

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
100 ORANGE STREET
PROVIDENCE, RHODE ISLAND 02903**

IN RE: Petition of Valley Gas Company, Bristol :
and Warren Gas Company and Southern : Docket No. D-00-02
Union Company for Approval of Mergers :

IN RE: Petition of Providence Energy Corporation, :
Providence Gas Company and Southern : Docket No. D-00-03
Union Company for Approval of Mergers :

ORDER

Whereas, On January 27, 2000, the Valley Gas Company (“Valley”) the Bristol and Warren Gas Company (“Bristol”) and the Southern Union Company (“Southern Union”) (collectively the Valley/Southern Union Companies or “Petitioners”), filed a petition with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking an approval of merger. The petition was filed pursuant to the requirements of Rhode Island General Laws, Sections 39-3-24, 39-3-25 and 39-3-26. The Division docketed the Valley/Southern Union Companies petition and designated the case D-00-02.

Whereas, Also on January 27, 2000, the Providence Energy Corporation (“ProvEnergy”) and Southern Union filed a notification with the Division detailing an *Agreement and Plan of Merger* that ProvEnergy and Southern Union had previously executed on November 15, 1999. The notification stated that ProvEnergy had merged with and into Southern Union. The Division subsequently invoked jurisdiction over this merger and consolidated the two

merger cases into one regulatory review proceeding.¹

Whereas, The Division later conducted hearings on the two aforementioned mergers on May 31 and June 1, 2000.

Whereas, The Division issued Order No. 16338 on July 24, 2000 wherein the Division found the proposed mergers to be in the public interest, as modified by a settlement agreement reached between the parties. Consequently, the Division approved the mergers predicated on the terms of the settlement agreement and “*conditioned upon the stockholder approvals mandated under Rhode Island General Laws, Section 39-3-24(3)*” (Order No. 16338, p. 62).

Whereas, The Division interpreted Section 39-3-24(3), supra, to require Southern Union’s, Valley’s, Bristol’s and ProvEnergy’s (particularly, the Providence Gas Company’s) shareholders to each approve the proposed mergers (Id., pp. 61-62).

Whereas, Subsequently, on July 31, 2000, the Petitioners filed a motion To Reconsider Order Dated July 24, 2000, wherein they request the Division to reconsider that portion of Order No. 16338 that requires the shareholders of Southern Union to approve the merger with Valley and Bristol. The Petitioners submit that the provisions of Section 39-3-24(3) are satisfied by requiring only the affirmative vote of the shareholders of Valley and Bristol. As the predicate for this conclusion, the Petitioners contend that

¹ The reason for the invocation of jurisdiction is discussed in Division Order No. 16338, p.2, which was previously issued in this docket.

Southern Union is not currently operating as a public utility in Rhode Island, and therefore, the provisions of Section 39-3-24(3) do not currently apply to Southern Union.

Whereas, The other parties to the docket have expressed support for the Petitioners' motion.

Whereas, The Division has considered the Petitioners' motion and finds their interpretation of Section 39-3-24(3), relative to the issue of shareholder approval of the merger, tenuous and questionable. However, under the prevailing circumstances, and particularly based on the issues of timing and expense, the Division will grant the Petitioners' request for reconsideration.

Regarding the Petitioners' interpretation of the relevant shareholder approval law, the Division finds the issue unclear and complicated by virtue of the Petitioners' decision to include Southern Union as a petitioner and party in this case. That decision represents the root cause of the controversy now in question.

When Bristol and Valley filed their petition on January 27, 2000 seeking an approval of their merger with Southern Union, Southern Union was identified as a petitioner. Under Section 39-3-24 only public utilities have standing to file petitions. Ergo, if Bristol and Valley believed Southern Union to be an indispensable party for purposes of filing the original Section 39-3-24 petition, they must have also believed Southern Union to properly be a public utility within the meaning of the Section.

Additional confusion resulted from the following language contained in Valley's and Bristol's original merger petition that:

...it is assumed for the purposes of this petition that at the time of the mergers of Valley and Bristol ultimately into Southern Union, Southern Union will be a public utility subject to the jurisdiction of the Division ... (Valley Exh. 1).

This language clearly evidences Bristol's and Valley's understanding of Southern Union's status as a public utility for purposes of the merger petition filing.

Evidence of Southern Union's arguable status as a required petitioner and a public utility is also somewhat inherent in the reason why Valley and Bristol filed their petition in the first place. Specifically, before the requirements of Section 39-3-24 attach, the merger transaction must be taking place between two public utilities. In short, one public utility must be merging into another public utility. In the case of Valley and Bristol, the actual description of the proposed merger involves Valley and Bristol separately merging with their parent company, Valley Resources, Inc., who in turn merges with Southern Union. Under this plan, the merger transaction, for purposes of Section 39-3-24 applicability, appears to be between Valley and Bristol and Southern Union, as Valley Resources, Inc. is clearly not a public utility.

The Division also finds it interesting that the Petitioners now claim that the merger is exclusively between Valley and Bristol alone and not Southern Union, for purposes of the Section 39-3-24 requirement of shareholder

approval. Again, this is curious in view of the original petition's inclusion of Southern Union as a petitioner and self-described public utility.

Of further curiosity is Southern Union's claim in the instant motion that by filing the original petition it "submitted to the jurisdiction of the Division for purposes of reviewing and approving the mergers of Valley and Bristol (as well as the merger of Southern Union with Providence Energy Corporation ... and its Rhode Island operating gas utility, Providence Gas Company". If Southern Union didn't believe it was a public utility, then there was no legal requirement that it join with the Petitioners. Additionally, if Southern Union wanted the Division to review its merger with ProvEnergy and the Providence Gas Company ("ProvGas"), it could have filed a separate petition relative to its indirect acquisition of ProvGas rather than filing a "notification" of the ProvEnergy/ProvGas acquisition. In short, the Division finds it difficult to understand why Southern Union opted to be a petitioner in the Valley and Bristol merger, in part as it states, to afford the Division an opportunity to review Southern Union's merger with ProvEnergy and ProvGas.

In conclusion, despite the Division's decision to grant the instant motion, the Division must express dismay with the Valley/Southern Union Companies over the incongruent involvement of Southern Union in this proceeding. Moreover, the Division must query why the Petitioners did not raise the matter of Southern Union's shareholders during the hearings conducted on May 31 and June 1, 2000 or through the pleadings filed in this docket. Southern Union's status as a petitioner in this docket clearly creates a nexus to the issue

of shareholder approvals under Section 39-3-24. Hopefully, this rough beginning with Southern Union will pass as an aberration and not as a presage of future regulatory interactions.

Now, Accordingly, It Is

(16347) ORDERED:

1. That the Petitioners' July 31, 2000 motion To Reconsider Order Dated July 24, 2000, is hereby granted.
2. That Order No. 16338 is hereby modified to remove the requirement that Southern Union's shareholders approve the merger between the Valley/Southern Union Companies.

Dated and Effective on August 10, 2000 at Providence, Rhode Island.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator