

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: REQUEST TO AMEND THE :  
RULES AND REGULATIONS GOVERNING :  
TERMINATION OF RESIDENTIAL : Docket No. 3423  
ELECTRIC, GAS AND WATER :  
UTILITY SERVICE :

COMMENTS REGARDING AMENDMENTS TO THE COMMISSION’S RULES  
AND REGULATIONS GOVERNING TERMINATION OF RESIDENTIAL  
ELECTRIC, GAS AND WATER UTILITY SERVICE

**I. Travel**

At the Commission’s January 19, 2001 open meeting, in response to concerns raised by the George Wiley Center, the Commission decided to investigate whether the Rules and Regulations Governing Termination of Residential Electric, Gas and Water Utility Service (“Termination Rules”), which were last revised in 1985, were being properly enforced and whether any revisions were required.<sup>1</sup> The investigation was opened in the existing Docket No. 1725.

During the course of the Commission’s investigation into the Termination Rules, four (4) public hearings were held for purposes of taking testimony and public comment regarding application of the Termination Rules.<sup>2</sup> During its investigation, the Commission also issued data requests and accepted written comments filed by interested parties.<sup>3</sup> At the June 26, 2001 hearing, the Commission requested that the parties work together in an attempt to narrow the issues and make recommendations of revisions that should be made to the Termination Rules. Most of the comments and proposed revisions

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<sup>1</sup> Minutes of Open Meeting Held on January 19, 2001.

<sup>2</sup> See Tr. 2/15/01, 2/27/01, 6/26/01, 10/23/01. Specific comments relative to the reasons behind the Commission’s proposed rules will be addressed below.

related to the issue of payment requirements for restoring a residential customer's utility service after it had been terminated for non-payment.

On September 11, 2001, counsel to various consumer advocacy groups filed their collective position. The consumer advocacy groups requested a continuation of the protections provided to customers prior to service termination as existed in their then-current form. The consumer groups requested added protection for customers who were seriously ill. With regard to customers whose gas, electric or water service had been terminated, the consumer advocacy groups advocated revising the Termination Rules to provide for payment plans for customers whose service had been terminated repeatedly for non-payment. The Termination Rules as last amended in 1985 only provided for a payment plan after a single termination of service for non-payment.

Specifically, the consumer advocacy groups proposed that the first time a customer's service is terminated for non-payment, service should be restored upon a down payment of 10% of the arrearage. The second time the customer's service is terminated for non-payment, it was proposed that service should be restored upon a down payment of 25% of the arrearage. Every time thereafter, without limitation, when the customer's service is terminated for non-payment, it was proposed that service should be restored upon a down payment of 50% of the unpaid balance. No comment was made regarding the terms of any payment plans that may or may not be required upon payment of the initial down payment. However, the consumer advocacy groups vigorously

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<sup>3</sup> At its April 9, 2002 open meeting, the Commission unanimously voted to take administrative notice of the record in Docket No. 1725, including all testimony, data responses and comments received after January 19, 2001, for purposes of this Docket No. 3423.

opposed a policy that would require 100% of the customer's unpaid balance to be paid prior to having service restored.<sup>4</sup>

On November 1, 2001, New England Gas Company ("NE Gas"), Narragansett Electric Company ("Narragansett") and the Division of Public Utilities and Carriers ("Division") filed Joint Recommendations regarding revisions to the Termination Rules. According to the parties to the Joint Recommendations, their proposed revisions to the Termination Rules accomplished two objectives. First, they addressed the main concern of the consumer advocacy groups seeking lower down payments and additional chances to have residential utility service restored after termination for non-payment. Second, they proposed creating a single "ladder" of payment plans that included a limit on the number of times a delinquent customer's service could be restored before the utility could require 100% of the customer's arrearage to be paid in order to restore service.

In addition, the Joint Recommendations proposed changes to bill inserts, an increase in the minimum delinquent balance required before termination of a customer's utility service would be allowed during the moratorium period, revisions to the language of the termination notice, and some definitional changes.<sup>5</sup> On December 20, 2001, NE Gas, Narragansett and the Division filed a proposed Transition Plan designed to transition customers who had previously broken payment plans into the proposed payment plan ladder.<sup>6</sup>

On December 20, 2001, NE Gas and Narragansett filed an additional proposal designed to eliminate the current requirement that utility employees sent out to terminate

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<sup>4</sup> See Position of Intervening Advocacy Groups, 9/11/01.

<sup>5</sup> See Joint Recommendation, 11/1/01.

<sup>6</sup> See Transition Plan, 12/20/01.

service accept cash payments from customers seeking to avoid service termination.<sup>7</sup> On February 22, 2002, the Division filed an opposition to the proposal.<sup>8</sup>

The Commission reviewed the transcripts, data responses, proposals and comments that it had collected during its year-long investigation in Docket No. 1725 and on March 6, 2002, issued its proposed revisions to the Termination Rules in the instant Docket for purposes of accepting comments by all interested parties.<sup>9</sup>

The Commission's proposed revisions were designed to provide an incentive for residential customers to communicate with their utility companies to establish payment plans prior to having their utility service terminated for non-payment. The revisions were necessary to address situations where customers had their utility service terminated for non-payment more than once. Therefore, the Commission's proposed revisions adopted the concept of a "ladder" of residential payment plans, originally suggested by the consumer advocacy groups and then addressed by the companies and Division in their proposal.

In addition to addressing changes to payment plans in general, there were comments during the hearings that customers would like to have more billing flexibility when establishing a payment plan. Therefore, the Commission created a six-month payment option for residential customers wishing to pay off their unpaid balance over the course of six months without having to enter into a twelve-month payment plan or having to pay for any of their prospective usage.

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<sup>7</sup> See Letter to Commission Clerk, 12/20/01.

<sup>8</sup> See Letter to Commission Clerk, 1/3/02.

<sup>9</sup> At an open meeting on March 5, 2002, the Commission unanimously voted to open Docket No. 3423 and to issue the proposed Termination Rules for public comment.

The Commission also responded to concerns from the elderly and from consumer advocacy groups that protections were limited for those customers who fell into a financial hardship category, but did not qualify for certain types of public assistance. Therefore, the Commission extended protections to customers who are aged 62 and over and to those who fall within the financial hardship category, as defined in the Termination Rules.

Finally, each year, the Commission receives a request from the George Wiley Center to issue an emergency order extending the utility termination moratorium period beyond March 31<sup>st</sup> because of cold weather. In fact, on a case-by-case basis, the Commission has extended the moratorium period in 10 of the last 12 years, finding that it has been cold enough in April to warrant a temporary extension beyond March 31<sup>st</sup>. However, in all but two of the last 12 years, the moratorium has only been extended to April 15<sup>th</sup>. Therefore, based on historical experience, the Commission believes that a permanent extension of the moratorium period to April 15<sup>th</sup> is warranted.

The proposed Termination Rules do not address the issue of whether or not there should be any sort of debt forgiveness program for residential utility customers. On October 24, 2001, the Commission opened Docket No. 3400 to examine the feasibility of establishing a debt forgiveness program. The parties to that docket created a working group. The working group has been filing periodic updates with the Commission at approximate sixty (60) day intervals. The Commission expects that any proposal for a debt forgiveness program will have an independent funding source that will not include socializing the costs of a debt forgiveness program among other utility ratepayers.

## **II. Comments**

In accordance with R.I.G.L. § 42-35-3, the Commission published a Notice of Proposed Rulemaking in the Providence Journal on March 6, 2002. The proposed Termination Rules were sent to all parties to Docket No. 1725 and made available at the Commission's offices and on the Commission's website. The Commission requested comments to be filed by April 5, 2002. Seven interested parties filed written comments in the instant Docket.

At an open meeting, held on April 9, 2002, the Commission discussed the comments and voted to adopt certain changes in response to comments that were filed. The Commission's rationale is set forth below regarding why it adopted some proposals and declined to adopt others. With such changes, the Commission voted unanimously to promulgate the proposed Termination Rules for effect May 1, 2002.

### **A. Hearing**

The Commission also held a public hearing in the instant Docket at its offices at 89 Jefferson Boulevard, Warwick, Rhode Island on March 18, 2002, to allow interested persons to make public comment on the proposed Termination Rules and for the utilities to make oral argument if so desired. The following appearances were entered:

Narragansett Electric Company	Ronald Gerwatowski, Esq.
New England Gas Company	Daniel Crocker, Esq.
Providence Water Supply Board and Block Island Power Co.	Michael McElroy, Esq.
Pascoag Utility District	William Bernstein, Esq.
Division of Public Utilities and Carriers	Leo Wold Special Assistant Attorney General

Ten people testified before the Commission. Many of the commenters addressed the need for a balance between the need of the utility companies to collect their amounts due and the ability of people to keep up with their utility bills during the months when their bills are the highest.<sup>10</sup> Mr. Bochichio, a former gas company employee testified, for example, that people need to be protected from overly-aggressive shutoff procedures, but on the other hand, “I think there has to be some checks and balances. There can’t be no shutoffs.”<sup>11</sup> The Commission agrees that the goal of the Termination Rules should be to strike a balance between the needs of the utility companies and their customers.

Other comments proposed extending protected status to persons who are unemployed, regardless of the reason or whether they are collecting unemployment compensation.<sup>12</sup> The Commission recognizes that some unemployed persons will not fall within the definition of “unemployed” contained in the Termination Rules, but also believes that many of these customers will fall under the general financial hardship protections of the Termination Rules. In addition, if every unemployed person were afforded protected status under the Termination Rules, the protected status category would be read so broadly as to cover retirees, students, stay-at-home parents and others, regardless of their financial situation. Therefore, the Commission rejects this proposal.

Commenters disagreed on whether the utility termination moratorium period should be permanently extended and if so, for how long. Some believed that the moratorium period should be permanently extended to May 1<sup>st</sup> and some believed that it

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<sup>10</sup> Tr. 3/18/02, pp. 8-22.

<sup>11</sup> Id. at 19. See generally Id. at 14-15.

<sup>12</sup> Tr. 3/18/02, pp. 22-4, 25-26.

should remain at March 31<sup>st</sup>.<sup>13</sup> The utility companies, both at the hearing and in written comments, indicated that the moratorium period should not be extended beyond March 31st. On the one hand, consumer advocates argue that consumers should be protected from utility service terminations until it is warm enough to turn off the utility, in the case of heat. On the other hand, the utilities point out that any extension of the moratorium period necessarily shortens the time during which people who either were unable to pay or who simply chose not to pay during the protection of the moratorium period can reduce their unpaid balances. The Commission believes it is reasonable to permanently extend the utility termination moratorium period until April 15th. This does not represent a compromise between the two sides of the issue, but rather, is based on the historical experience of the Commission in granting temporary extensions of the moratorium period on a case-by-case basis over the past twelve years.

Some comments indicated support for the fact that the Commission did not adopt the proposal by Narragansett and NE Gas to eliminate the requirement that cash payments be accepted by a utility employee sent out to terminate service.<sup>14</sup> However, no additional comments were received from the utility companies with regard to that issue.

Data responses filed by Narragansett and NE Gas during the investigation in Docket No. 1725 showed a lack of evidence that utility employees were at a greater risk by accepting cash payments from customers in the field or that there were any discrepancies between the amounts collected and the amounts turned in to the utility companies by their employees. The Commission finds that the benefit of maintaining this requirement to the utility's customers outweighs the burden on the utility companies of

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<sup>13</sup> Id. at 12, 25, 36-7. In fact, one commenter suggested June 1<sup>st</sup> as the end of the moratorium.

<sup>14</sup> Id. at 30.

continuing to require acceptance of cash payments in the field. The Commission is concerned that some utility companies may not have been complying with this requirement in the past year and expects that these companies will comply with the requirement on a going-forward basis.

Many commenters addressed the fact that despite an agreement by the utility companies in their Joint Recommendations to accept an initial down payment of only 10% of a customer's unpaid balance in order to restore service, the Commission's proposed Termination Rules required a customer to make an initial down payment of 25% of his or her unpaid balance in order to restore service. The Commission was persuaded by Mr. Matteo Gugliemetti of the State Energy Office, who testified that an initial down payment of 25% is a reasonable requirement.<sup>15</sup> The Commission believes that in requiring an initial down payment of only 10% after termination of service does not provide a sufficient incentive for customers to contact their utility company prior to having their service terminated for non-payment. In addition, a 10% down payment does not provide a sufficient level of investment to discourage a customer from breaking his or her payment plan. Finally, a 10% down payment does not reduce a customer's unpaid balance enough to make monthly payments reasonable. Therefore, the Commission concluded that, for a customer whose service has been terminated for non-payment for the first time, restoration will be restored upon making an initial down payment of 25% of the customer's unpaid balance plus entry into a payment plan at Step 3 of the "ladder."

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<sup>15</sup> Mr. Gugliemetti works for the State Energy Office and has been involved in the administration of low income heating assistance programs for approximately twenty (20) years. Mr. Gugliemetti has appeared before the Commission on numerous occasions to testify regarding termination of utility service and low income heating assistance programs.

Finally, many commenters requested that the Commission deny the utility companies the ability to ever demand more than 50% of a customer's unpaid balance in order to restore service. Mr. Gugliemetti pointed out that for many people, 50% is a substantial down payment that provides an incentive to comply with the terms of a payment plan. He also proposed a rule allowing a customer the ability to carry a balance during the non-moratorium period, which, if not exceeded, would protect a consumer from having his or her service terminated.<sup>16</sup>

The Commission recognizes that requiring 100% of the unpaid balance to be paid prior to restoration of service may be unattainable for some people. However, the proposed rules allow the customer and the utility to establish a reasonable payment plan, based on individual circumstances, after the customer has passed Step 5 (requiring 50% of the unpaid balance for restoration of service) of the payment plan "ladder." In addition, a customer still has the ability under the proposed Termination Rules to request assistance from the Division if unable to work out a reasonable payment plan with the utility. However, the Commission also recognizes that at some point, a utility needs the ability to terminate service to a customer who has broken numerous payment plans and whose delinquent balance simply continues to increase. Finally, the Commission will not, at this time, deny utility companies the right to expect full payment of its bills. To do so would likely increase a utility company's uncollectable accounts.

## **B. Written Comments**

Counsel to the George Wiley Center and several of the consumer advocacy groups filed a proposed rule that would allow families who already fall within a protected status class to avoid service termination during the winter moratorium regardless of any

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<sup>16</sup> Id. at 43-4.

other criteria that may apply. The Commission rejects this addition because it is redundant. Any person who is in a protected class is protected from service termination during the moratorium.<sup>17</sup>

Each utility that filed comments with the Commission indicated that it would either be unable to comply with a requirement to include Hmong or Laotian on its termination notice or it would incur an additional expense to do so. Therefore, the Commission has deleted the requirement at this time.<sup>18</sup>

The 1985 Termination Rules were silent as to the treatment of rate changes that are approved by the Commission while a customer is in the midst of a payment plan. The Commission proposed allowing the consumer the choice of whether to include the effect of the change ratably over the remainder of the term of the payment plan or to continue with the payments as they were calculated prior to the change with the difference rolled into a subsequent payment plan. NE Gas and the Division both commented on this provision.<sup>19</sup> NE Gas requested the Commission require a default option if a customer did not choose one. The Division expressed concern that failure to adjust payment plans to include the effect of a rate increase would result in larger unpaid balances requiring larger payments at the end of the term of a payment plan. As the Division noted, it was the intent of the Termination Rules to assist customers in reducing their unpaid balances. The Commission therefore agrees with the Division that rate increases should be included ratably over the remainder of the term of a payment plan. Accordingly, the Termination

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<sup>17</sup> Comments of The George Wiley Center et al, 4/3/02.

<sup>18</sup> Comments of Kent County Water Authority, 3/25/02; Comments of New England Gas Company, 4/1/02; Comments of Narragansett Electric, 4/5/02.

<sup>19</sup> See Comments of NE Gas, p. 2; See Comments of Division, p. 2.

Rules will require that the effect of a rate change, whether an increase or a decrease, be included ratably over the remainder of the term of a payment plans.

Narragansett, NE Gas and the Division filed comments regarding re-enrollment at the same step from which a customer becomes disenrolled from a payment plan.<sup>20</sup> The Commission initially proposed allowing a customer who becomes disenrolled from a payment plan to re-enroll in the same plan at the same step simply by bringing his or her account current prior to termination of service. The Division supported this position. The Commission proposal also required physical disconnection of service prior to a customer's advancing a step in the payment plans. The Commission was concerned that a customer not be advanced all the way to the last step without ever having service terminated or without ever having service personnel dispatched to his or her home.

However, Narragansett and NE Gas pointed out some practical problems with these proposals. First, a consumer could become "stuck" in a step. This is especially true for NE Gas where most meters are located inside a customer's home and therefore, may be inaccessible for purposes of service disconnection. Second, customers would have less incentive to contact the utility to work out payment arrangements prior to termination of service and more incentive to deny access to utility employees sent to disconnect service to that customer's meter. Third, these proposals would require the utility companies to be more aggressive with service terminations which, in turn, would lead to increased costs associated with service terminations. Fourth, there would be a likely potential for large unpaid balances to accrue while the utility companies attempted to gain access to a customer's meter in order to terminate service.

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<sup>20</sup> See Comments of Narragansett Electric, pp. 3-4; See Comments of NE Gas, p. 3; See Comments of Division, p. 1.

The Commission finds that these results are contrary to the goals of the Termination Rules and accepts the compromise proposals of NE Gas. First, termination of service shall mean either (1) disconnection or actual shutoff of utility service; or (2) a visit to a customer's residence in which an employee of a utility makes personal contact with the customer or with a responsible adult found within said residence, and in which the employee is unable to gain admission for purposes of disconnection of service.

In order to avoid potential abuse of this provision, however, the Commission is requiring the utility company employee sent out to terminate service to file an affidavit with the Division which states under oath that the visit occurred and the purpose was communicated or, if the adult did not speak the same language as the utility company employee, that the utility company employee provided the customer with a multi-language service termination card for the adult to review.<sup>21</sup> A multi-language service termination card is defined in the Part II, Section 1(J) of the Termination Rules. It is a card that is printed in several languages indicating that the utility company employee is at the customer's home to terminate service if the customer cannot pay the balance due at that time. The card also requests access to the customer's meter.

Second, NE Gas provided a compromise proposal designed to strike a balance between the Commission's concerns regarding a customer moving up the payment plan ladder without ever having service terminated and the utilities' concerns that a customer not become stuck in a step by becoming disenrolled repeatedly but never being penalized because each time, he or she brought the account current just in time to avoid termination. Therefore, the Commission accepts NE Gas' proposal that allows a customer to re-enroll in or renegotiate a payment plan at the same step if he or she

provides the amount due after becoming disenrolled from the plan, but prior to termination. However, in order to provide an incentive for customers to make every effort to comply with the terms of the payment plans as written, if a customer fails to bring his or her account current within the period of time in which two payments are due on the customer's payment plan, the customer will be required (1) to make the initial down payment required under the plan from which the customer was disenrolled, and (2) to renegotiate a new residential payment plan in order to maintain service.<sup>22</sup> In other words, prior to service termination, the customer will be allowed to re-enroll in his or her payment plan, without moving to the next step of the "ladder," as long as only one payment has been missed. However, by imposing a termination penalty for successive non-payment, payment plan customers will be less likely to accrue increasingly large unpaid balances. This compromise position alleviates the Commission's concerns regarding potential abuse of the system by all parties.

Narragansett filed comments regarding the six-month payment plan option as proposed by the Commission.<sup>23</sup> While Narragansett did not have concerns about the concept in general, the utility was concerned with the impact the proposal would have on customers who do not qualify for the protected status payment plans. Narragansett pointed out that because the six-month plan provided for an initial down payment of only 25% after service had been terminated and the first post-termination step of the Standard Customer payment plan requires a 60% down payment, the effect would be to discourage

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<sup>21</sup> See Termination Rules, Form III

<sup>22</sup> This allows a customer who misses one payment to re-enroll in the same payment plan step so long as service has not been terminated. However, after a customer misses two successive payments, he or she must make another down payment and re-negotiate a new payment plan.

<sup>23</sup> Comments of Narragansett Electric, pp. 4-5. The six-month option will allow a customer to pay off his or her unpaid balances plus current usage, without also requiring payment of a percentage of the customer's estimated prospective annual usage.

a Standard Customer from communicating with his or her utility prior to termination. Narragansett correctly observed that this effect was contrary to one of the primary goals of the proposed Termination Rules. Therefore, Narragansett proposed that the Termination Rules could be streamlined by including the six-month option in both the Protected Customer Payment Plans and in the Standard Customer Payment Plans. The six-month payment plan option would be available to protected status customers without a down payment requirement if entered into prior to termination of service and for a 25% down payment if entered into after termination of service. This modification renders the post-termination down payment requirement for protected customers consistent with the initial post-termination down payment that is required in the Protected Customer Payment Plan. However, the six-month payment plan option will be available to Standard Customers only prior to termination of service, unless the utility decides in its discretion to offer a six-month payment option following termination of service. This way, there will not be an incentive for Standard Customers to wait for service to be terminated in order to obtain a more favorable down payment requirement. This change will also give all customers flexibility in choosing payment plans as well as the addition of a one-time pre-termination payment plan re-negotiation opportunity that is already included in the twelve-month pre-termination plans. Therefore, this change provides consistency in the incentives for both Standard and Protected Status Customers to contact their utility company prior to service termination for non-payment under their payment plans.

The Division, NE Gas and Narragansett each filed comments indicating that the Commission's proposed termination notice requiring the company to indicate an exact

date of service termination was too administratively burdensome to be complied with.<sup>24</sup> Each utility and the Division recommended the language be changed to notify a customer that his or her service would be terminated “on or after” a certain date. The Commission was concerned that NE Gas was sending its customers termination notices that did not include a service termination date and which did not comply with the 1985 Termination Rules. The Commission is aware that the reverse side of NE Gas’ bills contains a summary of the Commission’s rules. However, the Commission believes that utility customers will be better informed by receiving a separate termination notice that contains all of the information required by the Rules, including the specific date on or after which service will be terminated. Therefore, while the Commission will not impose a “date certain” requirement that is too administratively burdensome for utilities, it expects the utilities to utilize and comply with the Termination Notice contained in Appendix B, Form IV of the Commission’s Termination Rules.

Narragansett questioned the rationale for not removing the possibility of a “ten-month” payment plan from language related to the terms of payment plans.<sup>25</sup> The Commission retained this provision from the 1985 Termination Rules because the Commission wishes to provide flexibility to utilities to offer ten-month payment plans to customers whose accounts are current but who wish to avail themselves of a levelized payment plan for personal budgeting purposes.<sup>26</sup>

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<sup>24</sup> See Comments of the Division, p. 4; See Comments of NE Gas, p. 3; See Comments of Narragansett Electric, p. 6.

<sup>25</sup> See Comments of Narragansett Electric, p. 6.

<sup>26</sup> Another provision that the Commission retained from the 1985 Termination Rules was the requirement that the electric and gas utility companies provide their customers with the option of setting up a levelized payment plan whereby a customer could make the same payment each month based on estimated monthly usage with a reconciliation at the end of the term to factor in the actual usage of that customer during the term of the plan. This type of payment plan is available to customers who are current on their payments but who wish to have a set monthly payment for personal budgeting purposes.

Narragansett also questioned the appropriateness of requiring the utilities to assume the responsibility of determining which of the options contained in Step 1A and 1B Protected Customer Payment Plans would provide the lowest monthly payment for a Protected Status Customer.<sup>27</sup> Narragansett contends that the customer should determine which payment plan he or she would like to enter. The Commission acknowledges that the decision to enter a payment plan ultimately lies with the customer. However, the Commission believes that the utility is in a better position, by having the information regarding the account, the customer's estimated prospective annual usage and the knowledge of the various payment plans offered by the utility, to inform its customer of the lowest priced option.

Obviously a customer's prospective annual usage is just an estimate. However, when evaluating the payment plan options, if a gas heating customer is entering into a payment plan in May, the option of paying 1/12 of the unpaid balance plus the current usage will likely produce a lower monthly payment than paying 1/12 of the unpaid balance plus 1/12 of the estimated prospective annual usage. On the other hand, if an electric non-heating customer enters into a payment plan in May, and the customer has air conditioning, a plan that requires 1/12 of the unpaid balance plus 1/12 of the estimated prospective annual usage may produce lower monthly payments. In both scenarios, the reverse may be true if the customer is entering into a payment plan in October. The Commission simply wants the customer to be fully informed as to his or her choices when working with the utility company and the Commission believes the utility is in the best position to provide that information when working with a customer. As a result, the Commission rejects Narragansett's proposed change.

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<sup>27</sup> See Comments of Narragansett Electric, p. 6.

The Division filed a comment that the Commission should clarify whether LIHEAP funds or promises of funds to be received from non-profit sources can be used toward the down payment required in order to restore service or for purposes of calculating a customer's monthly payment under a payment plan.<sup>28</sup> The Commission believes that the utility companies should have no preference as to the source of the money. Moreover, LIHEAP promises are legally binding promissory notes. Therefore, the Commission finds that the utilities should accept promissory notes toward down payments.

The Division also suggested extending the additional Step 2 pre-termination re-negotiation opportunity, available to LIHEAP recipients at the time of receipt LIHEAP funds/promissory notes, to all Protected Status Customers who receive grants and funds from bona fide charities.<sup>29</sup> The Commission declines to adopt this proposal for two reasons. First, the Commission is aware that traditionally, the minimum LIHEAP grant has been approximately \$300. Many organizations that contribute to people give much smaller amounts of money and thus, the difference in the monthly payment would not be significant. Second, the Division did not provide the Commission with a definition for the term "bona fide charity." The Commission is concerned that the inclusion of this term would cause confusion for customers. In addition, there is nothing that prevents a utility from allowing a customer to renegotiate or start a new payment plan if a customer approaches the utility with an amount of money that would affect the monthly payment due.

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<sup>28</sup> Comments of Division, pp. 3-4.

<sup>29</sup> Id. at 2.

Narragansett also suggested that financial hardship customers be required to submit proof annually of their continuing eligibility for the financial hardship category.<sup>30</sup> The Commission believes this to be a reasonable proposal and, therefore the Commission's Termination Rules will require eligible customers to renew proof of financial hardship on an annual basis, in accordance with Form V of Appendix B. Each utility will provide this form on an annual basis via a separate mailing to all customers who were enrolled in the financial hardship category in the twelve months immediately prior to the mailing. The mailing shall provide the customers with a notice regarding the purpose of the renewal form and indicating that the renewal form must be returned to the utility within forth (40) days from the date it was mailed to the customer.

The Division noted that the Commission's proposed Termination Rules set the initial down payment required to restore service at 25% of a customer's unpaid balance, despite the fact that in the past few years, the utilities have agreed to accept a 20% down payment to restore service during the moratorium period.<sup>31</sup> Therefore, the Division recommended that the Termination Rules require a down payment of only 20% to conform to the recent practice of the utilities during the moratorium period. The Commission declines to adopt this change for two reasons. First, the Termination Rules prescribe the maximum, or most stringent terms and conditions the utilities can impose on their customers. Nothing restricts the utilities from adopting more lenient terms and conditions on their customers. If the prescribed Termination Rules are too lenient at the outset, however, the utilities will have little or no incentive or "room" to adopt more lenient terms. Second, the proposed Termination Rules do not distinguish between

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<sup>30</sup> Comments of Narragansett Electric, p. 7.

<sup>31</sup> Comments of Division, p. 3.

payment plans entered into during the moratorium period and those entered into during the non-moratorium period. Therefore, adopting a practice that, historically, has been implemented only during the moratorium period would be inconsistent with the Termination Rules.

Additionally, the Division requested the Commission to clarify whether a utility was required to offer another payment plan to a delinquent customer who, after having service terminated for non-payment under a Step 5 payment plan, tenders 50% of his or her unpaid balance to the utility in order to restore service. The Commission has considered the Division's concern that the language of the proposed Termination Rules was not consistent throughout. Therefore, the Commission has made the language consistent with the following clarification.<sup>32</sup>

While a utility may require a down payment of more than 50% to restore service after a customer is terminated for non-payment under a Step 5 payment plan, the Commission is leaving the option open to the customer and utility to negotiate a reasonable payment plan according to the guidelines set forth in the Rules. It is the Commission's belief that if a delinquent customer tenders at least 50% of an unpaid balance to his or her utility, that customer is making a good faith effort to repay the account balance. Therefore, it would seem to make more sense for the utility to accept the customer's down payment and agree to a reasonable payment plan for the remaining balance than to simply assign the full amount of the unpaid balance as uncollectable. However, the Commission recognizes that there may also be instances where the utility will be justified in requiring a delinquent customer who has broken a Step 5 payment plan to pay 100% of his or her unpaid balance in order to restore service.

The Kent County Water Authority (“KCWA”) was the only water utility to file comments with the Commission.<sup>33</sup> KCWA indicated that while it sends out some 800 shut off notices and 1200 delinquency notices each month, it only terminates service for non-payment to approximately 300 customers per year. Upon service termination, KCWA’s customers tend to pay either their entire bill or at least a significant portion of the bill. In addition, KCWA indicated that it makes liberal use of payment plans when working with customers to collect unpaid balances. Finally, KCWA indicated that, due to its limited number of office staff, it did not believe it could administer the payment plans. Therefore, KCWA requested that publicly-owned water utilities be exempted from the proposed Termination Rules.

The Commission notes that it rarely receives complaints that KCWA or one of the other regulated water utilities has failed to provide a customer with a payment plan. In addition, in Docket No. 1725, each of the regulated water companies indicated that it complies with the 1985 Termination Rules, including the offering of payment plans. KCWA also indicated that it terminates service to only a small number of customers each year. In addition, the Commission is aware that the customer service staff of each of the publicly-owned water utilities is small.

While the Commission does not want to place an untenable administrative burden on the State’s water utilities, it does not believe the water utilities should be exempt from the Termination Rules in their entirety or from providing payment plans to customers with unpaid account balances. Therefore, the Commission will expect the water utilities to comply with the Termination Rules. However, the Commission will exempt a water

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<sup>32</sup> Id. at 3.

<sup>33</sup> See Comments of KCWA, pp. 1-3.

utility from compliance with the payment plans prescribed by the Commission's new Termination Rules upon submission to the Commission of such proof as the Commission requires from time to time that the water utility has procedures in place to provide reasonable payment plans to residential customers.

In its Comments, KCWA requested a waiver from compliance with the payment plans prescribed by the Commission's Termination Rules. In Docket No. 1725, KCWA provided the Commission with a copy of its Shutoff Procedures dated February 9, 1994. The Commission finds that these Shutoff Procedures identify the availability of residential payment plans in Section I, 1.1 and 1.11. Therefore, the Commission grants KCWA's request for waiver on the condition that it continues to make payment plans available to customers with unpaid account balances. KCWA shall file a copy of any new or amended Shutoff Procedures adopted by it after the Commission's new Termination Rules become effective.

The Providence Water Supply Board provided written testimony in Docket No. 1725 that it offers its customers more lenient payment plans than those specified in the 1985 Termination Rules.<sup>34</sup> Therefore, if Providence Water files an affirmation that it will continue this practice, together with a copy of any written shutoff rules, the Commission will grant Providence Water an exemption from compliance with the payment plans prescribed by the Commission's new Termination Rules.

In addition to comments received from the interested utilities and from consumers, the Commission received comments from Mr. Robert Stoddard of Charles River Associates.<sup>35</sup> Mr. Stoddard's comments concerned the effect of the proposed

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<sup>34</sup> Pre-Filed Testimony of Peter J. Pallozzi on behalf of Providence Water, February 2001, p. 3.

<sup>35</sup> See Comments of Robert Stoddard, Charles River Associates, dated March 19, 2002, pp. 1-3.

Termination Rules on non-regulated power producers. The Commission finds Mr. Stoddard's comments to be interesting and believes his comments will be pertinent when a competitive retail market develops for residential electric customers. However, at this time, the Commission declines to adopt Termination Rules for situations that may arise in the future but do not currently exist.

### **C. Transition**

NE Gas, Narragansett and the Division each filed comments regarding transitioning of customers into the new Termination Rules.<sup>36</sup> NE Gas and Narragansett both indicated that it would take approximately sixty (60) days to have their systems fully automated to track broken payment plans. The Division expressed concern that without guidance from the Commission, customers with a history of multiple broken payment plans could be adversely impacted by the new Termination Rules. The Commission has considered how to transition customers into the new Termination Rules in light of their varied payment histories, the utilities' concerns with automating their billing systems to implement the new Rules and the fact that the new Rules are significantly different from the 1985 Rules, and has concluded that customers should start with a "clean slate." Thus, each customer will be entitled to enter the payment plans prescribed by the new Termination Rules at the top step of the payment plan "ladder," without regard to that customer's payment history under prior payment plans. This will allow all customers to avail themselves of the full protections of brand new payment plans. Also, this approach should address the utilities' concern that until implementation of the new payment plans system is fully automated, they will not be able to track broken payment plans. Starting all customers at the top step of the payment plan ladder should allow for the passage of

enough time to accomplish automation of the system before tracking of broken payment plans becomes necessary.

### **III. Conclusion**

The Termination Rules adopted in 1985 remained in effect for over sixteen (16) years. The Commission is hopeful that the new Termination Rules will have the same level of success. The Commission believes that the new Termination Rules will provide an appropriate balance between the utilities' need to accomplish revenue collection and a delinquent customer's need for payment flexibility within pre-defined parameters, that will enable such a customer to restore and/or maintain his or her utility service.

(16966)

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON APRIL 9, 2002. WRITTEN ORDER ISSUED ON APRIL 16, 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

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<sup>36</sup> See Comments of NE Gas, p. 3; See Comments of Narragansett, p. 1; See Comments of Division, p. 2.