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May 31, 2019

Via Electronic Mail and Hand Delivery

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

**Re: Docket D-19-04 – In re: City of East Providence Rhode Island Streetlighting Petition
Post-Hearing Reply Brief**

Dear Ms. Massaro:

Enclosed for filing in the above-referenced docket are five (5) copies of the Post-Hearing Reply Brief submitted by The Narragansett Electric Company d/b/a National Grid.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "AS".

Andrew S. Tugan

AST/emh
Enclosures

cc: Docket D-19-04 Service List

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

Docket No.: D-19-04

THE CITY OF EAST PROVIDENCE

V.

NATIONAL GRID

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID'S
POST-HEARING REPLY BRIEF**

The City of East Providence (“City” or “East Providence”) mischaracterizes dispute as an attempt by The Narragansett Electric Company d/b/a National Grid (“National Grid” or “Defendant”) to intentionally delay East Providence’s purchase so that it can profit from the alleged delay. To accept this false framing of the dispute, the Rhode Island Division of Public Utilities and Carriers (the “Division”) would have to disregard a critical fact: twenty-three cities, towns, and fire districts in Rhode Island have purchased their streetlight assets using the exact same process that National Grid has followed with East Providence. East Providence’s characterization of National Grid’s motives and conduct is baseless and warrants no further discussion.

None of the disparate arguments that East Providence raises in its post-hearing briefing justify the relief that the City seeks. The Division should reject those arguments and permit National Grid to treat the City the same as every other municipality in Rhode Island seeking to purchase street lights.

First, East Providence’s argument that National Grid used varying methods to determine East Providence’s inventory and purchase price is not only unsupported – it is wrong. East Providence’s inventory changed over time, as did the net book value of its inventory. That is

why East Providence received different purchase prices at different points in time. Second, the City injects confusion into this proceeding by conflating the Public Utilities Commission (“PUC”) approved Attachment Agreement with the Agreement of Sale that National Grid provided East Providence. These are distinct documents and the City does not even identify a specific provision of the Agreement of Sale that is in dispute. Finally, East Providence’s arguments about its responsibility for street lights located adjacent to “state roads” is an unnecessary – and irrelevant – detour. The parties agree that the Municipal Streetlight Investment Act, R.I. Gen. Laws § 39-30-1 *et seq.* (the “Act”) controls this dispute; and the Act plainly defines what assets East Providence must purchase if it elects to make a purchase under the Act. The Act unambiguously defines “lighting inventory” in terms of equipment “currently charged to the municipality.” R.I. Gen. Laws § 39-30-2. As a result, all of the City’s arguments about application of the S-14 Tariff and whether the City is responsible for equipment located adjacent to “state roads” are irrelevant to the issues before the Division.

I. National Grid determined Inventory and Pricing using Consistent Methodology.

As National Grid explained in detail in its post-hearing brief, National Grid has applied the same methodology to determine inventory and purchase price with each of the nearly two-dozen municipal entities that already made purchases pursuant to the Act. It explained that methodology to the PUC in Docket No. 4442, and it used that methodology each time East Providence requested the purchase price for its Streetlight Assets.

National Grid used the same methodology with East Providence that it has used with every other municipal entity in Rhode Island to calculate the streetlight asset purchase price. Hrng. Tr. pp. 32-34. National Grid bases this calculation on the relevant municipal entity’s inventory, and the calculation includes depreciation of the relevant assets. Hrng. Tr. pp. 31,

National Grid Ex. 3. It is no surprise that a city's inventory will change over time – assets are constantly removed, installed, and replaced – and installed assets depreciate. The City provides no evidence that the different purchase prices that it received over time were the result of anything other than changes in inventory and changes in asset value. The Advocacy Section noted (and National Grid agrees) that “the City provided no pricing experts or analysis to support this contention [that National Grid used distinct methodologies to calculate East Providence’s purchase prices].” Advocacy Section Brief, p. 4. The Division should reject East Providence’s meritless argument that National Grid violated the Act because it employed differing pricing methodologies for East Providence.

II. East Providence Does Not Dispute Specific Provisions of the Agreement of Sale.

East Providence repeatedly conflates the Attachment Agreement and Agreement of Sale.¹ The distinction matters. The Agreement of Sale is the contract by which ownership of the Streetlight Assets are conveyed from National Grid to East Providence. The Attachment Agreement is the contract that describes the manner in which East Providence may attach certain equipment to poles owned, or jointly owned, by National Grid. The Attachment Agreement comes into play *after* East Providence purchases its Streetlight Assets under the Act. They serve different purposes and are subject to the Division’s review in different contexts. As the Advocacy Section recognized, the PUC in Order #21704 approved the Attachment Agreement and the Division’s jurisdiction is limited to resolving disputes that arise under an attachment agreement. The PUC approved the Attachment Agreement and it is not yet in effect between National Grid and the City because the City refuses to sign it, so there is no dispute for the Division to resolve. In contrast, the PUC considered, but did not incorporate the Agreement of

¹ All references to “Attachment Agreement,” “Agreement of Sale,” “Rate S-05 Tariff” and “Streetlight Assets” are the same as defined in National Grid’s post-hearing brief.

Sale into the Rate S-05 Tariff. However, East Providence neither offers any justification for why it should receive different terms of sale than other municipal entities that have purchased under the Act nor does East Providence identify a specific provision of the *Agreement of Sale* that is in dispute. *See City Brief, City Petition, City Issues of Law.* It appears that East Providence's only objection to the Agreement of Sale is that it contemplates a transfer of exactly the same assets that the Act requires East Providence to purchase if it moves forward under the Act. *See City Brief, pp. 33-37.*

III. The Act Determines Exactly Which Streetlight Assets East Providence Can Purchase.

Whether lighting equipment that East Providence purchases under the Act is located adjacent to a “state road” is irrelevant to issues before the Division. East Providence’s petition asks the Division to issue an order requiring the Attachment Agreement and Agreement of Sale to conform to the Act, including “The City is not required to purchase all street lighting equipment within the boundaries of the municipality.” City Petition, p. 10. Similarly, East Providence’s issues of law ask “Can the Agreement of Sale and Attachment Agreement require the City to purchase non-municipal lighting equipment?” City Issues of Law, p. 4. While the City argues at length that it cannot be forced to purchase street lights for which it has “no legal interest,” East Providence misses the point. *See City Brief, pp. 23-37.*

The Act, not the Agreement of Sale or Attachment Agreement, determines what assets East Providence must purchase if it moves forward under the Act. The Act states:

Any city or town receiving street lighting service from an electric distribution company pursuant to an electric rate tariff providing for the use by such municipality of lighting equipment owned by the electric distribution company, at its option ... After due diligence, including an analysis of the cost impact to the municipality, *acquire all of the public street and area lighting equipment of the electric distribution company in the municipality*, compensating the electric distribution company as necessary, in accordance with subsection (b).

R.I. Gen. Laws § 39-30-3(a) (emphasis added). Further the Act defines “lighting equipment” as:

means all equipment used to light streets in the municipality, the operation and maintenance of *which is currently charged to the municipality*, including lighting ballasts, fixtures, and other equipment necessary for the conversion of electric energy into street lighting service, but excluding the utility poles upon which the lighting equipment is fixed. Lighting equipment shall include, but not be limited to, decorative street and area lighting equipment and solid-state (LED) lighting technologies.

R.I. Gen. Laws § 39-30-2 (emphasis added). Thus, the Act is clear, if East Providence elects to purchase its streetlight assets under the Act, it must purchase all lighting equipment which is currently charged to the municipality. That ends the statutory analysis, and East Providence fails to show that the Agreement of Sale or Attachment Agreement require East Providence to purchase anything else.²

IV. East Providence Must Pay for the Streetlight Assets when it Purchases Them.

East Providence makes the unusual argument that the Act allows the City to “acquire” the Streetlight Assets, but does not state when the City must pay for the Streetlight Assets. Apparently, East Providence contends the Act contemplates a transfer of property without any exchange of consideration or the signature of any contract documents.³ This position is inconsistent with the Act, which states in the same sentence that a municipality may “acquire all of the public street and area lighting equipment of the electric distribution company in the

² The City’s lengthy arguments about interpretation of the S-14 Tariff, the State’s “responsibility” for lighting equipment adjacent to “state roads,” and what lighting equipment should be part of the City’s inventory are not properly before the Division. First, the dispute here is confined to the Act, not extraneous issues about the City’s inventory. Second, the City did not properly raise them here; its claims and requested relief seek compliance with the Act, not a re-assessment of other rights and responsibilities among the City, National Grid, and the State of Rhode Island (which is not a party). Finally, the City chose not to introduce any evidence that would demonstrate which – if any – lighting equipment East Providence should not be required to purchase under the Act.

³ Of course if this were the case, then East Providence would need to have obtained all necessary authority to enter into the relevant contracts and to pay for the Streetlight Assets the moment that it provided notice under the Act – which is something the City still apparently does not have.

municipality, compensating the electric distribution company as necessary...” R.I. Gen. Laws § 39-30-3(b). The Act contemplates payment and acquisition occurring simultaneously.

East Providence’s position is also impractical. Immediately after it argues that it can “acquire” the Streetlight Assets without paying for them, the City states that it could not “use, alter, remove, or replace said acquired Lighting Equipment until it has compensated National Grid for said ‘acquired’ Lighting Equipment.” City Brief, p. 9. Thus, East Providence apparently argues that the Act required National Grid to immediately turn off all lighting equipment in East Providence’s inventory 60 days after East Providence sent its notice of intent to purchase in 2016. This does not make sense and it is unclear how turning off East Providence’s Streetlight Assets until East Providence paid for those assets would benefit the City or its residents. Nor is there any evidence that East Providence has ever requested that National Grid turn off all of the Streetlight Assets.

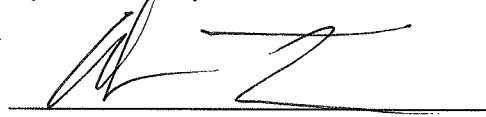
As the PUC recognized in the Rate S-05 Tariff proceedings, acquisition of streetlight assets is a process that necessarily involves an attachment agreement, an agreement of sale, and the exchange of consideration. Joint Exhibit 1, Tab 1, p.1. The Advocacy Section aptly recognized that a municipality’s purchase under the Act was a process, not a single event based merely on providing notice of intent to purchase: “the practical reality is that the complete acquisition process, to include compliance with the conditions articulated in RIGL §39-30-3(b)-(e), may well require more than sixty (60) days from the date of initial notice of intent to purchase.” Advocacy Section Brief, p. 2. National Grid agrees. Acquisition of streetlight assets under the Act is a process: a process that includes the municipal entity paying the purchase price for the streetlight assets concomitant with acquisition pursuant to R.I. Gen. Laws § 39-30-3.

CONCLUSION

For these reasons, and for the reasons stated in National Grid's post-hearing brief, National Grid respectfully requests that the Division dismiss East Providence's petition and enter an order requiring the City – if it elects to purchase the Streetlight Assets – to purchase the Streetlight Assets on the same terms and conditions as every other Rhode Island city, town, and fire district that has purchased streetlight assets under the Act.

Respectfully submitted,

The Narragansett Electric Company d/b/a
National Grid
By its Attorneys,



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Dated: May 31, 2019

Certificate of Service

I hereby certify that any materials accompanying this certificate were electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.

/s/ Andrew S. Tugan
Andrew S. Tugan

May 31, 2019
Date

**Docket No. D-19-04 City of East Providence - Streetlighting Petition
Service List as of 4/1/2019**

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