaining agreements." The Union also supported its motion by claiming that the

Union's "frontline employees" are in a unique position to address issues of "safety and customer service."

b. Petitioners' Objections

Southern Union argued that the Union's petition to intervene is without merit and should be denied. Southern Union contends that "no action undertaken by the Division in this proceeding could or would affect the existing collective bargaining agreements between the Union and Southern Union." Southern Union noted that the relevant agreements were executed in May 2002 and will expire in May 2007.

Southern Union also contends that the wages, hours and working conditions to which the Union refers are not issues subject to determination in this proceeding. Southern Union observes that such rights and responsibilities "will, as usual, be determined through the collective-bargaining process." Southern Union further argues that negotiating in this area "falls squarely within management prerogative", which the Company suggests is off-limits to the Division's regulatory oversight.

Regarding the Union's intervention request, Narragansett related that it has already committed to honor all collective bargaining agreements, emphasizing that its commitment is actually "a condition of the purchase and sale agreement." Narragansett thereafter argued that the Division has no authority to "place any conditions on either existing or any future collective bargaining agreements." Narragansett argues that

"this area of the law has been federally preempted through the *National Labor Relations Act.*[6]

7. Tiverton Residents

a. Tiverton Residents' Arguments in Support of Intervention

Like the Town of Tiverton, the Tiverton Residents also cite the environmental contamination issue raised by RIDEM as the basis for their request to intervene. The Tiverton Residents contend that as a result of Southern Union's refusals to comply with RIDEM directives they "have remained unable to make even the most basic uses of and repairs to their properties for almost three years." The Tiverton Residents relate that they have filed a lawsuit against Southern Union in Federal Court in response to Southern Union's "failure to clean up the contaminated areas." With respect to the instant docket, the Tiverton Residents claim that they ought to be permitted to intervene to ensure "that the party primarily responsible for their injuries does not cut its ties with the State of Rhode Island."

b. Petitioners' Objections

Southern Union "vigorously disputes" the allegations and contentions expressed by the Tiverton Residents. Southern Union emphasizes that the source(s) of the contamination in Tiverton has yet to be proven. Southern Union argues that the Division cannot determine in this proceeding whether the contamination was caused by a Southern

[6] 29 U.S.C. §§157 and 158.

Union facility, or by "a former dump, a private landfill, an auto body repair shop, a hat manufacturer, or other industrial activity." Southern Union further argues that the Division cannot permit the Tiverton Residents to use this proceeding to circumvent Southern Union's rights to defend itself "in the appropriate forums."

Southern Union also argues that the Tiverton Residents fail to meet the standing requirements for intervention. Southern Union asserts that the "remediation of any contamination on plaintiffs' private property and proceeds of any potential judgment are private 'interests,' not 'public interests.'" Southern Union maintains that Rule 17 does not permit interventions based on private interests. Southern Union contends that "by seeking to intervene in this proceeding, plaintiffs are attempting to place their [private] interests above those of the citizens of the State of Rhode Island, who will benefit greatly from the proposed transaction."

Narragansett argues that it has a right to have its petition to acquire the assets of Southern Union considered on the basis of the legal standards applicable to the petition, specifically, the standards set forth in R.I.G.L. §39-3-25. Narragansett opines: "there is a very real and legitimate dispute as to the legal responsibility for the clean up." Narragansett contends that "absent a mutually agreeable settlement, the dispute over responsibility might take years to resolve." Narragansett argues that, to the extent that any party might be trying to turn this Division proceeding into a forum to assert leverage against Southern

Union, "it would be a misuse of legal process that must be rejected by the Division."

8. Attorney General

a. Attorney General's Arguments in Support of Intervention

The Attorney General seeks to intervene to ensure that Narragansett's "acquisition does not negatively impact service quality, provides benefits to customers in terms of rate impacts, and does not otherwise conflict with the public interest."

b. Petitioners' Positions

Neither Petitioner objected to the Attorney General's motion to intervene.

FINDINGS

In reaching its findings, the Division relied on the provisions of Rule 17 of the Division's Rules of Practice and Procedure, Rule 24 of the Superior Court Rules of Civil Procedure, related case law, the arguments articulated at the April 25, 2006 hearing, and the related pleadings filed in this proceeding.

As an initial finding, the Division will permit the intervention of the Attorney General. The Division finds that because neither Petitioner objected to the Attorney General's request to intervene in this docket, the request must be approved by operation of law.[7]

[7] See Rule 17(e).

Similarly, as the Petitioners withdrew their opposition to Providence's amended request for limited intervention, the Division will approve Providence's limited participation in this docket. As requested, Providence's participation shall be limited to inclusion on the service list for the narrow purpose of receiving copies of all case-related documents and pleadings.

With respect to the other requests to intervene, the Division began its evaluation with a close review of the requirements of Rule 17. In determining whether the requested interventions are necessary or appropriate, Rule 17(b) mandates that the Movant's must demonstrate that they either have: (1) *a right* [to intervene] *conferred by statute,* (2) *an interest which may be directly affected and which is not adequately represented by existing parties and as to which...*[the movant] *may be bound by the Division's action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent,* or (3) *any other interest of such nature that the movant's participation may be in the public interest.*

To start, the Division finds that none of the Movants have demonstrated a statutory right to intervene or a "directly affected" interest that is not adequately represented by the Division's Advocacy Section and/or the Attorney General, both ratepayer advocates. Accordingly, the issue boils down to whether it would be in the public interest to permit

RIDEM, Tiverton, East Providence, the Union, the Tiverton Residents, and the Wiley Center to participate in this proceeding?

In deciding whether the "public interest" demands the participation of these movants, the Division must logically find that their individual interests warrant recognition and protection in furtherance of the general welfare of the public.[8] In considering this issue, the Division must also balance several related factors, specifically, whether the Division ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties.

With respect to RIDEM and Tiverton, the Division cannot direct Southern Union to agree to a remediation plan before an appropriate Court makes a finding of liability. However, the Division finds that it is both in the public interest and reasonable for these movants to be seeking assurances that the proposed asset sale does not negatively impact Southern Union's ability to pay for remedial actions in the event it is found liable for any of the contamination in Tiverton. The Division finds that it has the authority to seek these assurances and that an intervention for this limited purpose will not unduly delay the proceedings in this docket or prejudice the Petitioners.

[8] See definition of "public interest" in Black's Law Dictionary, Seventh Edition.

The Tiverton Residents, on the other hand, are chiefly seeking relief designed to advance their "private" claims against Southern Union, claims that exceed assurances of remediation. The record reflects that the Tiverton Residents have already filed suit against Southern Union in Federal Court and are seeking damages that transcend the costs associated with remediating any alleged contamination. Indeed, Mr. McConnell described his clients' interests in this case as distinguishable from Tiverton's interest in the matter. Mr. McConnell argued that the Tiverton Residents "...are really asking for individual relief separate and apart from what Tiverton is seeking."[9] Mr. McConnell subsequently clarified that in addition to their request that Southern Union implement a remediation program, the Tiverton Residents "who have been living under this cloud for three years... [seek] the relief that they so rightly deserve."[10]

After considering their arguments, the Division finds that the Tiverton Residents have failed to prove that their interest in this docket is consistent with the public interest. Further, to the extent that their interest also includes a request for assurances that the proposed asset sale does not negatively impact Southern Union's ability to pay for potential future remedial actions, the Division finds that RIDEM's and Tiverton's participation in this docket adequately advances that interest. Additionally, the Division needs to emphasize that denying the Tiverton

[9] Tr. 36.
[10] Tr. 37-38.

Residents' intervention in this proceeding will not in any way "impair or impede their ability to protect [their] interest" in seeking appropriate damages in other forums.[11]

The Division finds that the Union is also pursuing a "private" interest in this docket, in short, a promise from Narragansett that it not reduce jobs or wages after it takes over Southern Union's gas distribution business in Rhode Island. Regarding this issue, notwithstanding the fact that Narragansett indicated that it would honor all existing bargaining agreements between Southern Union and its workers, a commitment that essentially moots the Union's immediate concerns, the Division must find that the issue is clearly outside the Division's regulatory purview. The Rhode Island Supreme Court has made it clear that such decision making remains firmly within the control and prerogative of management.[12] Moreover, the Division must agree with Narragansett's assertion that any disputes arising under the existing bargaining agreements or negotiations of future agreements fall under the jurisdiction of the National Labor Relations Board.[13]

The Division must also reject the Union's ancillary argument that it ought to be permitted to intervene in this docket because it represents

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[11] See R.I. Super. Ct. R. Civ. P. 24(a)(2); also Marteg Corp. v. Zoning Bd. Of City of Warwick, A.2d 1240 (R.I. 1981), Rhode Island Federation of Teachers v. Norberg, 630 F.2d 850 (1980), and Richmond Ready-Mix, Inc. v. Atl. Concrete Forms, Inc., 2004 R.I. Super, LEXIS 188 (R.I. Super. Ct., October 20, 2004).
[12] See United Transit v. Nunes 99 R.I. 513, 209 A.2d 222 (R.I. 1965); and Providence Water Supply Board v. PUC, 708 A.2d 537 (R.I. 1998).
[13] See 29 U.S.C. §§157 and 158.

"those frontline employees who deal with safety and customer service issues on a day to day basis." The Union has not offered any evidence that suggests that safety or customer services will likely suffer as a direct result of the proposed asset sale to Narragansett. Furthermore, the Division's Advocacy Section and the Attorney General, both existing parties, customarily evaluate the possibility of safety and customer service degradation in all significant asset purchase and merger cases.

The Division must also deny East Providence's motion to intervene. The Division finds East Providence's rationale for intervention, although arguably in the public interest, unreasonably vague and/or beyond the scope of this proceeding. First, with respect to East Providence's concerns over the future of the KeySpan LNG facilities in Providence, not only is the matter not directly related to the instant proceeding, the Division is powerless to exert any influence over the future of that facility. As East Providence is aware, due to the interstate nature of that LNG facility the Federal Energy Regulatory Commission (FERC) has exclusive jurisdiction over any issues related to its future expansion and development. Therefore, the Division fails to understand the relevance of the issue in the context of this docket or the actual relief that East Providence is seeking.

Second, with respect to East Providence's environmental concerns and redevelopment interests regarding a parcel of land that Southern Union owns within the City's Waterfront Development District, the Division again fails to understand the relief that East Providence is

seeking. If East Providence is seeking to purchase this property from Southern Union (or Narragansett) or have the property redeveloped, those negotiations should take place outside the Division's hearing room. The Division finds that pursuing this issue in the instant docket would unduly delay and prejudice the adjudication of the rights of the Petitioners[14] and unreasonably broaden the issues in this case.[15]

Also with respect to East Providence, although the Division will not approve East Providence's petition for full intervention status, the Division will approve limited intervention for East Providence of the same nature approved for Providence in this case. If East Providence would like to be included on the service list in order to receive copies of all pleadings and documents in this docket, the City may contact the Division's Clerk and request, pursuant to this order, that such action is taken.

Finally, with respect to the Wiley Center's request to intervene, to accept the argument proffered by the Movant, simply, that it be allowed to intervene because "the people who are at low-income are uniquely affected by anything that affects public utilities" would mean that the Wiley Center ought to be permitted to intervene in every proceeding conducted before the Division and the Public Utilities Commission. The Division will not elucidate on that global implication at this time, but the Division does find that the Wiley Center's participation in this docket is generally in the

[14] See Chariho School Committee v. Broadwell, 703 A.2d 622 (R.I. 1997).
[15] See Town of Smithfield v. Fanning, 602 A.2d 939 (R.I. 1992).

public interest. The Division notes that the General Assembly has previously expressed an interest in encouraging low-income representation in rate cases, as evidenced by the creation of a "consumers' council" in 1969.[16] Although that body no longer exists, the Division agrees that the Wiley Center is in a unique position to represent low-income ratepayer interests in utility-related proceedings before the Division.

However, the Division must admonish the Wiley Center that its participation in this docket must not lead to unreasonable delays resulting from a protracted pursuit of unrelated rate design benefits for its constituents. The Division will neither permit improper forays into areas that are solely within the jurisdiction of the Public Utilities Commission, nor unreasonable delays that prejudice the rights of the Petitioners.

Now, therefore, it is

(18591) ORDERED:

1. That based on the findings contained herein, the motions to intervene filed by the Attorney General, RIDEM, Tiverton, Providence, and the Wiley Center, are hereby granted, subject to the limitations described herein.
2. That the motions to intervene filed by East Providence, the Union and the Tiverton Residents, are hereby denied. However, East

[16] See R.I.G.L. §39-1-17.

Providence shall be permitted to intervene in a limited capacity, consistent with Providence's limited participation in this docket.

Dated and Effective at Warwick, Rhode Island on May 4, 2006.

Division of Public Utilities and Carriers

John Spirito, Jr., Esq.
Hearing Officer

APPROVED:

Thomas F. Ahern
Administrator