

Petition of
The Narragansett Electric Company
and Southern Union Company for
Approval of Purchase and Sale of
Assets

Book 1 of 3

March 16, 2006

Submitted to:
Rhode Island Division of Public Utilities
and Carriers
Docket No.

Submitted by:

nationalgrid

Southern Union Company 

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

In Re: Petition of The Narragansett Electric Company and Southern Union Company)))))	Docket No. _____
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Petition for Approval of Purchase and Sale of Assets

Pursuant to Sections 39-3-24, 39-3-25, and 39-3-26 of Rhode Island General Laws, The Narragansett Electric Company (“Narragansett”) and Southern Union Company (“Southern Union”) (together, “Petitioners” or “Companies”) hereby petition the Division of Public Utilities and Carriers (“Division”) for approval of the acquisition by Narragansett of the assets associated with the regulated gas distribution business owned and operated by Southern Union in Rhode Island as the New England Gas Company (“New England Gas”). In support of this request, the Petitioners state as follows:

Approval of the Acquisition

1. Narragansett is a “public utility” as defined under Section 39-1-2(20) of the Rhode Island General Laws. The predecessor companies of the New England Gas Company, Providence Gas Company, Valley Gas Company, and Bristol and Warren Gas Company, were also each a “public utility” as defined under Section 39-1-2(20), and are succeeded in interest by Southern Union, pursuant to the approval of the Division in Docket Nos. D-00-02 and D-00-03. On July 24, 2000, the Division issued Order 16338, which adopted a settlement agreement authorizing the merger of Southern Union with the Providence Gas Company, the Bristol and Warren Gas Company, and the Valley Gas Company (p. 24).

Paragraph 5 of that Settlement provided that (Order 16338, p. 29):

The Settling Parties agree that, pursuant to the Division's approval of the mergers and consistent with the provisions of R.I.G.L. Sec. 39-3-24, Southern Union may exercise and enjoy all of the rights, powers, easements, privileges, and franchises following the merger theretofore exercised and enjoyed by ProvGas, Valley Gas and Bristol and Warren with respect to the property, assets, plant and business merged with Southern Union. Southern Union acknowledges that it is assuming the franchise and service requirements and responsibilities required of ProvGas, Valley Gas and Bristol and Warren.

2. Narragansett provides electric distribution service in the cities and towns of Barrington, Bristol, Central Falls, Charlestown, Coventry, Cranston, Cumberland, East Greenwich, East Providence, Exeter, Foster, Gloucester, Hopkinton, Jamestown, Johnston, Lincoln, Little Compton, Middletown, Narragansett, Newport, North Kingstown, North Providence, North Smithfield, Pawtucket, Portsmouth, Providence, Richmond, Scituate, Smithfield, South Kingstown, Tiverton, Warren, Warwick, Westerly, West Greenwich, West Warwick, Woonsocket, and a portion of Burrillville.
3. Southern Union provides gas distribution service in the cities and towns of Barrington, Bristol, Burrillville, Central Falls, Coventry, Cranston, Cumberland, East Greenwich, East Providence, Exeter, Gloucester, Hopkinton, Johnston, Lincoln, Middletown, Narragansett, Newport, North Kingstown, North Providence, North Smithfield, Pawtucket, Portsmouth, Providence, Scituate, Smithfield, South Kingstown, Tiverton, Warren, Warwick, West Greenwich, West Warwick, Westerly, and Woonsocket.
4. Narragansett is a subsidiary of National Grid USA. On February 15, 2006, National Grid USA executed a Purchase and Sale Agreement ("Agreement") with Southern Union under which National Grid USA agreed to purchase the New England Gas Assets of

Southern Union. The Agreement is attached as Exhibit 1 to this Petition. Under Section 1.1 of the Agreement, “Assets” are defined to include “all of the assets, properties, rights, claims, contracts and interests of every type and description, real, personal or mixed, tangible and intangible, owned by Seller, directly or indirectly through any Subsidiary or any Affiliate of Seller, and relating primarily to the Business other than the Excluded Assets.” The “Business” is also defined in Section 1.1 to include “the business and operations conducted in Rhode Island by Seller and the Subsidiaries, including:

- (a) the regulated and non-regulated gas distribution business conducted in Rhode Island by Seller through New England Gas Company and the provision of related services and products and the engagement in related activities, including agreements as to appliances and other equipment installed or serviced in Rhode Island by Seller through New England Gas Company; and
- (b) all activities conducted by any of the Subsidiaries, including the appliance and equipment installation and servicing businesses.”¹

National Grid USA, a Delaware corporation, is a holding company that is the parent of Narragansett.² Under Section 2.1 of the Agreement, National Grid USA agrees to purchase the Assets from Southern Union. However, the purchase may be implemented directly by National Grid USA or through one of National Grid USA’s subsidiaries. Specifically, under Section 8.1 of the Agreement, National Grid USA “shall have the right to designate any of its Subsidiaries to execute any documents or perform any actions on its behalf” necessary for the Closing.

¹ The Subsidiaries are defined under the same Section of the Agreement as Newport America Corporation, Patience Realty Corp., Prudence Realty Corp., and Valley Appliance and Merchandising Company. These subsidiaries are all engaged in unregulated operations.

² National Grid USA is in turn indirectly owned by National Grid plc, incorporated in the United Kingdom.

5. National Grid USA has designated Narragansett as the appropriate subsidiary for the purpose of acquiring “the regulated and non-regulated gas distribution business conducted in Rhode Island” included in subparagraph (a) of the definition of Business quoted above (hereinafter referred to as the “New England Gas Assets”). Because this Business is that of a “public utility” as defined under G.L. s. 39-1-2(20), Narragansett’s acquisition of the New England Gas Assets requires the Division’s approval under G.L. ss. 39-3-24, 39-3-25, and 39-3-26.
6. In contrast, National Grid USA will acquire the common stock of the Subsidiaries included in subparagraph (b) of the definition of Business quoted above directly or through another subsidiary of National Grid USA, but not through Narragansett. Because none of these unregulated Subsidiaries of Southern Union is a “public utility” as defined under Section 39-1-2(20) of the General Laws, the acquisition of the unregulated Subsidiaries by National Grid USA does not require Division approval under G.L. ss. 39-3-24, 39-3-25, and 39-3-26.
7. If approved by the Division, Narragansett’s acquisition of the New England Gas Assets will have the following result:
 - (a) all of the rights, privileges, easements, powers and franchises held or enjoyed by New England Gas will become vested in Narragansett pursuant to Section 39-3-24 of Rhode Island General Laws; and
 - (b) Narragansett will become the sole and exclusive gas distribution company serving the cities and towns in Rhode Island listed in paragraph 3 above.

8. As supported by the accompanying sworn and verified Testimonies of Ronald T. Gerwatowski and Richard N. Marshall, included as Exhibits 2 and 3 to this Petition, the acquisition of the New England Gas Assets by Narragansett will:
- (a) result in efficiencies and cost savings from increasing the customer base and consolidating operating and administrative functions in Rhode Island and the northeastern United States, combining electric and gas distribution operations in Rhode Island, and joining the expertise in the Rhode Island Gas distribution business with that developed in the other natural gas operations of National Grid in the Northeast and the United Kingdom;
 - (b) reduce administrative costs of regulation incurred by both the Division and the Public Utilities Commission by reducing the number of distribution companies subject to regulatory oversight;
 - (c) facilitate the implementation of common Division and Commission policies for gas and electric delivery services throughout the State of Rhode Island; and
 - (d) improve the ability of the gas and electric distribution utilities to provide reliable service to the public.
9. For all of the reasons stated above, Narragansett's acquisition of the New England Gas Assets (a) is consistent with the public interest and (b) will not diminish the facilities of the Companies used for furnishing service to the public, as required under G.L. s. 39-3-25.

Amendment to Narragansett's Corporate Charter

10. Article IX of the amendments to the Constitution of Rhode Island, adopted in November 1892, limits the power of the General Assembly to provide for the creation of corporations by general law so that no corporation shall be created with the power to exercise the right of eminent domain or to acquire franchises in the streets and highways of towns and cities except by special act, on notice as required by law. Narragansett was originally incorporated as United Electric Power Company through a special act on April 8, 1926. Under section 4 of that special act, Narragansett may sell its business to any other corporation organized under Rhode Island law and authorized "to carry on a similar business in this state" and Narragansett "may purchase and hold, all of the assets, property, rights, privileges and franchises of any such other corporation or corporations." Similar to G.L. s. 39-3-24, the special act requires a two thirds vote of the vendor corporation, and provides that: "Upon consummation of any such sale the purchasing corporation shall become vested with all the rights, privileges, powers and franchises held or enjoyed by the vendor corporation."³ Section 39-3-26 of the General Laws has amended this special act to allow Narragansett to purchase the assets of other public utilities in Rhode Island. The Section provides that: "The charters of all corporations

³ The special act also has a provision that addresses Providence Gas Company. Section 4 provides that: "nothing in this act shall be construed to authorize the corporation to acquire any of the property, rights, privileges, powers, franchises or capital stock of the Providence Gas Company. However, Section 39-3-26 of the General Laws has amended Narragansett's charter to allow the purchase of public utility assets located in Rhode Island if the purchase is approved by the Division. In addition, Providence Gas Company has been dissolved and the assets are now owned by Southern Union. Prior to that merger with Southern Union, Providence Gas Company operated under a special act amended in 1980 that authorized Providence Gas to merge with any corporation as long as the surviving corporation was a public utility as defined in Section 39-3-2 of the General Laws. Narragansett was not excluded as a potential purchaser in the Providence Gas statute.

subject to regulation by the division are hereby amended to the extent necessary to authorize the carrying out of any agreement, purchase, sale, or lease approved by the division as provided in ss. 39-3-24 and 39-3-25.” Accordingly, Narragansett’s charter was amended by operation of law when Section 39-3-26 was enacted by the General Assembly and, upon the Division’s approval of the acquisition, Narragansett will be authorized to exercise the franchise, eminent domain, and other rights necessary to carry on the public utility functions of the acquired gas distribution business associated with the New England Gas Assets.

Filing of Name Change in New England Gas Company Tariffs

11. As part of the implementation of the acquisition, Narragansett must file tariffs with the Administrator pursuant to G.L. s. 39-3-10 to reflect the change in ownership. The revised tariffs (along with a version that is marked to show changes) are included in Exhibit 4 to this Petition. As indicated by the marked version of the tariffs, the only change to the tariffs is the name of the public utility providing service to customers. The prices and terms are unchanged. The tariffs will continue in effect until they are superseded by the approval by the Commission of new rates for gas delivery customers. As explained by Mr. Gerwatowski, Narragansett commits to make a filing of a proposed rate plan with the Commission within six months after the Division’s approval of this transaction that proposes an allocation of efficiency savings arising from this transaction between customers and Narragansett and addressing other rate, tax, accounting, and cost allocation

issues associated with this transaction. Prior to that time, Narragansett will continue to operate under the terms of the New England Gas Company's existing rate settlement.

Request for Declaration that the 2/3 Shareholder Vote for Southern Union Is Not Required

12. Section 39-3-24(3) of the Rhode Island General Laws provides that (emphasis supplied):

Any public utility may merge with any other public utility or sell or lease all or any part of its property, assets, plant, and business to any other public utility, provided that the merger or a sale or lease of all or substantially all of its property, assets, plant, and business shall be authorized by a vote of at least two-thirds (2/3) in interest of its stockholders at a meeting duly called for the purpose.

As explained in the testimony of Richard N. Marshall, Vice President and Treasurer of Southern Union, the assets that Southern Union is conveying to National Grid constitute less than 10 percent of the total asset base of Southern Union. Given the size of the overall Southern Union asset base, the sale of the New England Gas Assets does not approach the statutory standard of a sale or lease of "all or substantially all" of Southern Union's assets. Accordingly, the Petitioners request a declaration by the Division that the two-thirds vote requirement set forth in Section 39-3-24 of the General Laws does not apply to Southern Union for this transaction. As explained by Mr. Marshall, this declaration will assist in ensuring that the transaction will be closed within the timeframe established in the Agreement.

13. In addition, the Petitioners request confirmation that Narragansett need not conduct any shareholder vote associated with this transaction. By its terms, Section 39-3-24(3) of the General Laws requires a shareholder vote only from the selling company when there is no merger involved. Under Narragansett's Preferred Stock Preference Provisions,

Narragansett's preferred shareholders also have no right to vote on "a purchase or other acquisition by the Company of franchises or assets of another corporation in any manner which does not involve a merger or consolidation." Narragansett's common shares are all owned by National Grid USA, and therefore, a vote of Narragansett's common shareholders would involve a vote only by National Grid USA. Nevertheless, Narragansett does not intend to take a shareholder vote prior to the closing. However, as with Southern Union, confirmation from the Division that no shareholder vote is required of Narragansett would assist in ensuring that the transaction will be closed within the timeframe established in the Agreement.

Request for Ruling by June 30, 2006

14. Under Section 9.1(e) of the Agreement, absent an extension, the acquisition may be terminated by Southern Union or National Grid USA if the closing has not occurred by August 25, 2006. Therefore, the transaction is structured to facilitate a timely approval by the Division. Unlike the merger of Narragansett with Blackstone Valley and Newport, a full rate review is not sought by the Petitioners before the closing date of this acquisition, nor is one required by Rhode Island law. Rather, as explained in Paragraph 11, Narragansett has committed to make a rate plan filing within six months after the Division's approval of this Petition. A decision by June 30, 2006 on this Petition provides for a thirty day appeal period necessary to achieve a "Final Order" as defined in Section 1.1 of the Agreement, and allows sufficient time for Petitioners to take the steps necessary to prepare for and complete the transaction on a timely basis. Because the rate

plan filing occurs after the Division's approval, the later rate filing provides the Division, Commission, and interested parties adequate time to complete a full review of a new rate plan after the transaction is complete.

15. To complete the transaction, the Petitioners must have in hand a final order of the Division and be in a position to complete other arrangements that are necessary to conduct the closing in an orderly fashion. Therefore, the Petitioners respectfully request the Division to approve the acquisition by June 30, 2006 to allow for a closing of the transaction on or before the August 25, 2006 termination date.

Conclusion

16. Accordingly, the Petitioners respectfully request the Division issue an order by June 30, 2006 stating that:
 - (1) Pursuant to Section 39-3-25 of the Rhode Island General Laws, the Division grants the prayer for approval of the transaction as set forth in this Petition based on findings that the facilities for furnishing service to the public will not thereby be diminished, and that the purchase and sale agreement and the terms thereof are consistent with the public interest.
 - (2) Under Section 39-3-24, the Division consents and approves of the acquisition of the New England Gas Assets by Narragansett;
 - (2) As provided by Section 39-3-24 of Rhode Island General Laws, upon such acquisition, all of the rights, privileges, easements, powers, and franchises held or

enjoyed by New England Gas Company and Southern Union shall become vested in Narragansett; and

- (3) As provided by Section 39-3-26 of Rhode Island General Laws, the charter of Narragansett has been amended by operation of law to the extent necessary to permit the proposed acquisition upon the Division's approval, to authorize the exercise of the rights, privileges, easements powers, and franchises vested in Narragansett pursuant to paragraph (2) above, and to carry out the regulated and unregulated gas distribution business acquired by Narragansett in this transaction.

17. Further, the Companies respectfully request the Division to:

- (1) Accept for filing under G.L. s. 39-3-10 the tariffs included in Exhibit 4 to become effective on the closing of the transaction;
- (2) Declare that the requirement of a shareholder vote under G.L. s. 39-3-24 does not apply to Southern Union and is not necessary to complete the transaction; and

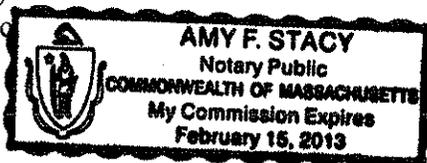
- (3) Confirm that there is no requirement for a shareholder vote under G.L. s. 39-3-24 for Narragansett.

Signed and verified on behalf of the Companies by:

Cheryl A. LaFleur
 Cheryl A. LaFleur
 President
 The Narragansett Electric Company

Subscribed and sworn to before me this 15th date of March, 2006.

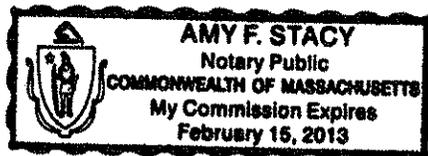
Amy F. Stacy
 Amy F. Stacy
 Notary Public



Gregory A. Hale
 Gregory A. Hale
 Secretary
 The Narragansett Electric Company

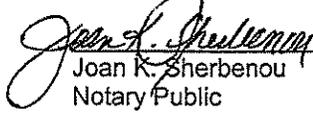
Subscribed and sworn to before me this 15th date of March, 2006.

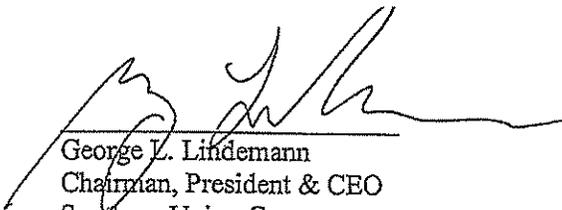
Amy F. Stacy
 Amy F. Stacy
 Notary Public



STATE OF TEXAS)
COUNTY OF HARRIS)

This instrument was acknowledged before me
on March 15, 2006, by George L. Lindemann.

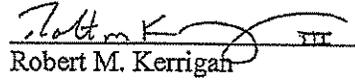

Joan K. Sherbenou
Notary Public


George L. Lindemann
Chairman, President & CEO
Southern Union Company

STATE OF TEXAS)
COUNTY OF HARRIS)

This instrument was acknowledged before me
on March 15, 2006, by Robert M. Kerrigan, III.


Joan K. Sherbenou
Notary Public


Robert M. Kerrigan
Vice President, Assistant General Counsel
& Secretary
Southern Union Company