

**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 : Docket No. D-06-13
Company and the Southern Union :
Company :

ORDER

Decision In Response To The Attorney General's May 31, 2006
*"Motion To Compel More Responsive Answers And/Or Document Production,
And To Amend Hearing Schedule"*; The Attorney General's June 7, 2006
*"Motion To Compel Document Production To His Second Set Of Data Requests,
And To Amend Hearing Schedule"*; The RIDEM's June 1, 2006 *"Motion To
Compel Responses To RIDEM's First Set Of Data Requests Directed To
Southern Union Company"*; The George Wiley Center's May 31, 2006 *"Motion
Of The George Wiley Center To Compel Answers To Data Requests No. 1-3, 1-
4, 1-5, 1-6, 1-7, 1-8, 1-10"*; The George Wiley Center's June 7, 2006 *"Motion
Of The George Wiley Center To Submit Testimony By June 23, 2006"*; and The
Town of Tiverton's June 12, 2006 *"Motion To Compel More Responsive
Answers And/Or Document Production To Southern Union Company"*.

Travel

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 and published a filing deadline of April 10, 2006 for all motions to intervene in the docket. After receiving timely motions to intervene from a number of interested entities, and after conducting a hearing on the motions on April 25, 2006, the Division issued a decision on May 4, 2006 through which the current parties of record were authorized to participate in this docket.¹

The Division next met with the parties at a pre-hearing conference on May 11, 2006 for the purpose of establishing a procedural schedule. An initial procedural schedule was adopted by agreement of the parties at that conference. The schedule was later amended to afford the Attorney General additional time to conduct discovery.²

The aforementioned procedural schedule provided for a “discovery conference, if needed” on June 1, 2006. As there were several discovery-related disagreements going on between the parties, as evidenced by the motions in issue, the Division conducted discovery conferences on June 1 and 8, 2006.³

¹ See Order No. 18591. The Division also notes that it subsequently denied a “*Motion To Stay And Request For An Emergency Hearing Thereon,*” that was filed by the Town of East Providence after its motion to intervene was denied by the Division in Order No. 18591 (See Order No. 18626, issued on June 1, 2006).

² See Order 18620, issued on May 26, 2006.

³ Pursuant to a demand made by the Attorney General, a stenographer recorded both conferences.

Findings

After carefully considering the arguments proffered by the Movants and the Petitioners, the Division makes the following findings:

1. The Attorney General's May 31, 2006 "Motion To Compel More Responsive Answers And/Or Document Production, And To Amend Hearing Schedule."

After hearing arguments from the parties on this motion during both discovery conferences, the Division makes the following findings:

- a. Data Request 1-2

The Division finds this data request overly broad and unduly burdensome. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

- b. Data Request 1-14

The Division finds this data request relevant and reasonable. The Division previously held in this docket that it is in the public interest for the Intervenors "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" (Order No. 18591, p. 16). The Division finds this data request to be reasonably calculated to lead to the discovery of related admissible evidence.

The Division acknowledges Southern Union's argument that its Massachusetts assets constitute a relatively small percentage of the Company's total assets (over \$5 billion), but the focus of this interrogatory is on the related question of whether Southern Union is attempting to assign

its potential liability in the Tiverton contamination matter to a smaller subsidiary or affiliated company, with less financial resources. Although Southern Union has offered a number of legal arguments and case citations in support of its assertion of its inability to evade potential liability in the Tiverton contamination matter, neither the Attorney General nor RIDEM (the State agency with the most expertise in environmental remediation issues) concur with Southern Union's legal opinion on the matter. Indeed, none of the Intervenors in this case supported Southern Union's contention that it cannot escape its potential CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) and State tort liability to third parties by transferring that liability to another company.

The Division has reviewed Southern Union's supporting case law, and cannot definitively conclude, based on the current record, that there is no way for Southern Union to insulate itself from a potential liability judgment on the Tiverton contamination matter. In fact, the sheer number of cases produced by Southern Union suggests that the law on this issue remains unsettled, evidenced by the myriad legal theories put forth by the plaintiffs in those cases. Because this extremely important legal issue remains contentious, and also linked to Southern Union's ability (and/or legal obligation) to pay for remedial actions in the event it (or the Fall River Gas Company or its successors or assigns) is found liable for any of the contamination in Tiverton, the Division finds the instant discovery question

relevant, reasonable, and in the public interest. Accordingly, the request to compel a more responsive answer is granted.

Notwithstanding the Division's decision to permit discovery on this subject, the Division hereby places the Attorney General, RIDEM and the Town of Tiverton on notice that the Division will not, in the final determination to be made in this docket, accept or consider unsubstantiated legal arguments on the issue of Southern Union's potential ability to evade its liability, if any, with respect to the Tiverton contamination matter through some indemnification scheme with subsidiary or affiliated companies. These parties are advised that the Division will insist on legal memoranda and/or expert witness testimony in support of any position to oppose the approval of the joint petition on the basis of a contention that Southern Union's possible evasion of liability runs afoul of the "public interest" criterion contained in R.I.G.L. §39-3-25.

c. Data Request 1-15

The Division finds this data request relevant and reasonable for the same reason as explained above, regarding Data Request 1-14. To the extent that Southern Union claims that the information is privileged, it shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Accordingly, the request to compel a more responsive answer is granted.

d. Data Request 1-16

The Division finds this data request relevant and reasonable for the same reason as explained above, regarding Data Request 1-14. Accordingly, the request to compel a more responsive answer is granted.

e. Data Request 1-17

The Division finds this data request relevant and reasonable for the same reason as explained above, regarding Data Request 1-14. Accordingly, the request to compel a more responsive answer is granted.

f. Data Request 1-18

The Division finds this data request unreasonably cumulative and/or duplicative vis à vis the information sought through Attorney General Data Request 1-15. Moreover, the Division finds that it is unreasonable for the Attorney General to be seeking a more responsive answer to a discovery question that was propounded by another party, another party who incidentally never filed its own motion to compel a more responsive answer after receiving Southern Union's data response. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

g. Motion to Amend Hearing Schedule

The Division is not inclined to amend the hearing schedule unless the Attorney General plans to present a direct case in this docket. In that event, the Division will revisit the Attorney General's request to amend the hearing schedule.

2. The Attorney General's June 7, 2006 "Motion To Compel Document Production To His Second Set Of Data Requests, And To Amend Hearing Schedule."

After hearing arguments from the parties on this motion during the June 8, 2006 discovery conference, the Division makes the following findings:

a. Data Request 2-4

The Division finds this data request relevant and reasonable for the same reason as explained above, regarding Data Request 1-14. To the extent that Southern Union claims that the information is privileged, it shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Accordingly, the request to compel a more responsive answer is granted.

b. Data Request 2-6

The Division finds this data request relevant and reasonable for the same reason as explained above, regarding Data Request 1-14. To the extent that Southern Union claims that the information is privileged, it shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Accordingly, the request to compel a more responsive answer is granted.

c. Data Request 2-7

As the Division has determined that Southern Union's ability to pay for remedial actions in the event it is found liable for any of the contamination in Tiverton is relevant subject matter in this docket, the Division would also find that the estimated cost of the remediation is also relevant. However, Southern Union has maintained in its responses to Attorney General Data Request 2-7 and Town of Tiverton Data Requests 1-1 and 1-2 that it "has no internal documents, nor any exchanged communications between Southern Union and National Grid, estimating the cost of remediating the alleged contamination in Tiverton." Predicated on this response, the Division finds that Southern Union has adequately responded to Data Request 2-7. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

d. Data Request 2-8

Consistent with its findings regarding Attorney General Data Request 2-7, the Division finds that Southern Union has adequately responded to Data Request 2-8. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

e. Data Request 2-9

The Division finds that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, and not reasonably calculated to lead to discovery of evidence

relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

f. Data Request 2-10

The Division finds this data request unduly burdensome. The Division also questions the relevance of these records with respect to the issue of Southern Union's ability to pay for remedial actions in the event it is found liable for any of the contamination in Tiverton. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

g. Data Request 2-11

The Division finds this data request relevant and reasonable for the same reason as explained above regarding Data Request 1-14. Accordingly, the request to compel a more responsive answer is granted.

h. Motion to Amend Hearing Schedule

As stated above, the Division is not inclined to amend the hearing schedule unless the Attorney General plans to present a direct case in this docket. In that event, the Division will revisit the Attorney General's request to amend the hearing schedule.

3. The RIDEM's June 1, 2006 "Motion To Compel Responses To RIDEM's First Set Of Data Requests Directed To Southern Union Company."

After hearing arguments from the parties on this motion during the June 8, 2006 discovery conference, the Division makes the following findings:

a. Data Request 1-4

The Division agrees with Southern Union in its assertion that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

b. Data Request 1-5

Again, the Division agrees with Southern Union in its assertion that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

c. Data Request 1-6

If Southern Union, or an affiliated company, possess assets in Rhode Island that transcend the assets identified in the Purchase and Sale Agreement, Southern Union is directed to identify those assets. Otherwise, Southern Union is directed to provide RIDEM with a copy of the Purchase and Sale Agreement, as requested in RIDEM's motion. Accordingly, the request to compel a more responsive answer is granted in part and denied in part.

d. Data Request 1-7

The Division finds this data request relevant and reasonable for the same reason as explained above, regarding Attorney General Data Request 1-14. Accordingly, the request to compel a more responsive answer is granted.

e. Data Request 1-8

The Division agrees with Southern Union in its assertion that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

f. Data Request 1-9

The Division agrees with Southern Union in its assertion that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

g. Data Request 1-10

The Division agrees with Southern Union in its assertion that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, unduly burdensome, and not

reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

h. Data Request 1-11

The Division agrees with Southern Union in its assertion that this data request seeks information that is not relevant to the issues properly under consideration by the Division, is overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

4. The George Wiley Center's May 31, 2006 "Motion Of The George Wiley Center To Compel Answers To Data Requests No. 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-10."

After hearing arguments from the parties on this motion during the June 1, 2006 discovery conference, the Division was compelled to deny the George Wiley Center's motion. The finding was based on representations from Narragansett that the Company had not yet formulated its future plans relative to the various rate-related issues addressed in the George Wiley Center's data requests.

5. The George Wiley Center's June 7, 2006 "Motion Of The George Wiley Center To Submit Testimony By June 23, 2006."

This motion was discussed during the June 8, 2006 discovery conference. None of the parties objected to the George Wiley Center's request for the extension of time and the motion was granted.

6. The Town of Tiverton's June 12, 2006 "Motion To Compel More Responsive Answers And/Or Document Production To Southern Union Company."

a. Data Request 1-1

Consistent with its holding regarding Attorney General Data Request 2-7, the Division finds that Southern Union has adequately responded to this information request. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

b. Data Request 1-2

Consistent with its holding regarding Attorney General Data Request 2-7, and Tiverton Request 1-1, the Division finds that Southern Union has adequately responded to this information request. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

c. Data Request 1-5

The Division agrees with Southern Union in its assertion that this data request is not relevant to the issues properly under consideration by the Division, is overly broad, and is not reasonably calculated to lead to discovery of evidence relevant to the issues in this docket. Accordingly, the request is quashed and the motion to compel a more responsive answer is denied.

Conclusion

The Division has responded through this order to the various discovery and scheduling issues raised in the Intervenors' motions. With respect to the issue of "privilege," as noted above, to the extent that Southern Union

claims that any of the information is privileged, it shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Regarding the question of whether the established procedural schedule in this docket needs to be amended, the Division will defer addressing this issue pending further feedback from the parties.

Now, therefore, it is

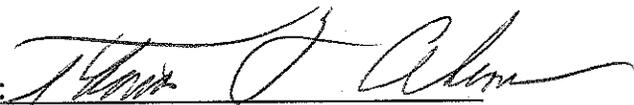
(18641) ORDERED:

1. That the Attorney General's May 31, 2006 "*Motion To Compel More Responsive Answers And/Or Document Production, And To Amend Hearing Schedule*" is hereby denied in part and granted in part as reflected in the findings contained herein.
2. That the Attorney General's June 7, 2006 "*Motion To Compel Document Production To His Second Set Of Data Requests, And To Amend Hearing Schedule*" is hereby denied in part and granted in part as reflected in the findings contained herein.
3. That the RIDEM's June 1, 2006 "*Motion To Compel Responses To RIDEM's First Set Of Data Requests Directed To Southern Union Company*" is hereby denied in part and granted in part as reflected in the findings contained herein.

4. That the George Wiley Center's May 31, 2006 "*Motion Of The George Wiley Center To Compel Answers To Data Requests No. 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-10*" is hereby denied.
5. That the George Wiley Center's June 7, 2006 "*Motion Of The George Wiley Center To Submit Testimony By June 23, 2006*" is hereby granted.
6. That the Town of Tiverton's June 12, 2006 "*Motion To Compel More Responsive Answers And/Or Document Production To Southern Union Company*" is hereby denied as reflected in the findings contained herein.

Dated and Effective at Warwick, Rhode Island on June 16, 2006.


John Spirito, Jr., Esq.
Hearing Officer

APPROVED: 
Thomas F. Ahern
Administrator