Laura S. Olton
General Counsel
Ocean State Division

April 21, 2006

VIA HAND DELIVERY AND ELECTRONIC MAIL

Luly E. Massaro, Division Clerk
RI Division of Public Utilities & Carriers
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket D-06-13 - Joint Petition of The Narragansett Electric Company and Southern Union Company for Approval of Purchase and Sale of Assets
Response to Requests for Intervention

Dear Ms. Massaro:

Enclosed please find six (6) copies of the Response of The Narragansett Electric Company, d/b/a National Grid to Requests for Intervention in the above-captioned proceeding.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,

Laura S. Olton

Laura S. Olton

Enclosures

cc: Docket D-06-13 Service List

280 Melrose Street, Providence, RI 02907
T: 401-784-7667 ■ F: 401-784-4321 ■ laura.olton@us.ngrid.com ■ www.nationalgrid.com

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

In Re: Joint Petition for Purchase and Sale of Assets by The Narragansett Electric Company and Southern Union Company	**)** **)** **)** **)**	**Docket No. D-06-13**

Response of National Grid to Requests for Intervention

This memorandum is being provided by The Narragansett Electric Company, d/b/a National Grid ("National Grid or Company") in response to the interventions of various parties in the above-captioned docket.

In this docket, National Grid, as co-petitioner with Southern Union, is asking the Division to grant approval of the sale of New England Gas Company's assets and business in Rhode Island to National Grid. From National Grid's perspective, we believe it will become abundantly clear in the course of these proceedings that this acquisition is in the best interest of ***all*** gas and electric customers in Rhode Island. In that regard, it is National Grid's hope that the attempt to inject extraneous issues into this process through several of the interventions does not cause the Division to be distracted from the core question in this case -- whether the transaction will benefit the state as a whole.

As a legal matter, it is the Division's charge to determine whether "the facilities for furnishing service to the public will not . . . be diminished, and that the purchase, sale, or lease and the terms thereof are consistent with the public interest." R.I.G.L. § 39-3-25 This is a very straightforward standard. It is not an invitation for any party to utilize the

Division as a resource to resolve disputes not tied to the transaction itself. Rather, it gives the Division the responsibility to consider whether the transaction will be more broadly in the "public interest". National Grid is certain it will be able to show that the transaction is in the public interest because the consolidation of gas and electric delivery service will undoubtedly bring benefits to the state. But it is not reasonable to expect this proceeding to be the vehicle for resolving other unrelated issues, no matter how important or serious those issues may be to the individuals or parties that are raising them.

National Grid appreciates that there is a group of residents in Tiverton who have had their lives apparently disrupted by an environmental issue that may relate to events as far back as the 1920's. We also understand that there are many residents in the Providence and East Providence area who are concerned about what might happen if an LNG expansion project were to be approved in Providence. We also understand that there may be some union employees for New England Gas Company who are anxious about how their jobs might be affected with a change of ownership. While each of these matters are quite important to the individuals involved, this proceeding is not a forum through which the objectives of each of these unique interests can be satisfactorily addressed. For that reason, National Grid is very concerned that, if this proceeding is not held to the statutory standard, it could result in a transaction that is clearly in the public interest nevertheless falling victim to the complicated and contentious concerns of only a few. Such a result would achieve nothing and resolve nothing.

It is with this backdrop that National Grid provides this response.

The Intervention Requests

There were nine (9) requests for intervention filed in this docket: The Attorney General, The Energy Council of Rhode Island ("TEC-RI"), The George Wiley Center, the Rhode Island Department of Environmental Management ("RIDEM"), the Town of Tiverton, the Cities of Providence and East Providence, the United Steelworkers Union Local 13421, and a group of residents from Tiverton ("Tiverton Residents").

National Grid has no objection to the requests of the Attorney General and TEC-RI. The George Wiley Center filed no substantive papers explaining the basis of its intervention. Thus, there is a question whether it has made a timely filing. In the absence of timely filed papers describing the basis of the intervention, it is not possible to give a substantive response to that request at this time.

The remainder of this memorandum will address the intervention requests of the other parties identified above.

I. Interventions Relating to the Bay Street, Tiverton Environmental Issue

The Rhode Island Department of Environmental Management ("RIDEM"), the Town of Tiverton, and the Tiverton Residents who have a tort case against Southern Union pending in federal court, have sought intervention relating to a dispute about legal responsibility for cleaning up contaminated soil in a neighborhood in the vicinity of Bay Street, in Tiverton.

National Grid is very sympathetic to the plight of the residents living in the Bay Street area of Tiverton. They appear to be faced with a problem that has disrupted their

lives. However, for the reasons stated below, it is not proper for the dispute to be litigated in this proceeding. National Grid 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. These legal standards do not allow parties to use this proceeding as a leverage point to help achieve objectives in separate agency actions and civil litigation. Rather, the standard is a narrower consideration set forth squarely in the statute in Rhode Island General Law § 39-3-25:

> "If, after the hearing, or, in case no hearing is required, the division is satisfied that the prayer of the petition should be granted, that the facilities for furnishing service to the public will not thereby be diminished, and that the purchase, sale, or lease and the terms thereof are consistent with the public interest, it shall make such order in the premises as it may deem proper and the circumstances may require."

There is no room within this statutory provision for a wide-reaching inquiry into matters not related to the transaction itself.

While many of the residents appear to have a contamination problem that will need to be addressed outside of this proceeding, there is a very real and legitimate dispute as to legal responsibility for the clean up. In fact, absent a mutually agreeable settlement, the dispute over responsibility might take years to resolve whether or not the sale to National Grid takes place. While RIDEM has issued an enforcement letter against Southern Union, such letter does not definitively establish legal responsibility for the contamination, and Southern Union vigorously disputes the assertion that it is legally responsible. For these reasons, it is imperative for the Division to take steps to assure that this proceeding does not 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. Those issues simply cannot be resolved in this case. To the

extent that any party might be trying to turn this Division proceeding into a forum to assert leverage against Southern Union, National Grid respectfully submits that it would be a misuse of legal process that must be rejected by the Division.

On the other hand, to the extent that RIDEM (or the Town of Tiverton) is only seeking assurance 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, then National Grid might have no objection to the inquiry. But the scope of any such intervention must be limited to its relevancy to the acquisition and cannot lawfully extend to the merits of the on-going environmental dispute itself. In that regard, arguably the only valid issue that could conceivably be relevant to the Division's approval of the transaction might relate to the financial capability of Southern Union to pay for any clean up costs, to the extent that a court were to find Southern Union responsible. However, unless the intervenors can show in this proceeding that Southern Union is not likely to be financially capable of paying for the clean up costs after it sells its assets located in Rhode Island to National Grid, there are no lawful grounds to place conditions on the sale of the Rhode Island business to National Grid – let alone prevent the sale from taking place. But no party seeking intervention on this issue has even made an allegation that Southern Union, in fact, would be financially incapable of paying clean up costs of any expected magnitude.

Unless we are misunderstanding Tiverton's intervention request, however, it appears that the Town is going beyond the issue of financial capability. In fact, Tiverton appears to be asking the Division to place a condition that an approved remediation plan be in place prior to the sale of the assets. This request is outside of the jurisdiction of the

Division in reviewing the transaction. There is a very clear statutory process established under Rhode Island law for establishing legal responsibility for clean up of contaminated soil, through processes and regulations of RIDEM that are designed to provide due process to anyone alleged to be a responsible party. This Division proceeding cannot lawfully be used to supplant or supplement those regulatory processes. Thus, any Division order that might grant intervenor status to any of the parties raising the environmental issue should expressly set forth the limited parameters of what may be reviewed in this proceeding.

Accordingly, to the extent the Division allows RIDEM or the Town of Tiverton to intervene, National Grid respectfully submits that the scope of those interventions needs to be limited to the following issue:

> Whether the sale is likely to render Southern Union financially incapable of meeting a reasonable RIDEM-imposed obligation to clean up the contamination in the Bay Street neighborhood after the sale takes place, assuming Southern Union was ultimately found legally responsible in court proceedings for such clean up.

But, in no event can the Division lawfully open up these proceedings to litigate responsibility for the environmental issue or require Southern Union to pay for the clean up as a condition of the transaction. Otherwise, due process is denied.

With respect to the residents and their claims in federal court, however, the circumstances are quite different. In effect, the residents are trying to protect their ability to collect a <u>potential</u> judgment in a separate civil action for emotional distress, diminution of property values, and other common law claims. The case is proceeding in the United

States District Court for the District of Rhode Island, where a motion to dismiss the residents' claims is pending. (Case No. 05-221T.) For the protection of the residents' alleged interest in that case, they have a remedy available in the federal court.

II. Intervention of the United Steelworkers Union

The United Steelworkers Local Union 13421 ("Union") also has filed a request for intervention. The only stated basis of the intervention is that the sale allegedly will "affect the rights and responsibilities of the Union and the Company under the existing collective bargaining agreements." The Union's intervention papers also state that neither collective bargaining agreement to which they refer expires until well into 2007.

National Grid has committed to honor all collective bargaining agreements. In fact, this is a condition of the purchase and sale agreement. In addition, the Company has a history of striving to work cooperatively with its unions. In this case, the Union has not raised any issues that would be properly before the Division. The Division has no authority to place any conditions on either the existing or any future collective bargaining agreements. Any disputes arising under the existing agreements or negotiations of future agreements are within the exclusive jurisdiction of the National Labor Relations Board. In fact, this area of the law has been federally preempted through the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157 and 158.

NLRA § 8 (a)(5) imposes a duty on employers to bargain in good faith with their employees' collective bargaining representatives regarding material changes to their terms or conditions of employment. Labor organizations are similarly required to bargain in good faith pursuant to NLRA § 8 (b)(3). The obligation to adhere to, and honor, the

terms of existing labor contracts are contained in NLRA §§ 8(a)(5) and (d). In addition to creating these substantive rights and obligations, the NLRA established the National Labor Relations Board ("NLRB") and a detailed administrative process for the investigation and enforcement of claimed violations of the statute. On numerous occasions, the United States Supreme Court has reaffirmed the primary jurisdiction of the NLRB to resolve all issues covered by NLRA, as well as the NLRA's broad preemptive effect. *See e.g., Wisconsin Department of Industry, Labor and Human Resources v. Gould, Inc*., 475 U.S. 282 (1986); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); *Garner v. Teamsters' Union*, 346 U.S. 485 (1985).

In *Garmon*, the Supreme Court explicitly held that "[w]hen an activity is *arguably* subject to . . . Section 8 of the Act, the States as well as the federal court must defer to the exclusive competence of the [NLRB]". *San Diego Building Trades Council v. Garmon*, 359 U.S. at 245. In assessing preemption questions under the NLRA, the United States Supreme Court also has recognized that it is irrelevant what legal theory or basis is attributed to the alleged violation. *Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1978). The forum in which the claim is brought also is irrelevant. Rather, the Supreme Court has emphasized that ". . . it is the conduct being regulated, not the formal description of the governing legal standards, that is the proper focus of concern". *Id*. At 292 Thus, the Supreme Court has consistently recognized when a party's allegations relate to conduct that is "arguably" subject to regulation under the NLRA, both federal and state courts and agencies must defer to the exclusive jurisdiction of the NLRB. *Id*.

There is no doubt that the Union's concerns here are "arguably" subject to regulation under the NLRA. Indeed, even if the Division were to find a factual basis for

considering the Union's issues, the Division does not have the authority to issue any relief to affect the rights under the collective bargaining agreement. *See Wisconsin Department of Industry, Labor and Human Resources v. Gould*, 475 U.S. 282 (1986); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); and *Garner v. Teamsters' Union*, 346 U .S. 285 (1953). Accordingly, National Grid respectively submits that the Division lacks jurisdiction to consider any issues in this proceeding that relate to matters governed by the collective bargaining agreements or the subject of future collective bargaining negotiations Thus, there are no issues raised by the Union that could be legitimately before the Division. As such, National Grid objects to the intervention.

III. Interventions Relating to the KeySpan LNG Project

Both the City of Providence and the City of East Providence have sought to intervene based exclusively on concerns about a proposed expansion of LNG terminal facilities by KeySpan LNG, L.P., a subsidiary of KeySpan Corporation. The City of East Providence alleges absolutely no connection between the transaction set forth in the Petition and the LNG project by KeySpan LNG, L.P. other than to say that New England Gas owns property near the existing KeySpan facility. The City of Providence, on the other hand, relies on speculation from a newspaper article that the acquisition of New England Gas Company assets by National Grid might be the first step in a grand stratagem to gain control over properties near the existing KeySpan, acquire KeySpan itself, and then return to the Federal Energy Regulatory Commission to obtain a permit to expand the LNG facilities. On this pure speculation, the City rests its intervention.

Before responding to these interventions, National Grid wishes to emphasize that we take very seriously the concerns of public officials relating to matters of such importance as the LNG terminal expansion. We acknowledge that National Grid USA has announced an agreement to purchase KeySpan Corporation, who owns KeySpan LNG, L.P. However, if the KeySpan acquisition occurs, Rhode Island officials can rest assured that National Grid would commence a dialogue on the issues associated with the LNG terminal following the transaction. But, today, National Grid has no authority to make any commitments relating to the KeySpan project. Similarly, the Division has no authority to change the status of that project proposal, even if the entire state of Rhode Island desired such action.

Accordingly, National Grid respectfully objects to the participation of the Cities of Providence and East Providence in the proceedings to the extent that their interventions would permit them to probe issues relating to the KeySpan proposal to expand LNG terminal facilities in Providence. While National Grid USA has an agreement to acquire KeySpan Corporation, it is a separate transaction which requires regulatory approvals in several other jurisdictions. KeySpan is not a party to these proceedings. National Grid has neither direct nor indirect control over what KeySpan does with the LNG facilities unless and until the other transaction is approved and the sale closes. The Division simply has no jurisdiction to review the KeySpan proposal or include any conditions on an approval of the New England Gas transaction that tie to the KeySpan proposal.

This is a collateral issue that has absolutely nothing to do with the matter at hand – that is, whether the sale of the New England Gas assets and business in Rhode Island to

National Grid is in the public interest. To the extent the Cities have objections to the LNG proposal, their remedies currently reside at the Federal Regulatory Commission ("FERC"), who has exclusive jurisdiction over the matter. In fact, FERC has already denied the application for the expansion and that issue is on appeal in the federal court system.[1] The Division has no jurisdiction over that project and cannot lawfully issue any orders that are intended to prevent the project from going forward without running afoul of federal law and encountering other weightier obstacles of constitutional dimensions. For all of these reasons, National Grid objects to the interventions of the Cities to the extent such interventions would allow the LNG project proposal to become a subject matter of these proceedings.

IV. Summary and Conclusion

It is imperative that the Division not allow this proceeding to become a forum for parties to advance claims or pursue objectives that are not relevant to the questions properly before the Division in this case. To do otherwise is to deny due process to the Petitioners. For that reason, National Grid asks the Division to assure that any intervention relating to the Tiverton environmental matter be strictly limited to the financial capability of Southern Union to meet obligations that might be imposed after the acquisition. In all other respects, however, the environmental matter cannot lawfully be considered by the Division in this case. For that reason, the intervention requests of RIDEM and the Town of Tiverton must be limited in scope. However, there is no valid

[1] *See KeySpan LNG, L.P. v. FERC*, (D.C. Circuit) Case No. 06-1097, appeal of *KeySpan LNG, L.P., Algonquin Gas Transmission, LLC*, Docket Nos. CP04-223-000, CP04-293-000, and CP04-358-000, "Order Denying Authorization Under Section 3 and Dismissing Certificate Application" 112 FERC ¶ 61,028 (July 5, 2005) and *KeySpan LNG, L.P., Algonquin Gas Transmission, LLC*, Docket Nos. CP04-223-001, CP04-293-001, and CP04-358-001, "Order Dismissing and Denying Request for Rehearing," 114 FERC ¶ 61,054 (January 20, 2006).

legal basis for permitting the Tiverton Residents to achieve intervenor status in this case. Their remedies reside in the federal court.

Regarding the Union, the only interest asserted by them relates to matters arising out of collective bargaining agreements. As explained above, such matters are preempted by federal law and, therefore, not properly before the Division. Thus, the Union's request should be denied.

Finally, any issues relating to the KeySpan LNG project proposal is completely unrelated to the subject matter before the Division in this case. For that reason, this issue cannot be properly considered by the Division and the interventions of the Cities of Providence and East Providence should be denied to the extent that these parties are seeking only to address issues relating to the KeySpan LNG project.

In conclusion, National Grid urges the Division to focus on what cannot be achieved through these interventions, because the limits on the Division's authority drive the ruling on the motions for intervention. Specifically:

(1) The Division cannot lawfully order a remedial plan or a clean up by Southern Union.

(2) The Division cannot lawfully order Southern Union to pay any money to the Tiverton residents or set aside proceeds for their benefit.

(3) The Division cannot lawfully order National Grid to reserve special benefits for members of the local union for future collective bargaining negotiations.

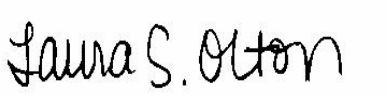
(4) Nor can the Division lawfully issue an order that prevents KeySpan from pursuing an LNG expansion in Providence.

In effect, other than considering the financial capability of Southern Union to meet any clean up obligations that may be imposed in the future after the sale occurs, there are no conditions that the Division can lawfully impose on this transaction in response to the Tiverton environmental issue, the Union's concerns, or the LNG issue that actually addresses the issues raised in the motions. Thus, the interventions must be appropriately limited or denied, as more fully explained in this Response.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC COMPANY, d/b/a NATIONAL GRID

By its Attorney,



Laura S. Olton, #7068
General Counsel, Ocean State Division
280 Melrose Street
Providence, RI 02907
Tel: (401) 784-7667
Fax: (401) 784-4321
laura.olton@us.grid.com

Dated: April 21, 2006

Certificate of Service

I certify that a copy of the cover letter and materials accompanying this certificate were mailed or hand-delivered to the parties listed below:

Joanne M. Scanlon
National Grid

April 21, 2006
Date

National Grid & Southern Union - Docket D-06-13
Updated Service List as of 04/21/06

Name/Address	E-mail Distribution	Phone/FAX
Laura S. Olton, General Counsel Narragansett Electric Co., d/b/a National Grid 280 Melrose Street Providence, RI 02907	laura.olton@us.ngrid.com Joanne.scanlon@us.ngrid.com	401-784-7667 401-784-4321
Thomas G. Robinson, Esq. Narragansett Electric Co., d/b/a National Grid 25 Research Drive Westborough, MA 01582	Thomas.robinson@us.ngrid.com Ronald.Gerwatowski@us.ngrid.com	508-389-2877
For New England Gas Co.: Cheryl Kimball, Esq. Keegan, Werlin & Pabian LLP 21 Custom House St. Boston, MA 02110	ckimball@keeganwerlin.com Rkeegan@keeganwerlin.com	617-951-1400 617-951-1354
Kevin Penders, Esq. Manager, Regulatory Relations New England Gas Co. 100 Weybosset St. Providence, RI 02903	Kevin.Penders@negasco.com	401-272-5040 401-751-0698
For New England Gas Co.: Gerald J. Petros, Esq. Hinckley, Allen & Snyder LLP 1500 Fleet Center Providence, RI 02903	gpetros@haslaw.com	401-274-2000 ext. 5666 401-277-9600
For the Division of Public Utilities Advocacy: Leo Wold, Esq. Dept. of Attorney General 150 South Main St. Providence RI 02903	lwold@riag.ri.gov RDiMeglio@riag.ri.gov sscialabba@ripuc.state.ri.us	401-222-2424 401-222-3016

For the Dept. of Attorney General: William Lueker, Esq. Dept. of Attorney General 150 South Main Street Providence, RI 02903	Wlueker@riag.ri.gov	401-222-2424 401-222-3016
Adrienne G. Southgate, Deputy City Solicitor Law Department City of Providence 275 Westminster Street, Suite 200 Providence RI 02903	asouthgate@providenceri.com	401- 421-7740 Ext. 333
For the City of East Providence: W. Mark Russo, Esq. Ferrucci Russo P.C. 55 Pine St., 4th Floor Providence, RI 02903	mrusso@frlawri.com wsmith@frlawri.com	401-455-1000 401-455-7778
Brian A. Wagner, Deputy Chief Legal Counsel RI Dept. of Environmental Management Office of Legal Services 235 Promenade St., 4th Flr. Providence, RI 02908	Brian.wagner@dem.ri.gov	401-222-6607 401 222-3378
For United Steel Workers Union Local 12431: Richard M. Peirce, Esq. Roberts, Carroll, Feldstein & Pierce Ten Weybosset St. – 8th Floor Providence, RI 02903	rpeirce@rcfp.com	401-521-7000 401-521-1328
For the Town of Tiverton: Andrew M. Teitz, Esq. Ursillo, Teitz and Rich, Ltd. 2 Williams St. Providence, RI 02903-2918	zoning@utrlaw.com	401-331-2222 401-751-5257
John Farley, Executive Director The Energy Council of RI One Richmond Square Suite 340D Providence RI 02906	jfarley316@hotmail.com	401-621-2240 401-621-2260
For The Energy Council of RI: Michael McElroy, Esq. Schacht & McElroy PO Box 6721 Providence RI 02940-6721	McElroyMik@aol.com	401-351-4100 401-421-5696
For the George Wiley Center: B. Jean Rosiello, Esq. 340 Olney St. Providence, RI 02906	jeanrosiello@cox.net	401-751-5090 401-751-5096
For Residents of Tiverton: Robert J. McConnell, Esq. Motley Rice LLC 321 South Main Street Providence, RI 02940	rmcconnell@motleyrice.com	401-457-7700
For Residents of Tiverton: David C. Strouss, Esq. Thornton & Naumes LLP 100 Summer St., 30th Floor Boston, MA 02110	dstrouss@tenlaw.com	617-720-1333

For Residents of Tiverton: Mark W. Roberts, Esq. McRoberts, Roberts & Rainer 53 State St. Boston, MA 02109	mroberts@mcrobertslaw.com	617-722-8222
John Spirito, Esq. Division of Public Utilities & Carriers 89 Jefferson Blvd. Warwick, RI 02888	jspirito@ripuc.state.ri.us	401-780-2152 401-941-9207
For Division of Public Utilities Advocacy: Bruce Oliver Revilo Hill Associates 7103 Laketree Drive Fairfax Station VA 22039	Boliver@cox.net	
For Division of Public Utilities Advocacy: David J. Effron Berkshire Consulting 12 Pond Path North Hampton, NH 03862-2243	Djeffron@aol.com	
File an original & five (5) copies w/: Luly E. Massaro, Division Clerk Division of Public Utilities & Carriers 89 Jefferson Blvd. Warwick, RI 02888	Lmassaro@puc.state.ri.us	401-780-2107 401-941-1691