

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
**PUBLIC UTILITIES COMMISSION**

IN RE: NARRAGANSETT ELECTRIC COMPANY :  
PETITION FOR DECLARATORY JUDGMENT :  
REGARDING STATION SERVICE DELIVERY :  
CHARGES ASSESSED USGEN NEW ENGLAND, INC. : DOCKET NO. 3342  
AND THE PROPOSED STATION SERVICE RATE AND:  
SETTLEMENT WITH TIVERTON POWER :  
ASSOCIATES :

**REPORT AND ORDER**

**I. Overview**

On June 14, 2001, Narragansett Electric Company (“Narragansett”) filed a Petition for Declaratory Judgment against USGen New England, Inc. (“USGen”) seeking a determination from the Public Utilities Commission (“Commission”) that USGen is required to pay Narragansett for station service power received by remote self-supply.<sup>1</sup>

USGen filed a Motion to Dismiss, stating that “Narragansett’s Petition seeks to charge [USGen] for delivery of station power for [USGen’s] Manchester Street Station, despite acknowledging that [USGen] purchases no energy from Narragansett.”<sup>2</sup> In its Motion to Dismiss, USGen made three arguments: (1) this matter is preempted by the Federal Energy Regulatory Commission (“FERC”); (2) the interconnection agreement between USGen and New England Power Company covers the contested transactions because all of the transactions are solely transmission in nature; (3) USGen is not a customer under R.I.G.L. § 39-1-2.<sup>3</sup>

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<sup>1</sup> Narragansett Ex. 1, Narragansett’s Petition for Declaratory Judgment Pursuant to the Commission’s Rules of Practice and Procedure (“Rules”) Rule 1.10(c), pp. 1-2. On June 19, 2001, Narragansett filed an Amendment Adding Tiverton Associates as a Party. On July 16, 2001, Narragansett voluntarily dismissed Tiverton pending resolution of the dispute between Narragansett and USGen.

<sup>2</sup> USGen Ex. 1, USGen New England, Inc.’s Motion to Dismiss Petition for Declaratory Judgment, p. 1.

<sup>3</sup> Id. at 1-2.

The parties proceeded with a voluminous exchange of pleadings, motions and discovery. At an open meeting held on August 12, 2001, the Commission ruled that it had jurisdiction over this dispute unless it waived its jurisdiction to FERC. Therefore, the Commission made the determination that it would assert jurisdiction over this dispute.<sup>4</sup>

After what was a contentious process, the parties finally reached and on October 30, 2001, filed a settlement that, after a duly noticed public hearing with input from the Division of Public Utilities and Carriers (“Division”), was approved by the Commission.<sup>5</sup> In addition to settling the monetary issues of the parties, the settlement created a new Station Power Delivery and Reliability Service Rate (“M-1 Tariff”). This rate was made available to any customer who met the criteria of the new M-1 Tariff.

On December 28, 2001, Narragansett filed a Settlement Agreement between Narragansett Electric and Tiverton Associates. As part of the Settlement, Tiverton agreed to be billed under the M-1 Tariff. The parties waived a hearing, the Division filed a position and the Commission approved the Settlement at open meeting on March 14, 2002.

## **NARRAGANSETT v. USGEN**

### **II. Filings**

#### **A. Narragansett’s Petition**

In its Petition, Narragansett alleged that USGen had refused to pay its properly assessed electric bills owed to Narragansett for the period September 1998 through

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<sup>4</sup> The Commission’s decision was without prejudice.

<sup>5</sup> See Tr. 11/19/01, pp. 89-93.

March 2001. Narragansett stated that despite USGen's arguments to the contrary, USGen was legally obligated to pay the charges.<sup>6</sup>

Narragansett explained that USGen owns a 495 MW generating station located in Providence, known as Manchester Street Station. According to Narragansett, USGen does not always run the generating units at the Manchester Street Station. When the generating units are not running, the Station consumes electricity for purposes of lighting the facilities and for the operation of various equipment and computers. Narragansett indicated that during times when the generating facilities are idle, the Manchester Street Station takes delivery service of electricity for internal consumption. In fact, Narragansett argued that because of the configuration of the Manchester Street Station and Narragansett's distribution facilities, even when the Manchester Street Station generating facilities are running, USGen takes delivery service over Narragansett's distribution facilities.<sup>7</sup>

Narragansett stated that it sent bills to USGen from September 1998 through the time when Narragansett filed its instant Petition. According to Narragansett, USGen either refused to pay the bills or simply ignored them.<sup>8</sup>

Narragansett maintained that USGen was legally obligated to pay the charges assessed for electricity delivered over local distribution facilities. Narragansett asserted that "when [a generator] receives delivery service of power that they use for internal consumption, they are liable for delivery charges just as any other Narragansett Electric customer is liable."<sup>9</sup> Narragansett further asserted that the Federal Energy Regulatory

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<sup>6</sup> Narragansett Ex. 1, pp. 1-2.

<sup>7</sup> Id.

<sup>8</sup> Id. at 2.

<sup>9</sup> Id. at 4.

Commission (“FERC”) had determined that a state commission has the authority to both regulate the tariffs to be used in providing local distribution service and to determine whether local distribution facilities are used in providing the service.<sup>10</sup>

Narragansett explained that the Manchester Street Station is metered at several high voltage metering points. Thus, Narragansett had been billing USGen under the provisions of its G-32 rate for retail delivery service, a rate that contains a high-voltage discount. However, Narragansett noted that USGen remotely obtains the power delivered to the Manchester Street Station through its NEPOOL settlement account and as such, Narragansett had assessed no power supply charges to USGen. Therefore, Narragansett had only been assessing USGen the same charges it assesses all other end use customers.<sup>11</sup>

**B. USGen’s Motion to Dismiss Narragansett’s Petition**

USGen filed a Motion to Dismiss, stating that “Narragansett’s Petition seeks to charge USGenNE for delivery of station power for USGenNE’s Manchester Street Station, despite acknowledging that USGenNE purchases no energy from Narragansett.”<sup>12</sup>

USGen raised three issues: (1) this matter is preempted by FERC; (2) the interconnection agreement between USGen and New England Power Company covers the contested transactions because all of the transactions are solely transmission in nature; (3) USGen is not a customer under R.I.G.L. § 39-1-2.<sup>13</sup>

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<sup>10</sup> Id. at 4-5.

<sup>11</sup> Id. at 5. Narragansett clarified that these charges included the statutorily authorized non-bypassable transition and DSM charges and transmission charges designed to collect the transmission costs incurred by Narragansett Electric on behalf of its customers. Id. at 5-6.

<sup>12</sup> USGen New England, Inc.’s Motion to Dismiss Petition for Declaratory Judgment, p. 1.

<sup>13</sup> Id. at 1-2.

Furthermore, USGen argued that rather than falling within the jurisdiction of the Commission, “the question of whether the delivery of station power to Manchester Street Station requires the use of local distribution service must be answered by FERC in the first instance.”<sup>14</sup> Therefore, USGen requested the Commission dismiss Narragansett’s Petition or at the very least, stay its proceedings until FERC made its determination.<sup>15</sup>

USGen agreed that station power is the energy required to operate electric equipment at the generating plant and for the heating, lighting cooling and office equipment needs of the generating plant. USGen pointed out that station power is required regardless of whether the plant is running. USGen explained that when the generating plant is operating, station power is withdrawn or netted from the output. On the other hand, if the plant is not operating, station power can be supplied from outside of the plant, either from a third party or from another generating plant owned by the same entity that owns the idle plant. Supply of station service by another generating plant owned by the same entity has been termed “remote self-supply.”<sup>16</sup>

According to USGen, when the Manchester Street Station is either not operating or is not generating sufficient power to service the station, it obtains its station service power from other remote USGen plants.<sup>17</sup> USGen maintained that the station service power was obtained pursuant to a FERC-jurisdictional transmission at the points of the plant’s interconnection with New England Power’s (“NEP”) transmission facilities. Moreover, USGen asserted that it did not receive station power over Narragansett’s

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<sup>14</sup> Id. at 2.

<sup>15</sup> Id.

<sup>16</sup> Id. at 3-4.

<sup>17</sup> Id. at 4.

distribution facilities.<sup>18</sup> Therefore, USGen maintained that its Amended and Restated Continuing Site/Interconnection Agreement (“CSA”) between it and NEP covered all of the disputed transactions for which Narragansett was attempting to charge USGen.<sup>19</sup>

Finally, USGen argued that even if Narragansett’s local distribution facilities were in use, the Commission did not have the jurisdiction to make such a determination. Rather, USGen maintained, FERC was the only agency that could determine whether remotely self-supplied stations power requires the use of local delivery service on a case-by-case basis. However, USGen argued that even if FERC were to find that the configuration of the Manchester Street Station resulted in local distribution of station power, the CSA prohibited Narragansett from prevailing on its claim.<sup>20</sup>

Accordingly, USGen requested that the Commission dismiss Narragansett’s Petition for lack of jurisdiction or, at the very least that the Commission stay its proceedings until FERC made a determination.<sup>21</sup>

### **C. Narragansett’s Objection to USGen’s Motion to Dismiss**

On July 26, 2001, Narragansett filed an Objection to USGen’s Motion to Dismiss, arguing (1) that the determination of whether retail delivery charges apply in a given set of circumstances is a matter for the state commission;<sup>22</sup> (2) that a FERC-jurisdictional CSA cannot displace the authority of a state to assess charges on the service of delivering service to end users;<sup>23</sup> (3) if USGen and Narragansett had entered into an agreement to exempt USGen from retail delivery charges, the agreement would be unlawful and

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<sup>18</sup> Id.

<sup>19</sup> Id. at 4-6.

<sup>20</sup> Id. at 7-12.

<sup>21</sup> Id. USGen also argued that Narragansett’s Petition was insufficient to establish jurisdiction under Commission Rule of Practice and Procedure 1.10(c). Id. at 12-15.

<sup>22</sup> Objection of Narragansett Electric to Motion to Dismiss of USGen, pp. 12-17.

<sup>23</sup> Id. at 17-18.

unenforceable under state law;<sup>24</sup> (4) that even USGen’s affiant had acknowledged that Narragansett’s distribution facilities are used to provide station service to Manchester Street;<sup>25</sup> (5) that USGen had not actually entered into the necessary FERC transmission tariff for service to the Manchester Street Station;<sup>26</sup> (6) that contrary to USGen’s assertions, the issue of station service was not resolved prior to USGen’s purchase of the Manchester Street Station;<sup>27</sup> (7) that USGen’s payments under the CSA related to transmission charges and not to retail delivery charges;<sup>28</sup> (8) that state law requires the assessment of non-bypassable transition charges and demand side management (“DSM”) on USGen;<sup>29</sup> (9) that the technical argument regarding Commission Rule 1.10(c) is without merit;<sup>30</sup> (10) that the Motion to Dismiss should be denied because there are issues in dispute;<sup>31</sup> and (11) that the Commission had the authority and the jurisdiction to hear the case and provide FERC with guidance regarding the application of Rhode Island law.<sup>32</sup>

Narragansett attacked USGen’s arguments on three levels. First, Narragansett argued that contrary to USGen’s position, FERC had never stated that it has exclusive jurisdiction over the determination of whether state law triggers the assessment of retail delivery charges. Rather, Narragansett argued that the determination rests with the state Public Utilities Commission regardless of whether identifiable local distribution facilities

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<sup>24</sup> Id. at 18-22.

<sup>25</sup> Id. at 22-26.

<sup>26</sup> Id. at 27-28.

<sup>27</sup> Id. at 28-29.

<sup>28</sup> Id. at 29-31.

<sup>29</sup> Id. at 31-32.

<sup>30</sup> Id. at 33-36.

<sup>31</sup> Id. at 36-37.

<sup>32</sup> Id. at 37-38.

are involved.<sup>33</sup> Narragansett maintained that “FERC has explicitly recognized the exclusive jurisdiction of State commissions over the rates and other terms of unbundled local delivery service.”<sup>34</sup> Moreover, Narragansett pointed out, in Order 888, FERC stated, “even where there are no identifiable local distribution facilities, states nevertheless have jurisdiction in all circumstances over the service of delivering energy to end users.”<sup>35</sup>

Second, Narragansett addressed USGen’s reliance on the CSA between NEP and USGen. Narragansett pointed out that it was not a party to the agreement. In addition, the agreement was not approved by the Commission and would therefore, be unenforceable. Moreover, Narragansett maintained that on June 15, 2001, FERC affirmed that a FERC-jurisdictional interconnection agreement cannot displace the state’s jurisdiction over assessing retail deliver charges.<sup>36</sup>

Third, Narragansett disputed USGen’s assertion that “no distribution facilities are used by Narragansett Electric to provide distribution delivery service of station power.”<sup>37</sup> Narragansett indicated that its affidavit of Christopher Worme showed how Narragansett’s two distribution substations had been used to provide deliveries of remotely supplied station service to the Manchester Street Station.<sup>38</sup> Furthermore, Narragansett indicated that USGen had not arranged for transmission service into Manchester Street Station and in fact, “any time that USGen receives remotely supplied station service during NEP’s coincident peak, Narragansett Electric incurs higher

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<sup>33</sup> Id. At 2-3.

<sup>34</sup> Id. at 1.

<sup>35</sup> Id. citing Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order 888, FERC Stats. & Regs ¶ 31,036 (“Order 888”).

<sup>36</sup> Id. at 3.

<sup>37</sup> Id.

transmission charges.”<sup>39</sup> Therefore, Narragansett argued, “if USGen is not required to pay for transmission under the retail delivery tariff, all of Narragansett Electric’s other customers subsidize USGen’s use of the transmission system for delivery of station service.”<sup>40</sup>

As part of its objection, Narragansett provided a description of how it provides distribution service to USGen. Narragansett explained that Manchester Street Station is located adjacent to Narragansett’s distribution substation, Franklin Square. Franklin Square normally operates in tandem with another substation, South Street Station. According to Narragansett, although capable of operating independently, the two substations are electrically tied in such a way that they operate as a single substation, rather than two separate substations.<sup>41</sup>

Narragansett explained that there are four transformers and associated metering points through which Manchester Street Station receives remotely supplied station service. At the one high voltage delivery point, remotely supplied station service is provided directly from the high voltage system, without passing through Narragansett’s distribution facilities. However, according to Narragansett, if USGen receives remotely supplied station service through any one of the three low voltage delivery points, the power has to flow through the distribution facilities. Narragansett pointed out that because the two substations act in tandem, the electrons, flowing along the lines of least resistance, are delivered to Manchester Streets Station’s low voltage delivery points

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<sup>38</sup> Id. at 3-4.

<sup>39</sup> Id. at 4.

<sup>40</sup> Id.

<sup>41</sup> Id. at 4-5.

through both of Narragansett's substations.<sup>42</sup> Finally, Narragansett noted that between December 2000 and June 2001, when Manchester Street was not running, power continuously and simultaneously flowed through both the high and low voltage delivery points to provide remotely supplied station service to Manchester Street Station.<sup>43</sup>

**D. USGen's Reply to Narragansett's Objection to Motion to Dismiss**

On August 15, 2001, USGen filed its Reply to Narragansett's Objection to its Motion to Dismiss. The Reply was, in part, a response to the Commission's request that the parties address whether federal law and FERC jurisdiction preempt state jurisdiction in determining, first, whether USGen uses local distribution service when it uses remote self-supply and, second, whether any retail charges should be applied.<sup>44</sup>

USGen noted that FERC has exclusive jurisdiction over the regulation of interstate electric transmission systems.<sup>45</sup> USGen argued that the station service provided to the Manchester Street Station through remote self-supply is the transmission of electric energy that does not involve local distribution facilities.<sup>46</sup> Furthermore, USGen represented that FERC had determined it would make factual determinations to classify facilities as transmission or distribution.<sup>47</sup>

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<sup>42</sup> *Id.* at 5-7.

<sup>43</sup> *Id.* at 6. Narragansett indicated that this assertion was based on a review of meter data for the applicable months. Narragansett also indicated that USGen make must use of the local distribution facilities prior to being stepped up for delivery onto the transmission grid. *Id.* at 7-8. Narragansett explained the relationship between itself and NEP for purposes of defining the ownership, maintenance, use and compensation arrangements surrounding NEP's transmission facilities in Rhode Island. *Id.* at 8-9. Finally, Narragansett explained the billing procedures used under the G-32 rate and why it had been applied to USGen. *Id.* at 10-12.

<sup>44</sup> USGen New England's Reply to Narragansett Electric Company's Objection to Motion to Dismiss, pp. 1-2.

<sup>45</sup> *Id.* at 1-7.

<sup>46</sup> *Id.* at 1-2, 4-6.

<sup>47</sup> *Id.* at 8. Moreover, USGen argued that the issue of whether distribution facilities are involved in the remote self-supply of station power was irrelevant to the issue of FERC jurisdiction. *Id.* at 13.

Additionally, USGen noted that under the 1996 Rhode Island Utility Restructuring Act (“URA”), as part of its unbundling, Narragansett submitted a Transfer Plan and Jurisdictional Separation Analysis (“Separation Analysis”), categorizing its assets as either generation, transmission or distribution. According to USGen, the Separation Analysis recognized that the facility USGen subsequently purchased was from a wholesale customer and not one that would be categorized as a retail customer.<sup>48</sup> USGen also argued that read in conjunction with the Separation Analysis, the CSA was, as a matter of law, determinative of the issues before the Commission -- namely, that Manchester Street Station would be exempt from retail delivery charges.<sup>49</sup> Finally, USGen also asserted that if there was no retail sale between the generators, reliance on Order 888 was misplaced and only FERC could interpret its order.<sup>50</sup> Therefore, USGen concluded that Commission jurisdiction was pre-empted by federal law.

#### **E. Narragansett’s Response to USGen’s Reply**

On August 28, 2001, Narragansett filed a Response to USGen’s Reply, making three arguments. First, USGen ignored the jurisdictional principle in this case, namely that FERC Order 888 stated, “even where there are no identifiable distribution facilities, states nevertheless have jurisdiction in all circumstances over the service of delivering energy to end users.”<sup>51</sup>

Second, USGen conceded that it never made separate transmission arrangements with NEP for deliveries of remotely supplied station power to Manchester Street

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<sup>48</sup> Id. at 11-12.

<sup>49</sup> Id. at 9-13.

<sup>50</sup> Id. at 13-15.

<sup>51</sup> Narragansett’s Response to USGen’s Reply, pp. 1-2.

Station.<sup>52</sup> In addition, USGen conceded that the CSA was silent regarding the issue of whether distribution charges would be assessed on USGen.<sup>53</sup>

Third, although USGen's Reply included new information, according to Narragansett, USGen's reliance on that information merely reinforced Narragansett's position.<sup>54</sup> Narragansett stated, "[s]pecifically, the [Separation Analysis] designated Narragansett Electric's Franklin Square facilities as a distribution facility."<sup>55</sup> Narragansett pointed out that this is the same facility used in providing remotely supplied station service to Manchester Street Station.<sup>56</sup>

#### **F. Division's Position Regarding Jurisdiction**

On September 6, 2001, the Division of Public Utilities and Carriers ("Division") filed a Memorandum addressing its position on whether the Commission's jurisdiction was preempted by federal law. The Division concluded that (1) the Commission is not preempted by federal law from considering Narragansett's Petition; and (2) the case should proceed into the evidentiary phase as set forth in the Commission's procedural schedule.<sup>57</sup>

The Division's Memorandum provided a brief overview of the basic concepts of federal preemption. The Division then directed the Commission to review the Federal Power Act, wherein Congress delineated the extent of FERC's jurisdiction.<sup>58</sup> The Federal Power Act states that FERC's jurisdiction "extends only to those matters which

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<sup>52</sup> *Id.* at 3-5.

<sup>53</sup> *Id.* at 5-6.

<sup>54</sup> *Id.* at 6-7.

<sup>55</sup> *Id.* at 6.

<sup>56</sup> *Id.* at 7. In addition, Narragansett supplied the Commission with its memorandum addressing the issue of federal preemption.

<sup>57</sup> Memorandum of the Division of Public Utilities and Carriers Regarding Whether State Jurisdiction Over USGen New England's Remote Supply of "Station Service" is Preempted by Federal Law ("Division's Memorandum"), p. 1.

are not subject to regulation by the States.”<sup>59</sup> Furthermore, the Division pointed out that the Federal Power Act states that “[t]he provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce, but...shall not apply to any other sale of electric energy...[FERC] shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction...over facilities used in local distribution...”<sup>60</sup>

Next, the Division directed the Commission to FERC’s Order 888, noting that although FERC set forth a seven factor test to be used in determining whether facilities are transmission or distribution in nature, even when the application of the test “identifies no local distribution for a specific transaction, we believe that states have authority over the service of delivering energy to end users.”<sup>61</sup> Moving from that statement, the Division cited FERC’s Order Denying Rehearing and Providing Clarification (“PJM II Clarification Order”)<sup>62</sup> clarifying its findings in PJM II.<sup>63</sup> In rejecting the argument that FERC should exercise jurisdiction over all aspects of station service to generators, the Division emphasized that FERC had stated that PJM II “did not intend to, nor did it in fact, add anything to or subtract anything from Order No. 888.”<sup>64</sup>

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<sup>58</sup> Id. at 3.

<sup>59</sup> Id. at 3, citing 16 U.S.C. 824(a).

<sup>60</sup> Division’s Memorandum, p. 3, citing 216 U.S.C. 824(b)(1).

<sup>61</sup> Division’s Memorandum, p. 4, citing Order 888, at 31,783.

<sup>62</sup> Order Denying Rehearing and Providing Clarification, 95 FERC 61,333 (issued June 1, 2001) (PJM II Clarification Order).

<sup>63</sup> PJM Interconnection, L.L.C., 94 FERC ¶ 61,251 (2001) (“PJM II”).

<sup>64</sup> Division’s Memorandum, p. 4, citing PJM II Clarification Order.

### **III. Commission’s Jurisdictional Analysis**

#### **A. Federalism**

##### **1. Federal Power Act**

FERC’s jurisdiction is defined in section 201(b)(1) of the Federal Power Act (“FPA”), which states in pertinent part: “[t]he provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but...shall not apply to any other sale of electric energy...”<sup>65</sup> FERC has noted that it does “not have jurisdiction over the sale of electric energy for end use, which is a retail transaction.”<sup>66</sup>

##### **2. R.I.G.L. § 39-1-2**

The Commission has jurisdiction over public utilities as defined in Title 39 of Rhode Island General Laws. A distribution facility is defined as “a company engaging in the distribution of electricity or owning, operating, or controlling distribution facilities and shall be a public utility pursuant to § 39-1-2(20).” The Commission is also authorized to allow the recovery of stranded costs by distribution companies.<sup>67</sup>

##### **3. FERC ORDER 888 – SEVEN FACTOR TEST FOR LOCAL DISTRIBUTION**

In Order 888, FERC addressed jurisdictional issues related to transmission and local distribution. It “clarified that it has exclusive jurisdiction over unbundled retail transmission in interstate commerce...up to the point of local distribution.”<sup>68</sup> In order to distinguish between FERC-jurisdictional transmission in interstate commerce and state-jurisdictional local distribution in the context of unbundled retail wheeling by public

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<sup>65</sup> 16 U.S.C. § 824(b)(1) (1994).

<sup>66</sup> PJM II.

<sup>67</sup> R.I.G.L. § 39-1-27.4.

utilities, FERC set forth a seven factor test to be used in evaluating the transaction on a case by-case-basis:

- (1) Local distribution facilities are normally in close proximity to retail customers.
- (2) Local distribution facilities are primarily radial in nature.
- (3) Power flows into local distribution systems; it rarely, if ever, flows out.
- (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market (end-use).
- (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.
- (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
- (7) Local distribution systems will be of reduced voltage.<sup>69</sup>

#### **4. PJM INTERCONNECTION, L.L.C. (PJM II)**

On March 14, 2001, FERC issued an order addressing jurisdictional issues relative to the supply of power to generation facilities from third party suppliers.<sup>70</sup> However, while the facts in PJM II differed from the Narragansett/USGen dispute, FERC did provide some direction. Furthermore, in issuing a response to requests for clarification of its PJM II Order, FERC provided even more direction in its June 2001 PJM II Clarification Order.<sup>71</sup>

FERC explained that historically, in vertically integrated facilities, a generation facility would treat station power as negative generation based on net generation. This means gross generation minus station power equals net generation. If a facility was off line, it would have negative generation. However, given the fact that the facility was vertically integrated, the utility would simply supply the off-line facility with power from another of its generating facilities. Now that the generating facilities are separate from

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<sup>68</sup> Order 888 at 31,781.

<sup>69</sup> Id. at 33,1545.

<sup>70</sup> PJM II, 94 FERC ¶ 61,251 (issued March 14, 2001).

<sup>71</sup> PJM II Clarification Order, 95 FERC ¶ 61, 333 (issued June 1, 2001).

the utility, there is a question of whether the supply of electricity to generation facilities for station power is a wholesale transaction, a retail transaction, or neither.<sup>72</sup>

Station power is defined by FERC as “the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility’s site, and for operating the electric equipment that is on the generating facility’s site.”<sup>73</sup>

FERC notes that there are three ways for a generation facility to meet its power supply requirements: (1) on-site self-supply; (2) remote self-supply; or (3) third-party supply. In the first situation, the generator’s gross supply equals or exceeds its station power requirements. In the second and third situations, the generator’s gross supply is less than its station power requirements. In a remote self-supply situation, the generator is using its own generating resources to supply the needed station power. It is not using another entity’s energy. Normally, it accounts for the self-supply of station power in the traditional manner of netting its station power requirements against gross output. In the third scenario, the generator obtains power from a resource it does not own. USGen has indicated that it participates in remote self-supply when the Manchester Station experiences negative supply.<sup>74</sup>

According to FERC, the practice of remote self-supply is not a sale, either wholesale or retail. Thus, “[w]hen a generator self-supplies its station power requirements, the traditional practice of netting appropriately reflects the fact that there is no sale, whether for end use or otherwise.”<sup>75</sup>

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<sup>72</sup> PJM II, p. 19.

<sup>73</sup> PJM II, p. 16.

<sup>74</sup> PJM II, pp. 19-22; PJM II Clarification Order, pp. 2-5.

<sup>75</sup> PJM II, p. 22.

In a third-party supply situation, the energy being sold is not sold for resale, and therefore it is not a transaction over which [FERC] can regulate under the FPA. However, in footnote 60 of PJM II, FERC noted that in a third-party transaction, transmission (subject to FERC jurisdiction) could also be involved in the transaction. However, “[t]he delivery of station power may also involve the usage of local distribution facilities; this aspect of the transaction may be subject to regulation by a state regulatory authority.”<sup>76</sup>

Finally, FERC noted that where a utility can show that generation facilities within a system are incapable of self-supplying station power under any circumstances (whether because of their particular configuration or otherwise), then a purchase under a retail tariff would be appropriate. However, this is a factual determination to be made on a case-by-case basis.<sup>77</sup>

#### **5. PJM INTERCONNECTION L.L.C. – ORDER PROVIDING CLARIFICATION (PJM II CLARIFICATION ORDER)**

Because of footnote 60 in PJM II, several parties requested clarification from FERC regarding footnote 60’s jurisdictional guidance relating to remote self-supply. In its PJM II Clarification Order, FERC first reiterated some key points of PJM II. FERC stated that “a company that is remotely self-supplying one of its facilities with station power generated at another one of its facilities may need to arrange for transmission and/or local distribution services over the facilities of a third party.”<sup>78</sup> [In PJM II, FERC] explained that:

[W]e would expect the transmission provider and transmission customer to enter into appropriate arrangements for such jurisdictional service, typically under the

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<sup>76</sup> Id. at 21, n.60.

<sup>77</sup> Id. at 26.

<sup>78</sup> PJM II Clarification Order, p. 7.

transmission provider's open access tariff. The delivery of station power may also involve the usage of local distribution facilities; this aspect of the transaction may be subject to regulation by a state regulatory authority.<sup>79</sup>

The Commission notes that both Narragansett and USGen quote the above language in support of their positions. USGen relies on the first sentence, arguing that all that is required of it is to have an appropriate open access tariff. It argues that the entire transaction is transmission. USGen also argues that even if it is not all transmission, the open access tariff covers the entire transaction. Narragansett relies on the second sentence, arguing that distribution is involved and that, even if the open access tariff did purport to cover distribution charges, it would be invalid, given the fact that it has not been approved by the Commission under its statutory jurisdiction over local distribution.

In its Comments to FERC, Con Edison raised the following issue to which FERC responded: "Con Edison seeks clarification that the transmission owner that note 60 references 'includes the host utility to which the generator receiving the station power is attached' and that the delivery of station power that a generator remote self-supplies is subject to the host utility's 'retail delivery service tariff.'"<sup>80</sup> FERC stated that "while individual circumstances may vary, we agree that a generator's so-called 'host utility' may be one of the transmission providers with whom a generator may need to make appropriate transmission and/or local distribution arrangements, as discussed in note 60."<sup>81</sup> As for the appropriate "'retail delivery service tariffs' to be used in providing local distribution service, that is a matter for a state regulatory authority to determine."<sup>82</sup>

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<sup>79</sup> Id.

<sup>80</sup> Id. at 9.

<sup>81</sup> Id.

<sup>82</sup> Id.

In its comments to FERC, Keyspan sought clarification similar to the issue raised by USGen. Keyspan asked if PJM II “establishes that station power may be netted by a generator against its output at all times without the need of retail delivery services. In other words, if a generator is self-supplying, no retail service is used or required.”<sup>83</sup> FERC responded, “a generator that is meeting its station power requirements through...remote self-supply...to the degree that it does not own or have rights to use the grid that connects its facility to the source of the station power, would need to make appropriate arrangements for transmission and/or local distribution services. In either situation, the determination of whether the generator is using another party’s resources in a manner that warrants consideration is case-specific.”<sup>84</sup>

The question then becomes whether it is the state commissions or FERC that make the case-specific determinations. In responding to the concern of one party that PJM II modified Order 888, FERC stated that “PJM II was not intended to, and does not, in any way modify or reverse Order No. 888’s jurisdictional findings, including our discussion of state jurisdiction over local distribution services, nor does it create any new legal requirements with respect to transmission services, including unbundled retail transmission services.”<sup>85</sup> In fact, FERC indicated that footnote 60 is “fully harmonious” with Order 888 as it relates to jurisdictional separation.<sup>86</sup> Therefore, the Commission turns back to Order 888 for guidance.

## **6. FERC ORDER 888 – JURISDICTION TO DETERMINE LOCAL DISTRIBUTION ON A CASE-BY-CASE BASIS**

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<sup>83</sup> Id. at 10.

<sup>84</sup> Id.

<sup>85</sup> Id. at 8.

<sup>86</sup> Id. at 9.

In Order 888, FERC noted that a bright line does not always exist between transmission and local distribution in a given transaction. FERC stated that “even when [FERC’s] technical test for local distribution facilities identifies no local distribution facilities for a specific transaction, we believe that states have authority over the *service* of delivering electric energy to end users.”<sup>87</sup> In addition, “states have authority not only to assess stranded costs but also to assess charges for stranded benefits, such as low-income assistance and demand-side management. Because their authority is over services, not just the facilities....[t]hey do not have to assign them to specific facilities.”<sup>88</sup> Therefore, FERC stated that the State Commission’s jurisdiction is over the service of delivering energy to end users.

Moreover, FERC stated that:

[It has] determined that it is appropriate to provide deference to state commission recommendations regarding transmission/local distribution matters that arise when retail wheeling occurs<sup>89</sup>

....

Determining where to draw the jurisdictional line for facilities used in unbundled retail wheeling transactions will involve case-specific determinations that evaluate the seven local distribution indicators that we are adopting. We believe that [FERC] should take advantage of state regulatory authorities’ knowledge and expertise concerning the facilities they regulate.

....

[FERC] will defer to recommendations by state regulatory authorities concerning where to draw the jurisdictional line under the Commission’s technical test for local distribution facilities, and how to allocate costs for such facilities to be included in rates, provided that such recommendations are consistent with the essential elements of” Order 888.<sup>90</sup>

Therefore, if Order 888 holds that the determination of whether a transaction involved local distribution facilities is, in the first instance, a determination for the state

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<sup>87</sup> Order 888, at 31,783.

<sup>88</sup> Id.

<sup>89</sup> The term “wheeling” “...cover[s] any delivery of electric energy from a supplier to a purchaser, i.e., transmission, distribution, and/or local distribution.” See Order 888, n.516.

commission and if PJM II was not intended to modify Order 888, then the state commission has the jurisdiction to make the determination. This means that, if local distribution facilities are involved in the transaction between USGen and Narragansett, the Commission will have jurisdiction over the charges to be assessed for that portion of the transaction.

#### **IV. Open Meeting Decision September 12, 2001**

At an open meeting on September 12, 2001, the Commission considered the pleadings and determined that it had jurisdiction over the dispute between Narragansett Electric and USGen for the purpose of holding hearings to determine whether the remotely-supplied station service to USGen's Manchester Street Station involves an element of local distribution that falls under Commission regulation.

The Commission indicated that hearings would focus on whether part of the remotely supplied station service falls substantially within the seven-factor test for local distribution. If so, the Commission would then proceed to determine the appropriate local distribution charges to be assessed to USGen. Even if no local distribution facilities were found to be involved, the Commission would still need to determine whether USGen is an end-user when it is receiving remotely supplied station service power and, if so, the Commission would have jurisdiction over the dispute. In the event neither finding was made however, the case against USGen could be dismissed after the hearings. Accordingly, the Commission's assertion of jurisdiction over the dispute was made without prejudice pending the outcome of the hearings.

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<sup>90</sup> Order 888, at 31,783-84.

## V. Settlement

### A. M-1 Rate

On October 31, 2001, Narragansett and USGen filed a Settlement and Stipulation (“Settlement”), resolving their issues before the Commission.<sup>91</sup> In addition, Narragansett filed an Explanatory Settlement Memorandum, explaining the details of the Settlement.

In the Settlement, Narragansett agreed to offer a new “Station Power Delivery and Reliability Service Rate M-1” (“M-1 Rate”) for delivering remotely-supplied station service power to USGen at its Manchester Street Station. Under the Settlement, USGen agreed to pay charges under the new M-1 Rate through December 31, 2004, while preserving its rights to seek different rate treatment for effect on and after January 1, 2005.<sup>92</sup>

The parties agreed that the effective date of the M-1 rate would be September 1, 2001 through December 31, 2004, regardless of whether any court or regulatory agency issues an order, decision or ruling that would otherwise exempt or make USGen not liable to pay such retail delivery charges.<sup>93</sup> Narragansett agreed that all charges under “Option A” of the M-1 Rate would remain fixed through December 31, 2004 and that no additional charges would be assessed under the M-1 Rate through December 31, 2004. Narragansett also agreed to offer the rate to any other generator to which the terms of the M-1 Rate apply for the delivery of remotely-supplied station service.<sup>94</sup>

If approved, the M-1 Rate would be made available to all customers meeting the following criteria: (1) the customer is a merchant generator who owns and operates a

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<sup>91</sup> The public version of the Settlement and its attachments are attached to this Report and Order as Appendix A.

<sup>92</sup> Settlement, p. 1.

<sup>93</sup> Id.

generating facility with one or more generating units with an aggregate generating facility of 50 MW or more and where all, or virtually all, of the electricity produced by the generating facility is delivered into the transmission grid for resale (net of any self-supplied Station Power); (2) the customer's generating facility is interconnected directly or indirectly with high voltage facilities at 115kV or greater where the high voltage facilities serving the customer are sized for deliveries into the transmission grid; and (3) the customer receives deliveries of electricity from time to time directly or indirectly through the high voltage facilities to serve all or a portion of the customer's Station Power requirements at the generating facility. In addition, any customer taking service under the M-1 Rate is required to arrange for its own transmission service delivery of Station Power into the generating facility. In addition, any customer taking service under the M-1 Rate must also either (1) establish a settlement account with ISO-New England, Inc. for power supply and must use the settlement account to arrange for any Station Power supply that is not self-supplied at the generating facility, or (2) purchase electricity directly from a nonregulated power producer. By electing to take service under the M-1 Rate, a customer may not take Last Resort Service ("LRS"). Finally, once a customer opts into the M-1 Rate, the customer may not choose to take service under a different rate without consent of Narragansett.<sup>95</sup>

The proposed M-1 Rate contains two billing options relative to transition and demand side management charges. Option A is based on "monthly netting" of power and follows a "higher of" methodology. The Distribution Delivery Service Charge is a fixed \$3,500 per month. The Non-Bypassable Transition Charge is the higher of .988 cents per

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<sup>94</sup> Id. at 2.

<sup>95</sup> Exhibit 1 to the Settlement; See R.I.P.U.C. No. 1164.

kWh or \$3,500 per month. The Conservation and Load Management Charge is the higher of the statutory rate of .230 cents per kWh or \$800 per month. Under Option A, neither the Transition Charge Adjustment Provision, the Conservation and Load Management Adjustment Provision, the Standard Offer Adjustment Provision nor the Transmission Service Charge Adjustment Provision applies.<sup>96</sup>

Option B is based on “hourly netting” of power and is composed entirely of fixed charges. The Distribution Delivery Service Charge is \$3,500 per month. The Non-Bypassable Transition Charge is .988 cents per kWh. The Conservation and Load Management Charge is set at .230 cents per kWh. Under Option B, neither the Standard Offer Adjustment Provision nor the Transmission Service Charge Adjustment Provision applies.<sup>97</sup>

**B. Settlement Credit and Payment for Outstanding Charges**

As part of the Settlement, Narragansett and USGen agreed on a methodology to true-up the disputed charges billed by Narragansett to USGen. USGen agreed to pay all of the station service charges assessed for deliveries from September 1, 1998 through August 2001 based on the charges set forth in the G-32 rate, but excluding the transmission charges. In consideration of the agreement, Narragansett agreed to apply a Settlement Credit to the charges billed from September 1, 1998 through August 2001. Second, under the Settlement, Narragansett will make adjustments to its Transmission Service Cost Adjustment Provision to reflect the exclusion of transmission charges from these billings. Third, the parties requested that the exhibit showing the calculation of the Settlement Credit be kept confidential as a negotiated settlement of money in dispute.

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<sup>96</sup> Id.

<sup>97</sup> Id.

Finally, USGen agreed to reimburse Narragansett for its actual transmission costs incurred from serving USGen for the period from September 1, 1998 through August 2001. In addition, USGen agreed to continue to reimburse Narragansett for its actual transmission costs until such time as USGen enters into the appropriate transmission service arrangements with transmission providers, as required as part of taking service under the M-1 Rate.<sup>98</sup>

### **C. Other Provisions of the Settlement**

As part of the Settlement, the parties agreed to preserve their respective rights to challenge or propose different rate treatment before the Commission or FERC on and after July 1, 2003 to take effect on and after January 1, 2005.<sup>99</sup> In addition, the parties agreed to file Stipulated Facts to narrow the scope of a pending FERC proceeding addressing the same issues raised in the instant proceeding. However, regardless of FERC's decision on the Stipulated Facts, the parties agreed to comply with the terms of the M-1 Rate through December 31, 2004, while preserving all rights to appeal and to take any position in any other matter before the Commission and FERC despite the Settlement.<sup>100</sup>

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<sup>98</sup> *Id.* at 3-4.

<sup>99</sup> Settlement, p. 2. On May 15, 2002, FERC issued an Order in part denying and in part granting USGen's Petition. Of particular note, FERC stated, "Our action today serves the public by properly delineating areas of federal and state responsibility." FERC concluded its order, stating "...the parties' stipulation demonstrates that the delivery of station power to the Manchester Street Station is performed, for the most part, over local distribution facilities subject solely to state jurisdiction. To the extent this is so, it follows that this matter is properly before the Rhode Island Commission, where proceedings are pending, and that USGen's Petition must be denied. However, the stipulation further indicates that one of the four delivery points in question includes facilities that the Rhode Island Commission has classified as transmission. Thus, this element of delivery is subject to the jurisdiction of [FERC], and this portion of the petition is granted." 99 FERC ¶ 61,169 (issued May 15, 2002).

<sup>100</sup> *Id.* at 3. USGen further agreed to waive and forever release any claims that it believes it may have against Narragansett Electric or its affiliates related to the CSA. *Id.*

## VI. Hearing

Following public notice, a hearing on the Settlement was conducted on November 19, 2001, at the Commission's offices, 89 Jefferson Boulevard, Warwick, Rhode Island.

The following appearances were entered.

FOR NARRAGANSETT ELECTRIC: Ronald Gerwatowski, Esq.

FOR USGEN NEW ENGLAND: Mark Russo, Esq.  
Michael Engleman, Esq.  
Peter Meier, Esq.

FOR THE DIVISION: Paul Roberti  
Assistant Attorney General

FOR THE COMMISSION: Cynthia G. Wilson  
Senior Legal Counsel

Mr. Gerwatowski provided the Commission with an overview of the main aspects of the Settlement.<sup>101</sup> Mr. Gerwatowski indicated that Narragansett and USGen had been in close contact with the Division throughout the settlement process in order to be certain to address its concern that any agreement between Narragansett and USGen did not result in one set of customers subsidizing the Settlement.<sup>102</sup>

Mr. Gerwatowski explained that as a result of the Settlement, three reconciliation account balances would be affected. Under the Settlement, Narragansett would receive less revenue in the transition and conservation funds than what was calculated between September 1, 1998 and the date of the hearing. However, Narragansett would make no adjustment to the fund, choosing to make up the difference between the amounts originally calculated and the amounts due under the settlement.<sup>103</sup>

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<sup>101</sup> Tr. 11/19/01, pp. 7-25.

<sup>102</sup> Id. at 15.

<sup>103</sup> Id. at 15-16.

Addressing the transmission and service cost adjustment balance, Mr. Gerwatowski explained that under the G-32 rate, USGen had been charged more for transmission than Narragansett's actual costs related to providing service to USGen. Therefore, Narragansett agreed to subtract its actual transmission costs from the transmission amounts originally charged to USGen. This left approximately \$134,000 to be charged instead to the transmission and service cost adjustment balance. The effect on a typical residential ratepayer will be a one-time charge of 12 cents. However, this will not show up as a charge on the bill, but will affect the amount of the overcollection that was, at the time of the hearing, in the transmission fund.<sup>104</sup> He explained that when Narragansett made its annual reconciliation filing, it would reflect an overcollection of approximately \$8 million which would be reduced by \$134,000.<sup>105</sup> Mr. Gerwatowski maintained that this methodology eliminates what otherwise would be a cross-subsidy going from USGen to other customers.<sup>106</sup> The Division indicated that it believed the Settlement, including the calculation of the Settlement Credit, was a fair resolution of the dispute.<sup>107</sup>

Mr. Gerwatowski then explained the reasoning behind allowing two methods of netting of power in the M-1 Tariff. He pointed out that with traditional customers, electrons flow one way – away from Narragansett and toward the customer. However, with generators, electrons can flow in both directions, depending on whether they are internally consuming more or less energy than they are producing. Therefore, Narragansett had used a methodology termed “hourly netting” as a way of measuring the

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<sup>104</sup> Id. at 17-19.

<sup>105</sup> Id. at 33-7. Narragansett's filing was made on November 23, 2001 and was assigned Docket 3402.

<sup>106</sup> Id. at 19.

<sup>107</sup> Id. at 77.

delivery of station service power to the generators. Hourly netting was used not only because Narragansett believed it to be a fair way, but also because it matched the methodology used by NEPOOL. However, USGen had a difference of opinion and believed that “monthly netting” would be a better way for Narragansett to measure deliveries of station service power to USGen’s Manchester Street Station. Narragansett, in turn, was concerned that, theoretically, USGen could run the plant for only one day each month and have a monthly net of zero. Therefore, in order to strike a balance, Narragansett and USGen agreed to a rate that would include a “higher of” methodology based on monthly netting with a minimum fixed charge attached (Option A). Realizing that other generators may prefer the traditional methodology of hourly netting, Narragansett included Option B in the M-1 Rate as well.<sup>108</sup>

The parties explained that the fixed charges under the M-1 Rate were negotiated numbers based on historical data.<sup>109</sup> The Division’s witness, Dr. John Stutz, testified that he had reviewed the new rate. He stated that it was a revenue-neutral rate design which, if it would settle the dispute, did not pose a problem. Dr. Stutz noted that it was unusual to have fixed costs attached to the rate, but because the customers taking service under this rate were generators, he believed that they would prefer to treat the charges as a business expense and therefore would prefer it to be stable.<sup>110</sup>

Mr. Gerwatowski explained that the methodology for arriving at the amount due by USGen under the Settlement was to put the parties in the same position had the M-1 Tariff been in effect since September 1, 1998. Mr. Gerwatowski indicated that similar terms would be offered to other generators. Finally, Mr. Gerwatowski indicated that he

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<sup>108</sup> Id. at 20-24.

<sup>109</sup> Id. at 66-7, 68-69.

believed the Settlement was a positive result because of the time, resources and expenses that would be saved by resolving the differences without extended litigation and potential appeals.<sup>111</sup> He indicated that because of the terms of the Settlement, the parties had agreed to be bound by the M-1 Rate through 2004, the end of Narragansett's rate freeze period, regardless of any determination by FERC or a court regarding jurisdiction or methodologies.<sup>112</sup>

## **VII. Commission Findings Regarding Settlement**

At the conclusion of the hearing, the Commission took a recess to consider the evidence and arguments presented. The Commission then reconvened to make a decision from the bench. Chairman Germani made two motions: (1) he moved to approve the Settlement between the parties without modification and (2) he moved to approve the M-1 Tariff pursuant to the terms and conditions contained in the draft tariff for use by generators. Commissioner Racine seconded the motions. Following discussion, the motions were unanimously passed by a vote of 3-0.<sup>113</sup>

The Commission finds the Settlement to present a fair resolution of the parties' dispute given the state of the law in November 2001. Narragansett has shown, by agreeing to absorb certain amounts under the Settlement and by charging back only a de minimus amount to the ratepayers, that it was attempting to resolve the matter in a way that considered the best interest of the ratepayers. Furthermore, the Settlement between the parties allows the cost of litigation to cease. The Commission was concerned that had this matter proceeded to full hearing on the dispute, the cost of litigation (including any

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<sup>110</sup> Id. at 67-8.

<sup>111</sup> Id. at 25.

<sup>112</sup> Id. at 82-6.

<sup>113</sup> Id. at 89. On November 27, 2001, Narragansett filed its finalized M-1 Tariff, R.I.P.U.C. No. 1164.

appeals) could have far exceeded the amount in controversy. Such a result would not have been in the best interest of the ratepayers. Finally, the Commission is pleased that the parties have expressly agreed and testified that the terms of the Settlement will remain in effect without challenge by any party through the end of the rate freeze period established in Docket 2930.<sup>114</sup>

## **SETTLEMENT BETWEEN NARRAGANSETT AND TIVERTON**

### **I. Settlement**

On December 28, 2001, Narragansett filed a “Settlement Regarding Station Service for Tiverton Power Associates,” (“Tiverton Settlement”), entered into between itself and Tiverton Power Associates, LP (“Tiverton Power”). The Tiverton Settlement resolved the parties’ dispute over retail delivery charges for station service provided by Narragansett to Tiverton Power at its generating station in Tiverton, Rhode Island.<sup>115</sup>

The Tiverton Settlement was similar to the Settlement entered into between Narragansett and USGen in the instant docket and which was approved by the Commission on November 19, 2001. Under the Tiverton Settlement, Tiverton agreed to take Station Service under the M-1 Tariff through December 31, 2004, regardless of whether any court or regulatory agency issues an order that would exempt Tiverton Power from payment of retail delivery charges.<sup>116</sup> As in the Settlement between Narragansett and USGen, Narragansett and Tiverton Power both reserved their rights to

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<sup>114</sup> Id. at 89-93.

<sup>115</sup> Tiverton Settlement, pp. 1-4. A public version of the Tiverton Settlement and its attachments are attached to this Report and Order as Appendix B.

<sup>116</sup> Id. at 1.

propose on and after July 1, 2003 different rate treatment for effect on and after January 1, 2005.<sup>117</sup>

With regard to the disputed charges, Narragansett and Tiverton Power used the same methodology to calculate the amounts due as was used in the Narragansett/USGen Settlement. Like the Settlement with USGen, Tiverton Power agreed to make payments minus a Settlement Credit paid by Narragansett.<sup>118</sup>

Unlike the situation with USGen, however, Narragansett did not incur any transmission charges for delivery of station service power to Tiverton Power. Narragansett incurs transmission charges on the coincident peak. During peak times, unlike USGen, Tiverton Power operated its generating facility as a base load unit. As a result, Narragansett incurred no transmission charges for Tiverton at those peak times. Therefore, there were no transmission costs to pass on to other customers as a result of the Tiverton Settlement.<sup>119</sup>

## **II. Division's Position**

On January 28, 2002, the Division filed a Memorandum with the Commission. Mr. David Stearns, Rate Analyst, indicated that Narragansett and the Division staff had discussed the Tiverton Settlement. He indicated that the Settlement Credit represented the difference between charges under the applicable G-32 Rate and charges that would have been assessed under the M-1 Rate had it been in effect during the period April 2000 through August 2001. According to Mr. Stearns, Narragansett had indicated that it would receive additional distribution revenue under the M-1 Rate when compared with calculations under the G-32 Rate for the same period. Finally, Mr. Stearns explained that

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<sup>117</sup> Id. at 2.

<sup>118</sup> Id. at 2-3.

because Narragansett had not billed Tiverton Power for station service, no revenue had yet been accounted for on Narragansett's books. The Division recommended the Tiverton Settlement be approved by the Commission.

### **III. Commission Findings**

The Parties indicated that a hearing was not necessary and at the March 14, 2002 Open Meeting, the Commission considered on the Tiverton Settlement. Commissioner Racine moved to approve the Tiverton Settlement. The Motion was seconded by Commissioner Gaynor and after discussion, the Motion was unanimously passed by a vote of 3-0.

The Commission finds that the Tiverton Settlement is in the best interest of the ratepayers because it represents a resolution to the parties' dispute without the need for extended litigation given the current state of the law. In addition, the Commission is pleased that Narragansett and Tiverton were able to work out their differences in a manner that did not require the Commission to issue discovery orders intended to make the parties cooperate with each other or with the Commission.

Accordingly, it is hereby

(17108) ORDERED:

1. Narragansett Electric Company's Petition for a Declaratory Judgment is dismissed.
2. USGen New England Inc.'s Motion to Dismiss is denied as moot.
3. The "Station Power Delivery and Reliability Service Rate M-1" filed by Narragansett Electric Company is approved for effect September 1, 2001.

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<sup>119</sup> Tr. 11/19/01, pp. 45-6.

4. The Settlement between Narragansett Electric Company and USGen New England, Inc., filed on October 31, 2001, is approved.
5. The Settlement between Narragansett Electric Company and Tiverton Power Associates, L.P., filed on December 28, 2001, is approved.
6. The parties shall comply with all other findings and instructions as contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO A BENCH DECISION ON NOVEMBER 19, 2001 AND AN OPEN MEETING DECISION ON MARCH 14, 2001. WRITTEN ORDER ISSUED AUGUST 20, 2002.

PUBLIC UTILITIES COMMISSION

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Elia Germani, Chairman

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Kate F. Racine, Commissioner

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Brenda K. Gaynor, Commissioner

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**In re: Narragansett Electric Company Petition     )**  
**for Declaratory Judgment Regarding            )**           **Docket No. 3342**  
**Station Service Delivery Charges             )**  
**Assessed USGen New England, Inc.            )**

**Settlement and Stipulation**

This Settlement and Stipulation (“Settlement”) is entered into between The Narragansett Electric Company (“Narragansett Electric” or “Narragansett”), and USGen New England, Inc. (“USGen”).

**Introduction**

USGen and Narragansett Electric desire to settle this Declaratory Judgment Proceeding. Accordingly, in consideration of the promises made in this Settlement:

- (1) Narragansett is willing to offer a new “Station Power Delivery and Reliability Service Rate M-1” (“M-1 Rate”) to provide delivery service of remotely supplied station service power to USGen at Manchester Street Station, a copy of which is attached as Exhibit 1 to this Settlement; and
- (2) USGen is willing to agree to pay charges under the new “M-1 Rate” through December 31, 2004, provided that USGen is able to preserve its rights to seek different treatment or seek to avoid such charges after such date if FERC or any other agency or court of competent jurisdiction issues rulings any time in the future that, in USGen’s view, either relieve USGen of any obligation to pay Narragansett any retail delivery charges for station service or materially affects the amount or manner of the assessment of retail delivery charges by Narragansett on USGen on and after January 1, 2005.

**I. New “Station Power Delivery and Reliability Service Rate (M-1)”**

- (a) USGen shall pay monthly charges assessed by Narragansett pursuant to the terms of rate “Option A” of the M-1 Rate commencing for usage on and after September 1, 2001 through December 31, 2004 regardless of whether any court or regulatory agency of competent jurisdiction has issued an order, decision, or ruling that would otherwise exempt or make USGen not liable to pay such retail delivery charges.
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- (b) Narragansett agrees that all charges under “Option A” of the M-1 Rate shall remain fixed through December 31, 2004 and that no other charges shall be assessed under the M-1 Rate through that date.
- (c) It is the intention of Narragansett Electric that the M-1 Rate be available to any other generator to whom its terms apply for the delivery of remotely supplied station service. Narragansett Electric agrees that it will not enter into a rate more favorable to a generator than the M-1 Rate for the delivery of remotely supplied station service without first providing USGen with the opportunity to transfer to such rate in substitution for the M-1 Rate, effective as of the date that such rate is to go into effect in Rhode Island, and all references herein to the M-1 Rate shall be deemed to refer to such substitute rate from and after the date that USGen becomes subject to the substitute rate.

## **II. Preservation of Rights for Different Treatment On and After January 1, 2005**

- (a) Narragansett preserves its rights to propose on or after July 1, 2003 (i) a continuation of the M-1 Rate effective on and after January 1, 2005, (ii) modifications to the M-1 Rate to take effect on and after January 1, 2005, or (iii) a new rate that would be applicable to USGen for delivery service provided on and after January 1, 2005. In the alternative, Narragansett may file a Petition for Declaratory Ruling before the Federal Energy Regulatory Commission on or after July 1, 2003 (“FERC Declaratory Proceeding”). In any such proceedings, USGen may oppose Narragansett and reserves its rights to take any position it deems appropriate.
- (b) USGen preserves its right to request on and after July 1, 2003 different rate treatment to take effect on and after January 1, 2005. As such, USGen retains the right to (1) file a Petition for Declaratory Ruling before the Rhode Island Public Utilities Commission any time on or after July 1, 2003 (“Declaratory Proceeding”), (2) participate in any rate case or rate design cases filed by Narragansett or required by the Commission in which the design of Narragansett’s rates is at issue (“Rate Design Proceeding”), or (3) file a Petition for Declaratory Ruling before the Federal Energy Regulatory Commission on or after July 1, 2003 (“FERC Declaratory Proceeding”). In any Declaratory Proceeding, Rate Design Proceeding, or FERC Declaratory Proceeding, Narragansett may oppose USGen and reserves its rights to take any position it deems appropriate.
- (d) In any FERC Declaratory Proceeding (referenced in paragraphs (a) and (b) above), USGen or Narragansett may request an order from the FERC for a declaration regarding federal/state jurisdiction over delivery charges assessed on USGen for remotely supplied station service to Manchester Street Station. However, regardless of the outcome of the proceeding before FERC, Narragansett agrees to assess charges only under the M-1 Rate and USGen agrees to continue to pay the charges pursuant to the M-1 Rate through December 31, 2004.

### **III. Agreement to Narrow Scope of FERC Proceedings**

In consideration of this Settlement, USGen and Narragansett agree to jointly file a "Stipulation" at FERC, narrowing the scope of the proceedings in Docket EL01-103-000. A copy of that Stipulation is attached as Exhibit 2 to this Settlement. USGen and Narragansett are free to make additional filings in Docket No. EL01-103-000 as they deem appropriate, but not in any manner or raising issues inconsistent with this Settlement including the Stipulation. Regardless of the outcome of those proceedings, Narragansett agrees to assess charges only under the M-1 Rate and USGen agrees to pay the charges pursuant to the M-1 Rate through December 31, 2004 and shall make the payments referred to in Sections V and VI below. Also, regardless of the outcome of those FERC proceedings, Narragansett and USGen each reserves its rights to pursue any appeals of FERC orders, or take any positions it deems appropriate regarding the jurisdiction of the Rhode Island Public Utilities Commission before FERC, the Rhode Island Commission, or any state or federal court of competent jurisdiction.

### **IV. Waiver of Other Legal Claims Relating to the CSA**

In consideration of this Settlement, USGen agrees to waive and forever release any claims that it believes it has or may have had against Narragansett Electric or any of Narragansett Electric's affiliates (including without limitation New England Power Company) arising out of promises or alleged promises made in connection with the Amended and Restated Continuing Site/Interconnection Agreement, dated September 1, 1998 (the "CSA") regarding the assessment of retail delivery charges in connection with the delivery of remotely supplied station service to any of the generating stations owned by USGen. Nothing in this Settlement shall be deemed to waive or release any other claims arising out of any other agreement or obligation other than the CSA as and to the extent set forth in the preceding sentence, provided that USGen shall not seek reimbursement or damages from New England Power Company or any of its affiliates from retail delivery charges for remotely supplied station service assessed by Narragansett Electric in accordance with the terms of this Settlement.

### **V. Payment of Past Bills - Settlement Credit**

- (a) Subject to the "Settlement Credit" set forth below, USGen agrees to pay all of the station service charges assessed for deliveries from September 1, 1998 through August 2001 based on the charges set forth in the G-32 Rate, but excluding the transmission charges (which total transmission charges are shown on Line 2 of Confidential Exhibit 3). USGen shall pay these charges, net of the Settlement Credit, regardless of whether any court or regulatory agency of competent jurisdiction has issued an order, decision, or ruling that would otherwise exempt or make USGen not liable to pay such retail delivery charges. In consideration of this Settlement, Narragansett agrees to apply a "Settlement

Credit" shown on Line 3 of Confidential Exhibit 3 to the billings from September 1, 1998 through August 2001.

- (b) Narragansett shall make appropriate adjustments to its Transmission Service Cost Adjustment Provision, to reflect the exclusion of transmission charges from these billings. However, no other adjustments shall be made to any other reconciliation adjustment balances as a result of this Settlement.

The Parties agree that Confidential Exhibit 3 represents a negotiated settlement of moneys in dispute and, therefore, should be treated as confidential proprietary data. Accordingly, the Parties request the Commission through this Settlement to preserve the Confidentiality of its contents from public disclosure.

#### **VI. Reimbursement of Narragansett's Actual Transmission Costs Incurred**

Narragansett shall calculate the actual transmission costs it incurred beginning September 1, 1998 relating to the delivery of remotely supplied station service to Manchester Street Station pursuant to Narragansett's Tariff No. 9 service agreement with New England Power Company, the New England Power Pool FERC Electric Tariff Vol. No. 1, and the ISO-NE FERC Electric Tariff Vol. No. 1. In consideration of this Settlement, USGen agrees to reimburse Narragansett for its actual transmission costs incurred from serving USGen for the period from September 1, 1998 through August 2001, which amount is shown on Line 4 of Confidential Exhibit 3. In addition, during the interim period prior to USGen entering into the appropriate transmission service arrangements with transmission providers, as required in the M-1 Rate, Narragansett shall bill USGen for its actual transmission costs incurred from serving USGen until the effective date of those arrangements, calculated on the same basis as the period September 1, 1998 through August 2001. USGen agrees to pay these bills. Such reimbursement shall be credited by Narragansett to the Transmission Service Cost Adjustment reconciliation balance. Narragansett shall take such action as may reasonably be necessary to permit USGen's entry into the appropriate transmission service arrangements and Narragansett consents to such arrangements.

#### **Netting of Generation Output**

The M-1 Rate sets forth two alternative procedures for the netting of generation output against deliveries of remotely supplied station service to determine the extent to which kilowatt-hour charges shall apply for the assessment of Transition and Conservation and Load Management Charges. The Parties agree that the alternative netting procedures set forth in the M-1 Rate have been proposed and accepted by the Parties for purposes of settlement only. Accordingly, the Parties agree that the fact that alternative netting procedures exist in the M-1 Rate shall not be used as evidence or legal argument in any future proceeding as an admission that any or either netting procedure is appropriate. As such, all Parties reserve their rights to argue for different netting procedures in future cases.

**VIII. Settlement Is Without Prejudice to Positions of the Parties**

This Settlement is a compromise of legal positions among the Parties. As such, the Parties to this Settlement agree that this Settlement is not to be construed as an admission on the part of any Party regarding the jurisdiction of the Commission over the applicability of retail distribution rates to USGen for delivery service on and after January 1, 2005 or the jurisdiction of any state commission over the service of delivering remotely supplied station service power to generators.

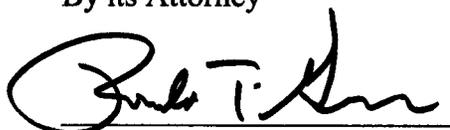
The Parties also reserve their rights to take any position they deem appropriate regarding the subject of retail delivery service of remotely supplied station power in any other state or federal jurisdiction, including without limitation in any current proceeding before the FERC, other than Docket EL01-103-000, which shall be controlled by Section III above and the referenced Stipulation in Exhibit 2.

**Miscellaneous**

- (a) This Settlement is the product of settlement negotiations. The content of those negotiations is privileged and all offers of settlement shall be without prejudice to the position of any Party.
- (b) This Settlement is submitted on the condition that it be approved in full by the Commission, and on the further condition that if the Commission does not approve the Settlement in its entirety, the Settlement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or used for any purpose.

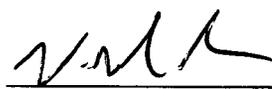
Respectfully submitted,

Narragansett Electric  
By its Attorney



Ronald T. Gerwatowski  
General Counsel

USGen New England, Inc.  
By its Attorney



W. Mark Russo  
Ferrucci Russo P.C.

Dated: October 30, 2001

**EXHIBIT 1**

**M-1 Rate**

THE NARRAGANSETT ELECTRIC COMPANY  
Station Power Delivery and Reliability Service Rate (M-1)  
Retail Delivery Service

R.I.P.U.C. No. xxxx

Rates for Station Power Delivery and Reliability Service

Eligible Customers must select one of the two rate Options A or B below:

**Monthly Charges**

**OPTION A**

<u>Distribution Delivery Service Charge</u>	\$3,500 per month
<u>Non-Bypassable Transition Charge</u>	Higher of: 0.988¢ per kWh or \$3,500
<u>Conservation and Load Management Charge</u>	Higher of 0.230¢ per kWh or \$800

**OPTION B**

<u>Distribution Delivery Service Charge</u>	\$3,500 per month
<u>Non-Bypassable Transition Charge</u>	0.988¢ per kWh
<u>Conservation and Load Management Charge</u>	0.230¢ per kWh

**Tax Note:** The rates listed above do not reflect gross earnings tax or sales taxes (when applicable). However, such taxes, when applicable, will appear on bills sent to customers.

THE NARRAGANSETT ELECTRIC COMPANY  
**STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)**  
Retail Delivery Service

**AVAILABILITY**

This service shall be available to all Customers meeting the following criteria:

1. The Customer is a "Merchant Generator" who owns and operates a generating facility with one or more generating units with an aggregate generating capacity of 50 MW or more and where all, or virtually all, of the electricity produced by the generating facility is delivered into the transmission grid for resale (net of any self-supplied Station Power);
2. The Customer's generating facility is interconnected directly or indirectly with high voltage facilities at 115 kV or greater where the high voltage facilities serving the customer are sized for deliveries into the transmission grid; and
3. The Customer receives deliveries of electricity from time to time directly or indirectly through the high voltage facilities to serve all or portion of the Customer's Station Power requirements at the generating facility.

This rate shall be mandatory for any Customer meeting the above listed criteria if such Customer arranges its own transmission service for delivery of Station Power into the generating facility, as described below under "Transmission Service Arrangements". Once a Customer takes service under this rate, the Customer may not choose to take service under a different rate without the consent of the Company.

**DEFINITIONS**

As used in this tariff:

**"Merchant Generator"** means a person or entity that owns and operates an electric power production facility and sells the output from such facility (net of self-supplied Station Power), either directly or through a marketer, at wholesale through the transmission grid.

**"Station Power"** means electrical energy and/or capacity used by the Customer for heating, lighting, power for station auxiliaries, office equipment, and/or other power production operating purposes.

**TYPE OF SERVICE**

Station Power Delivery and Reliability Service consists of delivery service through high voltage and/or other interconnected facilities to serve all or a portion of the Customer's Station Power requirements at the generating facilities.

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**THE NARRAGANSETT ELECTRIC COMPANY**  
**STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)**  
Retail Delivery Service

**DELIVERY POINT CONSOLIDATION**

If the Customer has more than one delivery point for station service deliveries into interrelated generating facilities, the Company may consolidate the metering and delivery points into one billing account for purposes of billing under this rate.

**MONTHLY CHARGE**

Customers must select either Option A or Option B. The Monthly Charge will be the sum of the Station Power Delivery Service Charges stated on the cover sheet for the applicable option. Once a Customer selects an Option, the Customer must remain on that Option for 12 consecutive months before changing Options.

**BILLING DETERMINANTS FOR TRANSITION AND CONSERVATION CHARGES**Option A -- Monthly Netting

Under Option A, for purposes of determining whether the alternative kilowatt-hour charges apply for the Non-Bypassable Transition Charge and the Conservation and Load Management Charge, the Company will net gross generator output against remotely supplied station service deliveries each month. The charge for each month for such components shall be the higher of (i) the fixed charge or (ii) the kilowatt-hour charge multiplied by the net kilowatt-hours delivered for the month if the deliveries exceed generation output for the month.

Option B – Hourly Netting

Under Option B, for purposes of determining the kilowatt-hour charges that apply for the Non-Bypassable Transition Charge and the Conservation and Load Management Charges, the Company will net gross generator output against remotely supplied station service deliveries each hour. The charge for each month shall be the kilowatt-hour charge multiplied by the net kilowatt-hours delivered for the hour if the deliveries exceed generation output for such hour.

**RATE ADJUSTMENT CLAUSE APPLICABILITY**

The Transition Charge Adjustment Provision, the Conservation and Load Management Adjustment Provision, the Standard Offer Adjustment Provision, and the Transmission Service Charge Adjustment Provision shall not apply to Option A of this Rate.

The Standard Offer Adjustment Provision and the Transmission Service Charge Adjustment Provision shall not apply to Option B of this Rate.

THE NARRAGANSETT ELECTRIC COMPANY  
**STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)**  
Retail Delivery Service

**TRANSMISSION SERVICE ARRANGEMENTS**

Any Customer served under this rate must make its own arrangements for transmission service to the Customer's generating facility for delivery of Station Power. Such arrangements must be made with the appropriate transmission provider(s) pursuant to a tariff or tariffs jurisdictional to the Federal Energy Regulatory Commission (FERC) in order to assure that the Company is not required to account for any load delivered into the Customer's facility for Station Power for transmission billings assessed on the Company pursuant to FERC jurisdictional transmission tariffs applicable to the Company. This transmission service is distinguishable and separate from transmission service or interconnection arrangements that permit the Customer to deliver output from the generating facility into the transmission grid.

**ARRANGEMENTS FOR GENERATION SERVICE**

Any Customer served under this rate must either (1) establish a settlement account with ISO-New England, Inc., for power supply and must use the settlement account to arrange for any Station Power supply that is not self-supplied at the generating facility or (2) purchase electricity directly from a nonregulated power producer. By electing service under this tariff, the Customer agrees not to take service at any time under the Company's Last Resort Service or Standard Offer Service Tariffs.

**OTHER LOW VOLTAGE SERVICE EXCLUDED**

Any Customer served under this rate who also is receiving Station Power service or other retail delivery service through a separate distribution feeder that is not associated with the facilities through which the Customer delivers generated electricity into the transmission system must take such delivery service through a separate applicable retail delivery service tariff that is separately metered and established as a separate account.

**OTHER FACILITIES EXCLUDED**

This rate applies only to Station Power. The Customer may not use this rate to receive or provide power to other non-generation related facilities, the use of which falls outside of the definition of "Station Power", as defined in this rate.

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**THE NARRAGANSETT ELECTRIC COMPANY**  
**STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)**  
Retail Delivery Service

**GROSS EARNINGS TAX**

A Rhode Island Gross Earnings Tax adjustment will be applied to the charges determined above in accordance with Rhode Island General Laws.

**TERMS AND CONDITIONS**

The Company's Terms and Conditions in effect from time to time, where not inconsistent with any specific provisions hereof, are a part of this rate.

Effective: [Month] [Day], [Year]

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**EXHIBIT 2**

**Stipulation in FERC Docket**

Stipulation to be Filed at FERC

(1) When USGenNE is not operating its Manchester Street generating units, it receives remotely supplied station power produced at one or more of its plants. When USGenNE is operating one or more of its Manchester Street generating units, it self supplies it station power from power generated at the site;<sup>1</sup>

(2) Because its station power is either supplied from the Manchester Street generating units or remotely supplied power from plants owned by USGenNE, there is no retail sale of power involved in the acquisition of the power by USGenNE;

(3) The remotely supplied station power is delivered over the NEPOOL pool transmission facilities pursuant to FERC jurisdictional tariffs;

(4) The power is delivered from the NEPOOL PTF to USGenNE over facilities owned by Narragansett through four different delivery points located at the generating station;

(5) Before passing through three of the delivery points, the power passes through 11.5 kV facilities owned by Narragansett that have been properly classified by the RIPUC as distribution facilities pursuant to Order No. 888 through application of FERC's seven factor test

(6) Before passing through the fourth delivery point, the power passes through 115 kV facilities owned by Narragansett that have been properly classified by the RIPUC as transmission facilities pursuant to Order No. 888 through application of FERC's seven factor test;

(8) Narragansett Electric is assessing local distribution charges for the delivery of the remotely supplied station power to Manchester Street Station through all four delivery points when the Manchester Street generating units are not operating, consolidating the four delivery points for billing purposes pursuant to the local retail delivery tariff.

(9) The local distribution charges consist of distribution charges, transition charges (i.e., stranded cost charges), and demand side management charges. All of the charges are being assessed pursuant to a retail delivery tariff approved by the Rhode Island Public Utilities Commission.

**ISSUE FOR DECLARATORY RULING:** Under the set of facts set forth above, does the State of Rhode Island have jurisdiction to assess the retail delivery charges on the deliveries of remotely supplied station service power to USGenNE at Manchester Street Station where there is no "retail sale" involved in USGenNE's acquisition of the station power because the power was produced at remotely located plants also owned by USGenNE?

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<sup>1</sup> Narragansett and USGenNE have agreed to the stipulations set forth herein in order to facilitate an order on the issue submitted for a declaratory ruling. Narragansett and USGenNE each reserves its right in future proceedings at FERC or in state commission proceedings to disagree with the facts and circumstances contained herein.

**REDACTED VERSION**

**EXHIBIT 3**

**Calculation of Payment for Past Costs and Charges**

1	Original Amount Owed	\$
2	Less Exclusion of Transmission Charges	\$
		\$
3	Less Settlement Credit	\$
		\$
4	PLUS Transmission Cost Reimbursement	\$
5	<b>TOTAL Payment</b>	\$

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

<b>In re: Narragansett Electric Company</b>	)	
<b>Proposed Station Service Rate</b>	)	<b>Docket No.</b>
<b>and Settlement with</b>	)	
<b>Tiverton Power Associates</b>	)	

**Settlement Regarding Station Service for Tiverton Power Associates**

This Settlement ("Settlement") is entered into between The Narragansett Electric Company ("Narragansett Electric" or "Narragansett") and Tiverton Power Associates, L.P. ("Tiverton"), the owner of a 250 MW generating station in Tiverton, Rhode Island (the "Facility").

**Introduction**

Narragansett Electric and Tiverton have had discussions regarding the legal rights of Narragansett Electric to assess Tiverton retail delivery charges for station service provided by Narragansett to Tiverton at the Facility. Rather than litigate the issue, the parties have decided to settle their differences through compromise, on terms substantially the same as the settlement approved in State of Rhode Island and Providence Plantations Public Utilities Commission (the "Commission") Docket No. 3342.

Accordingly, in consideration of the exchange of promises contained in this Settlement, Narragansett Electric and Tiverton agree to the terms of this Settlement and jointly request its approval by the Commission.

**I. New "Station Power Delivery and Reliability Service Rate (M-1)"**

- (a) Commencing for usage on and after September 1, 2001, Tiverton shall pay monthly charges assessed by Narragansett pursuant to the terms of the "Station Power Delivery and Reliability Service Rate M-1" ("M-1 Rate") for delivery service of remotely supplied station service power to the Facility. A copy of the M-1 Rate is attached as Exhibit 1 to this Settlement. Tiverton agrees to pay the charges under the M-1 Rate through December 31, 2004 regardless of whether any court or regulatory agency of competent jurisdiction has issued an order, decision, or ruling that would otherwise exempt or make Tiverton not liable to pay such retail delivery charges.

Narragansett agrees that all charges under Option A of the M-1 Rate and the distribution charge under Option B shall remain fixed through December 31, 2004 and that no other charges shall be assessed under the M-1 Rate, or any other tariff except as provided in paragraph V, through that date.

## **II. Preservation of Rights for Different Treatment On and After January 1, 2005**

Narragansett reserves its right to propose on or after July 1, 2003 (i) a continuation of the M-1 Rate effective on and after January 1, 2005, (ii) modifications to the M-1 Rate to take effect on and after January 1, 2005, or (iii) a new rate that would be applicable to the Facility for delivery service provided on and after January 1, 2005. In any proceedings involving such proposals, Tiverton may oppose Narragansett and reserves its rights to take any position it deems appropriate.

Tiverton reserves its right to request on and after July 1, 2003 different treatment from Narragansett regarding station service deliveries to take effect on and after January 1, 2005. Tiverton retains the right to (1) pursue its rights in Federal Energy Regulatory Commission Docket No. EL01-96-000, (2) file a Petition for Declaratory Ruling before the Commission any time on or after July 1, 2003, (3) participate in any rate case or rate design cases filed by Narragansett or required by the Commission in which the design of Narragansett's rates is at issue, or (4) file a Petition for Declaratory Ruling before the Federal Energy Regulatory Commission on or after July 1, 2003. However, regardless of the outcome of any of these proceedings, Tiverton agrees to continue paying charges assessed under the M-1 Rate by Narragansett through December 31, 2004. In any of these proceedings, Narragansett may oppose Tiverton and reserves its rights to take any position it deems appropriate.

## **III. Past Station Service Deliveries — Settlement Credit**

Subject to the "Settlement Credit" set forth in Confidential Exhibit 2, Tiverton agrees to pay all of the station service charges assessed for deliveries from April 1, 2000 through August 2001 based on the charges set forth in the G-32 Rate. Tiverton's payment of the sums set forth in Exhibit 2 shall be complete accord and satisfaction of all station service charges, including charges associated with transmission service, owing to Narragansett prior to August 31, 2001. Tiverton shall pay these charges, regardless of whether any court or regulatory agency of competent jurisdiction has issued an order, decision, or ruling that would otherwise exempt or make Tiverton not liable to pay such retail delivery charges.

## **IV. Credits to Transition and Conservation Reconciliation Balances**

Narragansett will credit the Transition Cost Adjustment reconciliation balance and the Conservation and Load Management Adjustment reconciliation balance in an amount equal to

the charges assessed for such billing components pursuant to the G-32 rate for station service deliveries to the Facility from April 1, 2000 through August 2001.

**V. Credit to Transmission Cost Adjustment Reconciliation Balance**

Narragansett shall calculate the actual transmission costs, if any, that it incurred beginning April 1, 2000 through August 2001 relating to the delivery of remotely supplied station service to Tiverton pursuant to Narragansett's Tariff No. 9 service agreement with New England Power Company, the New England Power Pool FERC Electric Tariff Vol. No. 1, and the ISO-NE FERC Electric Tariff Vol. No. 1. Narragansett shall credit the Transmission Service Cost Adjustment reconciliation balance with an amount equal to the total transmission cost, if any, incurred for that period.

**IV. Interim Transmission Cost Reimbursement**

It is understood that Tiverton will enter into appropriate transmission service arrangements with appropriate transmission provider(s), as required by the M-1 Rate, no later than 60 days after a final non-appealable order has been issued by FERC (or a federal appeals court) in FERC Docket No. EL01-96-000. From and after September 1, 2001 until Tiverton enters into appropriate transmission service arrangements with transmission provider(s), Narragansett shall bill Tiverton for its actual transmission costs incurred from serving Tiverton pursuant to Narragansett's Tariff No. 9 service agreement with New England Power Company, the New England Power Pool FERC Electric Tariff Vol. No. 1, and the ISO-NE FERC Electric Tariff Vol. No. 1. During the interim period prior to Tiverton entering into the appropriate transmission service arrangements with transmission providers, as required in the M-1 Rate ("Interim Period"), Narragansett shall bill Tiverton for its actual transmission costs incurred from serving Tiverton until the effective date of those arrangements and Tiverton agrees to pay these bills. Such payments by Tiverton to Narragansett shall be credited by Narragansett to the Transmission Service Cost Adjustment reconciliation balance. However, Tiverton's agreement to pay such bills during the Interim Period is based on its understanding that such costs are incurred by Narragansett only when Tiverton is taking station service power during New England Power Company's monthly coincident peak. In the event that Tiverton is required to reimburse transmission costs other than those incurred on a coincident peak method, Tiverton may reopen the issue of station service charges at the RIPUC or FERC sooner than provided in Section II above, for an effective date sooner than January 1, 2005. If such reopening occurs, Tiverton and Narragansett agree that it shall be effective prospectively only and that all sums paid by Tiverton shall be full accord and satisfaction of all of the Facility's station service requirements until the date of such reopening.

**VI. Netting of Generation Output**

The M-1 Rate sets forth two alternative procedures for the netting of generation output against deliveries of remotely supplied station service to determine the extent to which kilowatt-hour charges shall apply for the assessment of Transition and Conservation and Load Management Charges. The Parties agree that the alternative netting procedures set forth in the

M-1 Rate have been proposed and accepted by the Parties for purposes of settlement only. Accordingly, the Parties agree that the fact that alternative netting procedures exist in the M-1 Rate shall not be used as evidence or legal argument in any future proceeding as an admission that any or either netting procedure is appropriate. As such, all Parties reserve their rights to argue for different netting procedures in future cases.

**Settlement Is Without Prejudice to Positions of the Parties**

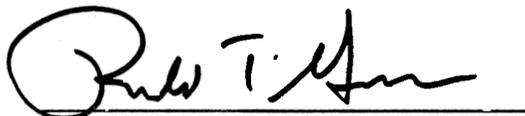
- (a) This Settlement is a compromise of legal positions among the Parties. As such, the Parties to this Settlement agree that this Settlement is not to be construed as an admission on the part of any Party regarding the jurisdiction of the Commission over the applicability of retail distribution rates to Tiverton for delivery service on and after January 1, 2005 or the jurisdiction of any state commission over the service of delivering remotely supplied station service power to generators.
- (b) The Parties also reserve their rights to take any position they deem appropriate regarding the subject of retail delivery service of remotely supplied station power in any other state or federal jurisdiction.

**Miscellaneous**

- (a) This Settlement is the product of settlement negotiations. The content of those negotiations is privileged and all offers of settlement shall be without prejudice to the position of any Party.
- (b) This Settlement is submitted on the condition that it be approved in full by the Commission, and on the further condition that if the Commission does not approve the Settlement in its entirety, the Settlement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or used for any purpose.

Respectfully submitted,

Narragansett Electric  
By Its Attorney



Ronald T. Gerwatowski  
General Counsel

Tiverton Power Associates, L.P.

By: Robert K. Caffrey  
Its: Senior Vice President

December 24, 2001

**EXHIBIT 1**

M-1 Rate

THE NARRAGANSETT ELECTRIC COMPANY  
Station Power Delivery and Reliability Service Rate (M-1)  
Retail Delivery Service

R.I.P.U.C. No. 1164

Rates for Station Power Delivery and Reliability Service

Eligible Customers must select one of the two rate Options A or B below:

**Monthly Charges**

**OPTION A**

<u>Distribution Delivery Service Charge</u>	\$3,500 per month
<u>Non-Bypassable Transition Charge</u>	Higher of: 0.988¢ per kWh or \$3,500
<u>Conservation and Load Management Charge</u>	Higher of 0.230¢ per kWh or \$800

**OPTION B**

<u>Distribution Delivery Service Charge</u>	\$3,500 per month
<u>Non-Bypassable Transition Charge</u>	0.988¢ per kWh
<u>Conservation and Load Management Charge</u>	0.230¢ per kWh

**Tax Note:** The rates listed above do not reflect gross earnings tax or sales taxes (when applicable).  
However, such taxes, when applicable, will appear on bills sent to customers.

THE NARRAGANSETT ELECTRIC COMPANY  
STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)  
Retail Delivery Service

**AVAILABILITY**

This service shall be available to all Customers meeting the following criteria:

1. The Customer is a "Merchant Generator" who owns and operates a generating facility with one or more generating units with an aggregate generating capacity of 50 MW or more and where all, or virtually all, of the electricity produced by the generating facility is delivered into the transmission grid for resale (net of any self-supplied Station Power);
2. The Customer's generating facility is interconnected directly or indirectly with high voltage facilities at 115 kV or greater where the high voltage facilities serving the customer are sized for delivery into the transmission grid; and
3. The Customer receives deliveries of electricity from time to time directly or indirectly through high voltage facilities to serve all or portion of the Customer's Station Power requirements at the generating facility.

This rate shall be mandatory for any Customer meeting the above listed criteria if such Customer arranges its own transmission service for delivery of Station Power into the generating facility, as described below under "Transmission Service Arrangements". Once a Customer takes service under this rate, the Customer may not choose to take service under a different rate without the consent of the Company.

**DEFINITIONS**

As used in this tariff:

"**Merchant Generator**" means a person or entity that owns and operates an electric power production facility and sells the output from such facility (net of self-supplied Station Power), either directly or through a market, at wholesale through the transmission grid.

"**Station Power**" means electrical energy and/or capacity used by the Customer for heating, lighting, power for station auxiliaries, office equipment, and/or other power production operating purposes.

**TYPE OF SERVICE**

Station Power Delivery and Reliability Service consists of delivery service through high voltage and/or other interconnected facilities to serve all or a portion of the Customer's Station Power requirements at the generating facilities.

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THE NARRAGANSETT ELECTRIC COMPANY  
**STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)**  
Retail Delivery Service

**DELIVERY POINT CONSOLIDATION**

If the Customer has more than one delivery point for station service deliveries into interrelated generating facilities, the Company may consolidate the metering and delivery points into one billing account for purposes of billing under this rate.

**MONTHLY CHARGE**

Customers must select either Option A or Option B. The Monthly Charge will be the sum of the Station Power Delivery Service Charges stated on the cover sheet for the applicable option. Once a Customer selects an Option, the Customer must remain on that Option for 12 consecutive months before changing Options.

**BILLING DETERMINANTS FOR TRANSITION AND CONSERVATION CHARGES**

Option A -- Monthly Netting

Under Option A, for purposes of determining whether the alternative kilowatt-hour charges apply for the Non-Bypassable Transition Charge and the Conservation and Load Management Charge, the Company will net gross generator output against remotely supplied station service deliveries each month. The charge for each month for such components shall be the higher of (i) the fixed charge or (ii) the kilowatt-hour charge multiplied by the net kilowatt-hours delivered for the month if the deliveries exceed generation output for the month.

Option B -- Hourly Netting

Under Option B, for purposes of determining the kilowatt-hour charges that apply for the Non-Bypassable Transition Charge and the Conservation and Load Management Charges, the Company will net gross generator output against remotely supplied station service deliveries each hour. The charge for each month shall be the kilowatt-hour charge multiplied by the net kilowatt-hours delivered for the hour if the deliveries exceed generation output for such hour.

**RATE ADJUSTMENT CLAUSE APPLICABILITY**

The Transition Charge Adjustment Provision, the Conservation and Load Management Adjustment Provision, the Standard Offer Adjustment Provision, and the Transmission Service Charge Adjustment Provision shall not apply to Option A of this Rate.

The Standard Offer Adjustment Provision and the Transmission Service Charge Adjustment Provision shall not apply to Option B of this Rate.

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THE NARRAGANSETT ELECTRIC COMPANY  
STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)  
Retail Delivery Service

**TRANSMISSION SERVICE ARRANGEMENTS**

Any Customer served under this rate must make its own arrangements for transmission service to the Customer's generating facility for delivery of Station Power. Such arrangements must be made with the appropriate transmission provider(s) pursuant to a tariff or tariffs jurisdictional to the Federal Energy Regulatory Commission (FERC) in order to assure that the Company is not required to account for any load delivered into the Customer's facility for Station Power for transmission billings assessed on the Company pursuant to FERC jurisdictional transmission tariffs applicable to the Company. This transmission service is distinguishable and separate from transmission service or interconnection arrangements that permit the Customer to deliver output from the generating facility into the transmission grid.

**ARRANGEMENTS FOR GENERATION SERVICE**

Any Customer served under this rate must either (1) establish a settlement account with ISO-New England, Inc., for power supply and must use the settlement account to arrange for any Station Power supply that is not self-supplied at the generating facility or (2) purchase electricity directly from a nonregulated power producer. By electing service under this tariff, the Customer agrees not to take service at any time under the Company's Last Resort Service or Standard Offer Service Tariffs.

**OTHER LOW VOLTAGE SERVICE EXCLUDED**

Any Customer served under this rate who also is receiving Station Power service or other retail delivery service through a separate distribution feeder that is not associated with the facilities through which the Customer delivers generated electricity into the transmission system must take such delivery service through a separate applicable retail delivery service tariff that is separately metered and established as a separate account.

**OTHER FACILITIES EXCLUDED**

This rate applies only to Station Power. The Customer may not use this rate to receive or provide power to other non-generation related facilities, the use of which falls outside of the definition of "Station Power", as defined in this rate.

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**THE NARRAGANSETT ELECTRIC COMPANY**  
**STATION POWER DELIVERY AND RELIABILITY SERVICE RATE (M-1)**  
Retail Delivery Service

**GROSS EARNINGS TAX**

A Rhode Island Gross Earnings Tax adjustment will be applied to the charges determined above in accordance with Rhode Island General Laws.

**TERMS AND CONDITIONS**

The Company's Terms and Conditions in effect from time to time, where not inconsistent with any special provisions hereof, are a part of this rate.

Effective: September 1, 2001

**REDACTED**

**EXHIBIT 2**

**Calculation of Payment for Past Costs and Charges**

1	Original Amount Owed	\$
2	Less Settlement Credit	\$
	<b>TOTAL Payment</b>	<b>\$</b>