

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: INVESTIGATION OF NEW ENGLAND :  
GAS COMPANY'S SERVICE QUALITY AND : DOCKET NO. 3433  
PROCEDURES :

REPORT AND ORDER

In response to Commission Order No. 17001 (issued May 16, 2002) ("May 16<sup>th</sup> Order")<sup>1</sup> pursuant to an emergency open meeting of the Rhode Island Public Utilities Commission ("Commission") held that same day, the New England Gas Company ("NEGas") filed three motions on May 17, 2002: a motion for relief, a motion for stay, and a motion for clarification. In its motion for relief, NEGas argued that: there was not an emergency or irreparable injury as required by R.I.G.L. § 39-1-32; pursuant to its tariff provisions, NEGas is not required to perform work "after the meter"; NEGas cannot be mandated to provide service without just compensation; and the emergency open meeting did not meet the criteria set forth in R.I.G.L. § 42-46-6. In its motion for stay, NEGas argued that: R.I.G.L. § 28-27-29 exempts its workers from the licensing requirements of the Rhode Island Department of Labor and Training ("DLT"); the regulations of the United States Department of Transportation ("USDOT") preempt DLT; the Commission and the Division of Public Utilities and Carriers ("Division") have exclusive jurisdiction to regulate NEGas' pipeline operators; and NEGas will suffer

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<sup>1</sup> A copy of the Commission's May 16<sup>th</sup> Order is attached hereto as Appendix A.

irreparable harm because it does not have enough licensed personnel to perform the services ordered by the Commission. In its motion for clarification, NEGas requested the Commission to clarify its position as to its jurisdiction over NEGas “beyond the meter”.

On May 22, 2002, after due notice, the Commission conducted a public evidentiary hearing on issues and motions relating to its May 16th Order and other issues related to NEGas’ service quality affected by Superior Court Justice Fortunato’s temporary restraining order (“TRO”) issued May 15, 2002. The hearing was conducted at the Commission’s offices, 89 Jefferson Boulevard, Warwick, Rhode Island. The following appearances were entered:

FOR NEGAS:	Craig Eaton, Esq.
FOR DIVISION:	John Spirito, Esq.
FOR ATTORNEY GENERAL:	Paul Roberti, Esq. Assistant Attorney General
	Andrew McKay, Esq. Special Assistant Attorney General
FOR LOCAL 12431:	Dennis Roberts II. Esq.
FOR COMMISSION:	Steve Frias, Esq. Executive Counsel

At the hearing, public comment was received indicating that new customers were not able to obtain gas service from NEGas unless, at their own expense, customers (or their landlord) retained a licensed plumber to ignite their pilot lights. Also, public comment was similarly received indicating that, upon entering a suitable payment arrangement

with NEGas for restoration of service, existing customers were not able to get their gas service restored unless at their own expense they retained a licensed plumber to re-ignite their pilot lights. In sum, NEGas was refusing to light/relight these customers' pilot lights, requiring them instead to incur the additional expense of hiring a licensed third-party to perform this service. In response to pointed questioning by the Commission, however, NEGas conceded that, until the recent TRO was issued, the Company's long-standing practice was to light/relight pilot lights for its customers at no additional charge.

At the hearing, NEGas waived its right to a hearing under R.I.G.L. § 39-1-32 regarding the Commission's May 16<sup>th</sup> Order, and ultimately withdrew its motions for relief, stay and clarification of that Order. NEGas requested that the Commission amend the second ordering paragraph of the May 16<sup>th</sup> Order requiring NEGas to provide "properly licensed personnel" to state that NEGas will provide "personnel whose qualifications are consistent with applicable court rulings" to ignite or re-ignite pilot lights. In addition, in response to questioning by the Commission, NEGas committed that, if so ordered by the Commission, the Company would, at its own expense and without additional charge to customers, ignite the pilot lights of new customers initiating gas service and of customers having their service restored after making suitable payment arrangements with the Company. The Division indicated that it supported these modifications.

In a unanimous bench decision, the Commission amended the second ordering paragraph of Order No. 17001 to provide that NEGas will provide, free of additional charge to customers, “licensed personnel consistent with applicable court rulings” to ignite/re-ignite pilot lights. This amendment provides flexibility to NEGas in the event further court rulings are made that supersede the TRO issued by Justice Fortunato on May 15, 2002.

In light of evidence presented at the hearing, the Commission also expanded the ruling of its May 16th Order to require NEGas to light/re-light customer pilot lights, free of additional charge to customers, in connection with the initiation of gas service to new customers and the restoration of gas service to customers who have made suitable payment arrangements with NEGas. This is a logical and reasonable extension of the Commission’s May 16<sup>th</sup> Order, particularly in light of NEGas’ acknowledgement that the Company’s practice has always been to ignite/re-ignite pilot lights for customers at no additional charge. Even more importantly, NEGas’ refusal to ignite/re-ignite pilot lights of new customers and reinstated customers implicates the *very same public safety concerns* raised by the Commission majority in its May 16<sup>th</sup> Order.<sup>2</sup> In addition, the Commission finds that the additional cost incurred to retain a plumber to perform this service could impose a financial hardship on customers, most particularly on those customers

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<sup>2</sup> May 16<sup>th</sup> Order, p. 3.

who are entitled to restoration of gas service after making suitable payment arrangements with the Company.

In addition, an operating pilot light is essential to receiving gas service from NEGas. Unlike the initiation or restoration of electric service, for example, in which service is provided when electricity is delivered to the customer's meter, the services needed to initiate gas service cannot be performed without access to the customer's premises and without service "after the meter." Specifically, for gas service to commence, the pilot light(s) must be ignited inside the customer's premises. Therefore, the Commission finds that pilot light ignition is an integral part of providing gas service to customers and that the service of igniting a pilot is implicitly mandated in the Company's tariff provisions. Any cost to NEGas of providing this service to customers is already assumed in the Company's present distribution rates. Accordingly, NEGas must ignite the pilot lights of its customers because it is an inherent and integral part of providing gas service. As stated in our May 16<sup>th</sup> Order, NEGas can either use its own personnel to provide this service or, at no additional cost to customers, arrange for this service to be provided by third parties.

Finally, the Commission ordered the effective date of this Report and Order to be May 16, 2002. As a result, any NEGas customers that, at their own expense, retained a third party to ignite or re-ignite their pilot lights under the circumstances described in this Report and Order

and the May 16<sup>th</sup> Order, will be entitled to prompt reimbursement of their expenses from NEGas upon presentation of appropriate documentation of the expenses incurred. NEGas shall file monthly reports with the Commission and the Division detailing the number and dollar amount of the reimbursement claims filed and their respective dispositions, as well as the status of any unresolved claims, until all such claims have been resolved.

Accordingly, it is

(17041) ORDERED:

1. In addition to the pilot lighting requirements set forth in Commission Order No. 17001 (issued May 16, 2002), New England Gas Company will provide, free of additional charge to customers, licensed personnel consistent with applicable court rulings to ignite or re-ignite the pilot lights of customers who are seeking to initiate new service or to restore service after making suitable payment arrangements with the Company.
2. The second ordering paragraph of Order No. 17001 is hereby amended so that the phrase “properly licensed personnel” is replaced with the phrase “personnel whose qualifications are consistent with applicable court rulings.”
3. Except as modified hereby, the provisions of Commission Order No. 17001 (issued May 16, 2002) shall remain in full force and effect.

4. New England Gas Company will comply with all other findings and instructions contained in this Report and Order.

EFFECTIVE IN WARWICK, RHODE ISLAND AS OF MAY 16, 2002  
PURSUANT TO A BENCH DECISION ON MAY 22, 2002. WRITTEN  
ORDER ISSUED JUNE 21, 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

\* Chairman Germani issued a concurring opinion.

Concurring opinion of Chairman Germani:

While I concur with the result reached by my colleagues in this matter, since I dissented from Commission Order #17001 issued on May 16, 2002, I think I should explain why I now join in the result that has been reached.

I dissented because of the three concerns which were raised in my dissenting opinion from the May 26, 2002 order. All three of those concerns have now been completely addressed.

My first concern was that there was no “irreparable injury to the public interest” which would justify the Commission proceeding under RIGL 39-1-32. The Commission is no longer proceeding under RIGL 39-1-32.

My second concern was that the Division of Public Utilities and Carriers (Division) which has primary jurisdiction in this area, had not been given an opportunity to exercise its jurisdictional responsibilities. The Division has not exercised its jurisdictional responsibilities and, therefore, the Commission is appropriately acting in the absence of the Division taking any action in this matter.

My third concern was that New England Gas Company was being deprived of property without due process of law. That concern is no longer present because New England Gas has, in fact, now been granted the necessary due process.

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Elia Germani  
Chairman



## **Appendix A**

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

IN RE: INVESTIGATION OF NEW :  
ENGLAND GAS COMPANY'S SERVICE : DOCKET NO. 3433  
QUALITY AND PROCEDURES :

#### **REPORT AND ORDER**

On May 16, 2002, the Rhode Island Public Utilities Commission ("Commission") held an emergency open meeting in accordance with R.I.G.L. § 42-46-6(c). The Commission determined that an emergency existed because certain customers of New England Gas Company ("NEGas") were not being provided adequate gas service, which could adversely impact public safety and result in irreparable harm to customers. Specifically, following NEGas' repair of a damaged underground distribution system pipeline, NEGas was refusing to enter the residences and relight the pilot lights of certain customers whose pilots had gone out as a direct result of a service disruption "in the street" due to the damaged pipeline.

The Commission ordered pursuant to R.I.G.L. § 39-1-32 that an emergency situation affecting the public safety had arisen which, if not addressed, would cause irreparable injury to NEGas' customers. Until recently, NEGas had turned on the pilot lights of its customers, free of charge, following a service disruption "in the street". Now, however, NEGas is refusing to turn on (or relight) the pilot lights of its customers due to a temporary restraining order ("TRO") issued yesterday by R.I.

Superior Court Justice Fortunato, prohibiting NEGas from utilizing unlicensed personnel to perform pilot lighting, appliance repair and other service inside the homes of its customers. NEGas has apparently interpreted this TRO to prohibit it from sending *any* personnel, including its own licensed personnel or licensed third-party contractors, into the homes of its customers to perform service. Instead, NEGas has instructed customers that they must now locate and hire a licensed contractor to perform service at the customer's own expense.

The Commission ordered that NEGas must, at no additional charge to the customer and immediately following service restoration, provide properly licensed personnel to enter the residences and relight the pilots of customers whose gas was shut off due to service disruption caused by damage and/or repair to the NEGas distribution system by NEGas Company or a third party. NEGas can either utilize its own licensed personnel or, at no additional charge to customers, arrange for the services of licensed third parties to perform this service on the Company's behalf. Contrary to the Company's representations to customers, there is nothing in the TRO that prohibits NEGas from utilizing its own licensed personnel or from procuring, at no additional charge to customers, duly licensed third parties to perform this service on the Company's behalf. We note that the circumstances giving rise to the need for this service are typically beyond the customer's control and for which payment of significant fees to a licensed contractor would

cause irreparable financial hardship. Moreover, we have serious public safety concerns that, if NEGas does not continue to furnish this service free of charge to its customers, customers will attempt to relight their pilots by themselves in order to avoid having to pay contractors for this service. An operating pilot light is essential to receiving gas service from NEGas in order to perform such necessary day to day activities such as heating, cooking, bathing and washing, and needs to be restored by the Company as soon as possible after the cause of the service disruption in the distribution system is repaired.

The Commission will soon as practicable provide formal notice and an opportunity for hearing to NEGas and any other interested party regarding this matter. This order is of a temporary duration until a final order is rendered after a hearing is held.

Accordingly, it is

(17001)     ORDERED:

1. Emergency circumstances warranted the conduct of an emergency open meeting of the Commission in accordance with R.I.G.L. § 42-46-6(c) on May 16, 2002.
2. The New England Gas Company will provide, free of charge to customers, properly licensed personnel to turn on (or relight) the pilot lights of any customer whose pilot lights are not operating because service was disrupted due to damage and/or repair of the NEGas system by NEG Company or a third party. This service shall be

provided to affected customers immediately following the end of the service disruption.

EFFECTIVE IN WARWICK, RHODE ISLAND PURSUANT TO A MAY 16, 2002 OPEN MEETING DECISION. WRITTEN ORDER ISSUED MAY 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

\*Chairman Germani dissents and has issued a dissenting opinion.

Dissenting Opinion of Chairman Germani:

Commissioners Racine and Gaynor called an Emergency Open Meeting of the Commission today at 11:30 AM. The matter before the Commission is the fact that the Southern Union Company, d.b.a. New England Gas Company ("NEGas") has indicated publicly that because of a decision of the Superior Court which requires a licensed pipe fitter to disconnect or reconnect gas service to a customer, the Company will be unable to perform these tasks because of that decision. It is unclear what the order of the court is because it has not been reduced to writing. However, an affidavit was supplied by Donald Ledverdis of the Division of Public Utilities and Carriers indicating that the Division and the Commission has no jurisdiction over customer facilities that are beyond the meter and are located on the premise of the customer. What is not clear is whether or not that jurisdictional issue was addressed in the Superior Court order. So it is not clear if the Superior Court ruled this Commission has any jurisdiction in this matter.

Assuming that the Commission does have jurisdiction, the Commission voted to order the Company, under Section 39-1-32 of the General Laws of RI, to immediately, and until a formal hearing is convened by the Commission, to reconnect, free of charge, all customers whose services have been disconnected because the Company was required to disconnect service to those customers in order to perform

necessary maintenance or where such service to customer was disconnected because of some other party's negligence.

Assuming the Commission does have jurisdiction, the Commission has voted to order NEGas to restore service to customers who have been disconnected because NEGas was required to disconnect service to those customers where such service to such customers required disconnection. Section 39-1-32 states that a Commission may order a utility to take certain action where the failure by the utility to take such action "will result in irreparable injury to the public interest." Apparently, the irreparable injury which was found by the majority is that refusal by the Company to reconnect services to the customer will result in the customer having to hire an outside contractor to reconnect the service at a greater cost (presumably) than it would be charged by the Company for the work performed for that same service. To describe this set of circumstances as creating "irreparable injury to the public interest" has no basis in law.

I am also concerned that the Division of Public Utilities and Carriers (Division) which has primary jurisdiction in this matter, has not been given the opportunity to exercise its jurisdictional responsibilities. There has been no evidence adduced to indicate that the Division is unable or unwilling to deal with this matter. I am also concerned that NEGas has not been afforded the opportunity to respond to the Division. I am also concerned that requiring NEGas to restore gas service to such

customers free of charge is a deprivation of property without due process of law. I, therefore, conclude the following:

1. It is unclear if the Commission has jurisdiction in this matter since the primary jurisdiction is with the Division.
2. Even if it has jurisdiction in this matter, since the customers are not being prohibited from restoring service by the action of NEGas, the fact that these customers may have to pay an additional sum to restore such service clearly does not result in “creating irreparable injury to the public interest.”
3. I am concerned that requiring NEGas to restore service to such customers free of charge is a deprivation of property without due process of law.

For the above-stated reasons, I, therefore, dissent from this order.

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Elia Germani  
Chairman