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June 1, 2007

VIA HAND DELIVERY

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RECEIVED
2007 JUN -1 PM 3:14
RHODE ISLAND PUBLIC UTILITIES COMMISSION

Re: The Narragansett Electric Company v. The Town of Johnson, et al

Dear Luly:

Enclosed please find an original and ten copies of National Grid's Petition for Review under § 39-1-30 of the provisions of a Johnston ordinance relating to fees for street openings. I am also forwarding this to you electronically.

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely,



Peter V. Lacouture

PVL/lgo
Enclosures

cc: Steven Frias, Esq.
Paul J. Roberti, Esq.
Chris Colardo, Esq.
John Spirito, Jr., Esq.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

THE NARRAGANSETT ELECTRIC CO. :
d/b/a/ NATIONAL GRID, :
Plaintiff, :
 :
v. : Docket No. _____
 :
THE TOWN OF JOHNSTON, :
ERNEST F. PITOCELLI, :
JOSEPH A. WELLS, ROBERT V. RUSSO, :
GABRIEL DEFEO, & STEPHANIE P. :
MANZI, in their official capacity as :
members of the Town Council, :
Defendants. :

PETITION FOR REVIEW UNDER § 39-1-30

1. The Narragansett Electric Co. d/b/a National Grid (“Narragansett”) brings this Petition under R.I. Gen. Laws § 39-1-30 and Rule 1.10 of the Public Utilities Commission’s (“PUC”) Rules of Practice and Procedure seeking review and nullification, or, in the alternative, modification, of an ordinance adopted by the Johnston Town Council.

JURISDICTION AND FACTS

2. Narragansett is a Rhode Island chartered public utility under the supervision of the PUC.
3. Narragansett serves approximately 245,000 natural gas customers in 33 towns and cities and approximately 475,000 electric customers in 38 towns and cities in Rhode Island.
4. As a Rhode Island chartered public utility, Narragansett has the right and franchise to install its gas and electric lines within public ways of the State.
5. Upon information and belief, the Town of Johnston (“Johnston”) acting through the defendants Ernest Pitochelli, Joseph Wells, Robert Russo, Gabriel Defeo, and Stephanie Manzi, in their official capacity as members of Johnston Town Council, adopted “An Ordinance

to Update Building Department Fees in the Town of Johnston” (“the Ordinance”). The relevant portion of the fee schedule is attached hereto.

6. Upon information and belief, the Ordinance and/or Johnston’s implementation of the Ordinance requires “private contractors” to pay a fee of two hundred dollars (\$200.00) plus one dollar and fifty cents (\$1.50) per linear foot for each “Road Opening,” i.e., the excavation of a public road for, inter alia, the purposes of locating, replacing, repairing, or installing underground utility lines or other facilities.

7. Upon information and belief, the Ordinance and/or Johnston’s implementation of the Ordinance requires such payment as a condition precedent to issuance by Johnston of a permit needed to begin construction.

8. On or about May 22, 2007, Narragansett received a facsimile from Johnston’s Building Department containing an invoice for one thousand eight hundred and ninety dollars (\$1890.00) for “Road Opening” fees allegedly owed by Narragansett to Johnston for six (6) permits.

9. Upon information and belief, Johnston has refused to issue a permit to enable Narragansett to install service to a residence located at 78 Enfield Street in Johnston until Narragansett pays a road opening fee.

10. The owner of the residence located at 78 Enfield Street has been unable to occupy the premises because Narragansett has been unable to procure the permit needed to begin the gas line installation, which, in turn, is due to Johnston’s requirement that all related fees be pre-paid.

11. Narragansett’s local personnel do not have the capability to issue checks immediately, but must instead prepare check requests, which take several weeks to process, thus preventing immediate check payments such as those required by Johnston here.

LEGAL CLAIMS

12. The Ordinance, by its plain language, applies only to “private contractors,” therefore does not apply to Narragansett, a public utility.

13. Even if the Ordinance purports to apply to Narragansett, such application would be a violation of R.I. Gen. Laws § 45-6-1, which grants to cities and towns the power to adopt ordinances, inter alia, “to regulate the putting up and maintenance of telegraph and other wires and the appurtenances thereof,” but does not authorize Johnston to charge fees for the locating, replacing, repairing, or installing underground gas or other utility lines.

14. The Ordinance interferes with the use of the public right-of-way which Narragansett has the right to use in common with the public for its facilities. See R.I. Gen. Laws § 24-1-1.

15. R.I. Gen. Laws § 39-1-1(c) vests in the PUC “the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy”

16. The Ordinance constitutes an unlawful exercise of home rule power by Johnston and is preempted by state law. Town of East Greenwich v. O’Neil, 617 A.2d 104 (R.I. 1992).

17. Both the basic \$200.00 fee and the additional \$1.50 per linear foot fee charged by Johnston ostensibly pursuant to the Ordinance have no reasonable or demonstrable relationship to the costs incurred by Johnston in processing a permit application and/or in performing other administrative functions.

18. Further, Johnston’s requirement that Narragansett pay such fees as a condition precedent to receiving the necessary permit to begin work is arbitrary, capricious, and serves no reasonable purpose.

19. The Ordinance, therefore, constitutes an illegal enactment and purports to impose illegal charges on Narragansett, its facilities, and its ratepayers.

WHEREFORE, Narragansett respectfully requests that the PUC, pursuant to R.I. Gen. Laws § 39-1-30,

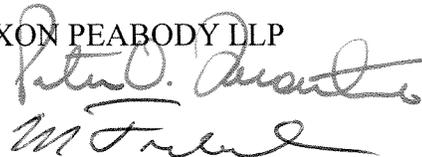
- (a) determine that the Ordinance, by its terms, does not apply to Narragansett, a public utility;
- (b) review and nullify, or in the alternative, modify, the Ordinance;
- (c) issue an Emergency Order prohibiting Johnston from requiring pre-payment of fees under the Ordinance as a condition precedent to issuance of the necessary permit to begin work; and
- (d) issue such other and further relief as is within its power and is just and proper.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC CO.
d/b/a NATIONAL GRID

By its attorneys,

NIXON PEABODY LLP



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Dated: June 1, 2007

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been mailed first-class mail to Chris Colardo, Esq., Johnston Town Solicitor, 1481 Atwood Avenue, Johnston, RI 02919; Paul J. Roberti, Esq., Assistant Attorney General, 150 South Main Street, Providence, RI 02903; and Steven Frias, Esq., Executive Counsel, Public Utilities Commission, 89 Jefferson Boulevard, Warwick, RI 02888 and John Spirito, Jr., Esq., Chief of Legal Services, Rhode Island Division of Public Utilities, 89 Jefferson Boulevard, Warwick, RI 02888 this 15th day of June, 2007.



"An Ordinance to Update Building Department Fees in the Town of Johnston", cont.

Section 2. Building Department Fee Schedule, cont.

Miscellaneous Building Department Fees

<u>CATEGORY</u>	<u>FEE</u>
Billboards / Marquees	\$ 350.00
Signs	\$ 60.00 per face
Pylon Signs	Building Schedule Plus \$ 60.00 per face
Portable / Temporary Sign	\$ 75.00
Above Ground Pools	\$ 35.00
Wood Stoves	\$ 65.00
Tents Larger than 2,400 sq. ft.	\$ 75.00
Temporary Electrical Service	\$ 50.00
Electrical (Pools only)	\$ 30.00
Road Opening (private contractors)	\$ 200.00 Plus \$ 1.50 per linear foot
<u>Demolition Permit - Residential</u>	
Up to \$ 50,000 of value	\$ 50.00
\$ 50,001 to \$ 150,000 of value	\$ 150.00
\$ 150,001 of value and over	\$ 250.00
<u>Demolition Permit - Commercial</u>	\$ 500.00
<u>Owner's Request for Inspection</u>	\$ 45.00
<u>Business License Inspection</u>	\$ 45.00
<u>Renewal of Expired Permit</u> (Within 30 days of expiration)	\$ 75.00
<u>Re-Inspection Fee (for prior failed inspection or inaccessibility of structure for inspection)</u>	\$ 45.00

Continued.