

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