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R.I. PUBLIC UTILITIES COMMISSION

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August 10, 2007

VIA HAND DELIVERY

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

Re: The Narragansett Electric Company v. Town of Portsmouth

Dear Luly:

Enclosed please find an original and ten copies of the above-referenced appeal. I am also sending this document to you electronically.

Please acknowledge receipt on the enclosed copy of this letter and return with my messenger. Thank you.

Sincerely,



Peter V. Lacouture

PVL/lgo
Enclosures

cc: Steven Frias, Esq.
Paul J. Roberti, Esq.
Kevin P. Gavin, Esq.
John Spirito, Jr., Esq.
Laura S. Olton, Esq.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a/ NATIONAL GRID, :
Plaintiff, :

v. :

Docket No. _____

THE TOWN OF PORTSMOUTH; :
ROBERT G. DRISCOLL, in his official :
capacity as Town Administrator; :
DAVID KEHEW, in his capacity as :
Director of Public Works; and :
DENNIS M. CANARIO, JAMES A. :
SEVENEY, KAREN GLEASON, :
LEONARD B. KATZMAN, HUBERT :
LITTLE, PETER J. MCINTYRE, and :
WILLIAM E. WEST, 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 of recent action by the Town of Portsmouth (“Portsmouth”) “affecting the placing, erection, and maintenance” of underground gas and electric lines of Narragansett, “a company under the supervision of the commission.”

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, in February, 1996, Portsmouth, acting through Defendants CANARIO, SEVENEY, GLEASON, KATZMAN, LITTLE, MCINTYRE, and WEST or their predecessors, in their official capacity as members of the Portsmouth Town Council, enacted an ordinance entitled “An Ordinance of the Town of Portsmouth, Rhode Island, Regulating Street Excavations and Curb Cuts” (“the Ordinance”).

6. Upon information and belief, the Ordinance requires that Narragansett pay a fee of “sixty (\$60.00) dollars for the first fifteen (15) linear feet or part thereof of any excavation, and eight (\$8.00) dollars for each additional five linear feet or part thereof,” in connection with 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, Portsmouth has not, prior to 2007, enforced the Ordinance against Narragansett.

8. Upon information and belief, in 2007, Portsmouth, acting through Defendant DRISCOLL, in his official capacity as Town Administrator and Defendant KEHEW, in his official capacity of Director of Public Works, sought to commence enforcement of the Ordinance against Narragansett by requiring payment of a fee for street excavation for the installation of utility facilities.

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

10. Narragansett received an invoice from Portsmouth in the amount of four thousand eight hundred and thirty-six dollars (\$4,836.00) in connection with Narragansett's permit application to install three thousand (3,000) feet of gas main piping on Wapping Road in Portsmouth.

11. In response, Narragansett's Director of Gas Operations, Fred Amaral, wrote a letter to David Kehew, Portsmouth's Director of Public Works, inquiring as to the basis for the excessive fee and asking that Portsmouth issue the permits upon a payment of an administrative fee consistent with Narragansett's fee agreements with other towns and cities in Rhode Island.

12. On or about August 6, 2007, Mr. Amaral received a letter dated August 1, 2007, from Portsmouth's Town Administrator, Robert G. Driscoll, which stated that Narragansett "will be required to pay . . . \$4,836.00 prior to the issuance of any permits Please be assured that \$4,836.00 is a reasonable cost." A copy of Mr. Driscoll's letter is attached hereto.

13. Upon information and belief, Portsmouth refuses to issue the permit for work on Wapping Road, or any other permits, absent payment pursuant to the Ordinance's excessive fee structure.

LEGAL CLAIMS

14. Portsmouth's enforcement of the Ordinance against Narragansett violates R.I. Gen. Laws § 45-6-1, which grants to cities and town 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 Portsmouth to charge fees for the locating, replacing, repairing, or installing underground gas or other utility lines.

15. 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.

16. 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”

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

18. Portsmouth’s fee structure of “sixty (\$60.00) dollars for the first fifteen (15) linear feet or part thereof of any excavation, and eight (\$8.00) dollars for each additional five linear feet or part thereof” has no reasonable or demonstrable relationship to the costs incurred by Portsmouth in processing a permit application for street excavations by a public utility.

19. Further, Portsmouth’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.

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

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

- (a) review and nullify, or in the alternative, modify, the Ordinance;
- (b) issue an Emergency Order prohibiting Portsmouth from requiring pre-payment of fees under the Ordinance as a condition precedent to issuance of the necessary permit to begin work; and

- (c) 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,

Of Counsel:

Laura Olton
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The Narragansett Electric Co.
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Providence, RI 02903
(401) 454-1000
(401) 454-1030 (fax)

Dated: August 10, 2007

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been mailed first-class mail to Kevin Gavin, Portsmouth Town Solicitor, 31 Harrington, Portsmouth, RI 02871; 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 10th day of August, 2007.





TOWN OF PORTSMOUTH

2200 East Main Road • Portsmouth, Rhode Island 02871 • www.portsmouthri.com

Robert G. Driscoll
Town Administrator

(401) 683-3255
Fax (401) 683-6804
rdriscoll@portsmouthri.com

1 August 2007

Mr. Fred Amaral
Manager of Gas Operations
National Grid
477 Dexter Street
Providence, RI 02907

Dear Mr. Amaral:

Though I telephoned you today I thought it best to follow up with this letter.

National Grid will be required to pay the Town of Portsmouth's invoice dated 18 June 2007 in the amount of \$4,836.00 prior to the issuance of any permits to National Grid. Your letter references a willingness to pay "reasonable administrative costs" associated with the issuance of the permit. Please be assured that \$4,836.00 is a reasonable cost.

Yours truly,

Robert G. Driscoll
Town Administrator

RGD/bar

cc: David Faucher, Portsmouth Finance Director
David Kehew, Portsmouth Director of Public Works
Kevin Gavin, Portsmouth Town Solicitor