

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

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

TOWN OF TIVERTON'S POST-TRIAL MEMORANDUM

In a proceeding for approval of transactions between utilities, the division must be satisfied that the transaction is consistent with the public interest. R.I. Gen. Laws §39-3-25. The division must consider the potential for adversely affecting the existing service quality and generally whether the transaction is consistent with the public interest. Re Valley Gas Co., No. D-00-02, D-00-03, 2000 WL 1576662, at *29 (R.I. P.U.C. July 24, 2000). The division must look for evidence not only confirming that the ratepayers will not be harmed by the transaction but also verifying that the ratepayers will actually benefit from the transaction. Id. (Emphasis added.)

Additionally, the burden is on the petitioners to show that the ratepayers will not be harmed and will actually benefit from the transaction. *See Id.* The division should look beyond mere assertions of the petitioners with regard to the public interest and seek supporting evidence. *See Id.* The division should be concerned where such assertions lack supporting evidence. *See Id.* The interests of private litigants must give way to the realization of public purposes. Id. at *30.

The Town of Tiverton was allowed to intervene in this matter to inquire into the affect the transaction will have on the public interest with regard to the contamination and remediation of properties, private and town-owned, within the town, the contamination of which Southern

Union has been named a probable responsible party by R.I. DEM. As such, this memorandum will deal primarily with that issue.

After approximately five weeks of discovery and two days of hearings, one must conclude that Southern Union has failed to provide any evidence in support of its contention that the transaction will not negatively affect the public interest, let alone actually benefit the public. Southern Union has provided evidence that if the division allows it to sell all of its assets in Rhode Island, the State will not be left holding a judgment against Southern Union relative to the contamination that is either uncollectible or will involve substantial time and effort to recover. In fact, other than SEC filings, the little information that the parties were able to glean from Southern Union shows that in or about 2004, Southern Union signed a Settlement Agreement with former Fall River Gas management company, Stone and Webster, in which it asserted that Fall River Gas Company was liable for the Tiverton contamination. An assertion which is in sharp contrast to representations by Southern Union during these proceedings that it adamantly maintains that Fall River Gas Company is not the source of the Tiverton contamination. This document was requested early in the very short discovery time period¹ but was received only days before the hearing. Additionally, late produced discovery also showed that Southern Union had collected funds from Stone and Webster to compensate it for remedial actions it was required to take in various areas of Rhode Island and Massachusetts, including Tiverton.

Tiverton's witness, David Sousa, Tiverton town administrator from February 2004

¹The expedited discovery schedule was argued for by Southern Union which then proceeded to object to almost every discovery request necessitating numerous motions to compel and delaying the eventual production of documents.

through December 2005, testified that during his tenure as town administrator Souther Union expended virtually none of those settlement funds in remediating any areas in Tiverton. He testified that although he had a meeting with representatives of Southern Union subsidiary, New England Gas Company, wherein New England Gas acknowledged its commitment to remediate the Cory's Lane area of Tiverton in the year 2004, it did not follow through. Attorney Wagner of RI DEM confirmed that, as of the hearing date, Southern Union still had not submitted a plan for remediation of the area.

Throughout the hearing, Southern Union referred to and/or produced documents which were not produced during discovery although they were requested. Furthermore, Southern Union produced only one witness, Richard Marshall, to provide direct testimony and to be available for cross examination of issues. While Mr. Marshall was the company representative allegedly responsible for providing responses to the discovery data requests, he had virtually no knowledge of the content of his responses. In several cases, he testified that he was seeing for the first time at the hearing documents that he had allegedly supplied to the parties. In fact, at one point during the Attorney General's cross examination, Mr. Marshall responded, "You know, what obviously happened there is I responded to that data request or sponsored that data request by attaching a document that I was not familiar with or involved with in any way." (Hr. Tr. June 29, 2006, page 185, lines 22-24 and page 186, lines 1-2.) In response to 4 out of 5 questions regarding Southern Union's retention of liability for different environmental sites, Mr. Marshall testified that he did not know whether Southern Union would retain the liability. As to whether Southern Union possesses any of the funds earmarked for remediation costs in Tiverton referenced in the Settlement Agreement with Stone and Webster, Mr. Marshall again had no knowledge. The

transcript shows that Mr. Marshall had little actual knowledge of the relevant issues.

Based on Southern Union's obstructionist behavior during the expedited discovery process and in failing to provide a meaningful witness to testify regarding issues affecting the public interest, the Town of Tiverton submits that Southern Union has failed to present evidence from which the division can conclude the petitioners have met their burden of proof as to the affect the transaction will have on the public good. Further, Tiverton urges the division not succumb to bully tactics. If, as Mr. Marshall stated, Southern Union will pull out of the sale if the division imposed any escrow condition, that is a matter to be handled by National Grid and Southern Union based on the terms and conditions of their contract.

Tiverton suggests that in order to address the potential detriment to the State with regard to the contaminated sites, the division should require a \$55,000,000 escrow as a condition of the division's approval. As Mr. Marshall stated, this is a small sum to Southern Union. It is also a large sum to the State of Rhode Island and to Tiverton.

TOWN OF TIVERTON
By Its Attorneys,

Jeanne M. Scott, Esq. #6178
Ursillo, Teitz & Ritch, Ltd
2 Williams Street
Providence, Rhode Island 02903
(401)331-2222
(401)751-5257

July 7, 2006