



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

April 4, 2011

**Via First Class Mail And Electronically**

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

**Re: Complaint of Benjamin Riggs Relating to  
Town of Portsmouth Generating Facility-  
Net Metering**

Dear Ms. Massaro:

Enclosed for filing please find an original and nine (9) copies of the Objection to the Motion to Intervene of Church Community Housing Corporation of the Advocacy Section of the Division of Public Utilities & Carriers for filing in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,

Jon G. Hagopian (# 4123)  
Special Assistant Attorney General  
Tel. (401) 274-4400 ext. 2231  
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Encl.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES & CARRIERS

IN RE: COMPLAINT OF BENJAMIN RIGGS )  
RELATING TO TOWN OF ) Docket No. D-10-126  
PORTSMOUTH GENERATING )  
FACILITY- NET METERING )

**OBJECTION OF THE ADVOCACY SECTION  
OF THE DIVISION OF PUBLIC UTILITIES AND CARRIERS  
TO THE MOTION TO INTERVENE OF  
CHURCH COMMUNITY HOUSING CORPORATION**

Now comes the Advocacy Section of the Division of Public Utilities and Carriers (the “Division”) and hereby objects to the Motion to Intervene of Church Community Housing Corporation (“Church”). Church has failed to set forth reasons articulating why the Advocacy section, as well as other parties to this proceeding, cannot adequately represent their interests. Furthermore, the motion is based upon a generalized public interest which is essentially unparticularized in contravention of the requirements of the Division’s Rules of Practice and Procedure rule 17(c). For the foregoing reasons the Advocacy Section respectfully requests that the hearing officer deny said motion.

**Church Community Housing Corp.’s Motion to Intervene**

On March 23, 2011 Church filed a Motion to Intervene with the Division. Church’s stated reasons for intervention were that their “interest is directly affected by this proceeding and is not adequately represented by existing parties.” In addition they state that their “turbine project is obstructed and impaired by the same legal interpretation of Rhode Island’s net metering law

that is at issue in this proceeding.” The Motion to Intervene was submitted by Seth H. Handy, the attorney for several proposed intervenors to this case.

### **Standard of Review**

In ruling upon a motion to intervene the Division’s Rules of Practice and Procedure, Rule 17(b), requires that the moving party demonstrate that they either have one of the following: (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.<sup>1</sup>

Similarly, the Division’s Rules Practice and Procedure, Rule 17(c) requires that the motion to intervene shall set out clearly and concisely facts from which the nature of the movant’s alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the movant in the proceeding.<sup>2</sup>

### **Argument**

It is the Advocacy Section’s position that Church has no right to intervene conferred by statute and has not articulated any such statutory right. The Town of Portsmouth and the Washington County Regional Planning Council will adequately represent any alleged interest of Church who otherwise has offered no evidence to support their contention that their intervention

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<sup>1</sup> Division of Public Utilities and Carriers Rules of Practice & Procedure 17(b).

<sup>2</sup> Division of Public Utilities and Carriers Rules of Practice & Procedure 17(c).

is in the public interest. Such a generalized interest does not warrant granting Church's intervention here. Similar to the argument made against the motion of People's Power and Light the assertions made by Church demonstrate that its interest here is ancillary to the complaint at hand. The facts set-forth in Church's motion describe a set of circumstances where Church alleges it made plans and sought an interconnection agreement, which does not appear to have been executed. The claims of Church as to an agreement that may exist between it and National Grid, do not have a sufficient nexus to the Complaint here and should not be part of this matter. This alleged agreement is, upon information and belief, still in the review phase. The questions raised by Church are issues for the review of the Public Utilities Commission pursuant to its ratemaking function.

The Advocacy Section is already a party to this proceeding and represents the public interest. "The [d]ivision, which is represented by the Department of the Attorney General in all administrative and legal proceedings, is statutorily charged with representing the interests of the public, as its advocate, in rate proceedings before the [PUC]." In re: Kent County Water Authority Change Rate Schedules, 996 A.2d 123, 126 (R.I.,2010) *quoting* In re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240, 1244 n. 6 (R.I. 2000). Church has provided no evidence as to why their interests and those of the public will not be satisfactorily represented by the Advocacy Section. Church may file or proffer public comment, which appears to be more appropriate than granting full intervenor status.

Church also asserts that granting them intervenor status would be in the public interest. In determining whether an intervention is in the public interest the Division must find that their

individual interest warrant recognition and protection in furtherance of the general welfare of the public...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 interest in other forums and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties.

City of East Providence v. Narragansett Electric Co., 2006 WL 1660761, \*4 (R.I. Super. 2006).

The Advocacy section avers that Church's position is directly represented by several parties to this proceeding, most of which are represented by the same attorney. Allowing Church to intervene will unduly delay the proceedings at hand.

Church has failed to articulate any specific interest that would be directly affected by the Division's decision. Because Church has not obtained an interconnection agreement as of this time, this matter appears to be in such a stage of planning that it is not ripe for review. Any rate setting aspect should be entertained by the Public Utilities Commission in a separate docket. The matter before the Division is a limited question relating to the transaction between National Grid and the Town of Portsmouth and should be limited in scope thereto.

Respectfully submitted,

ADVOCACY SECTION,  
STATE OF RHODE ISLAND  
DIVISION OF PUBLIC UTILITIES  
AND CARRIERS

By its Attorney,



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April 4, 2011

**CERTIFICATE OF SERVICE**

I certify that a copy of the within motion was served by electronic mail to all persons listed on the service list for Docket No. D-10-126 on the 4<sup>th</sup> day of April, 2011.

