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August 27, 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 Tiverton

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.

Very truly yours,



Steven M. Richard

SMR:crp
Enclosures

cc: Steven Frias, Esq.
Paul J. Roberti, Esq.
Andrew Teitz, Esq.
John Spirito, Jr., Esq.
Laura S. Olton, Esq.

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PUBLIC UTILITIES COMMISSION

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

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

v.

THE TOWN OF TIVERTON; W. GLENN
STECKMAN, in his official capacity as
Town Administrator; DAVID A.
WEBSTER, P.E., in his official capacity as
Director of Public Works; and LOUISE
DURFEE, DAVID BOLLIN, JOANNE
ARRUDA, JAY EDWARDS, HANNIBAL
COSTA, PAUL CARROLL and BRIAN
MEDEIROS, in their official capacity as
members of the Town Council,
Defendants.

Docket No. _____

August 27, 2007

PETITION FOR REVIEW UNDER R.I.G.L. § 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 Tiverton (“Tiverton”) “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, Tiverton, acting through its Town Council, enacted an ordinance titled “Chapter 70 – Streets, Sidewalks and Other Public Places” (the “Ordinance”).

6. Section 70-3(e) of the Ordinance requires that a contractor must provide a curb-to-curb pavement overlay after patching whenever a road has been excavated for utility main extensions or replacements. Tiverton’s Director of Public Works shall prescribe the thickness and method of applying the curb-to-curb pavement overlay, and he or she may waive the overlay requirement “for good cause.”

7. Upon information and belief, the Ordinance was amended most recently by the Tiverton Town Council on or about July 24, 2006.

8. Upon information and belief, Tiverton has not, prior to 2007, enforced the Ordinance against Narragansett.

9. In a letter dated August 17, 2007, Tiverton, acting through Defendant WEBSTER, in his official capacity of Director of Public Works, stated its intention to enforce the Ordinance against Narragansett by requiring curb-to-curb pavement overlays, rather than asphalt patching, at locations where Narragansett has conducted and/or will conduct gas main repair or replacement work. *See* Letter dated August 17, 2007 from Defendant WEBSTER to Alfred Amaral, Narragansett’s Manager of Gas Operations, copy attached hereto as Exhibit A (which includes the Ordinance). This letter from Defendant WEBSTER triggered the ten-day period under R.I.G.L. § 39-1-30.

10. As a condition of its issuance of permits to Narragansett, Tiverton has imposed and/or will impose the curb-to-curb pavement overlay requirement upon the public utility.

11. The curb-to-curb pavement overlay requirement is structurally unnecessary. Further, this requirement imposes unwarranted and significant economic costs upon Narragansett and all of its customers.

LEGAL CLAIMS

12. Tiverton's enforcement of the Ordinance against Narragansett violates R.I. Gen. Laws § 45-6-1(a), 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," but does not authorize Tiverton to impose fees for the locating, replacing, repairing, or installing underground gas or other utility lines.

13. 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.

14. 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"

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

16. Further, Tiverton's requirement that Narragansett must provide curb-to-curb pavement overlays, rather than asphalt patching, is arbitrary, capricious, and serves no reasonable purpose.

17. The Ordinance, therefore, constitutes an illegal enactment and purports to impose illegal burdens, costs and requirements upon 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 Tiverton from imposing a requirement that Narragansett must provide curb-to-curb pavement overlay 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 (#7068)
General Counsel
The Narragansett Electric Co.
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(401) 784-4321 (fax)

NIXON PEABODY LLP
Peter V. Lacouture (P. SMRE)
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Peter V. Lacouture (#1188)
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Providence, RI 02903
(401) 454-1000
(401) 454-1030 (fax)

Dated: August 27, 2007

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via courier to Andrew Teitz, Esq., Tiverton Town Solicitor, Ursillo Teitz & Ritch, Two Williams Street, Providence, RI 02903, Paul J. Roberti, Esq., Assistant Attorney General, 150 South Main Street, Providence, RI 02903, 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 on this 27th day of August, 2007.

Andrew M. (Paul)



**TOWN OF TIVERTON
DEPARTMENT OF PUBLIC WORKS
50 INDUSTRIAL WAY
TIVERTON, RI 02878**

PHONE: 401-625-6760

FAX: 401-625-6783

EMAIL: publicworksdirector@townoftivertonri.com

DAVID A. WEBSTER, PE. DIRECTOR

This institution is an equal opportunity provider, and employer.

August 17, 2007

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

Dear Mr. Amaral:

This letter is in response to your July 30, 2007 letter to me questioning the requirement for curb to curb pavement overlay on Town of Tiverton streets where gas mains are extensively repaired or replaced.

Please see the attached copy of Sec. 70-3. Excavations of the Town of Tiverton Code of Ordinance as voted by the Tiverton Town Council on July 24, 2006. Specifically, see section e. that describes the requirement for curb to curb overlay. This requirement was included in the Ordinance prior to the revisions of July 24, 2006. This portion of the Ordinance is also included on the reverse side of the Street Opening Application and Permit that is submitted to this office for approval for each street excavation.

Presently the requirement for curb to curb overlay has been required on the following streets where extensive gas main repair or replacement has been permitted:

Hillside Avenue 12-8-05

Narragansett Avenue 12-21-05

Prospect Hill Street 6-27-07

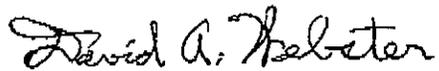
The requirement for curb to curb overlay on Narragansett is being waived since it is not included in the Hillside area as originally thought. Thus, out of the twenty eight permits issued to National Grid or its predecessor companies during the past two years, only two permits have included the requirement for curb to curb overlay.

It is requested that you or John Walmsley respond with your schedule for completing the required overlay work.

It has been brought to my attention that your bond has expired as of July 3, 2007.
Please forward a new bond to this office.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in cursive script that reads "David A. Webster".

David A. Webster, PE
Director of Public Works

Cc: W. Glenn Steckman, Town Administrator

ORDINANCE NO.2006-

AN ORDINANCE IN AMENDMENT TO
CHAPTER 70 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
OF THE ORDINANCES OF THE TOWN OF TIVERTON

EXCAVATIONS

WHEREAS, The Town of Tiverton desires to clarify the procedures for excavating and repairing public streets and sidewalks, and provide for sufficient bonding to cover cost of repair.;

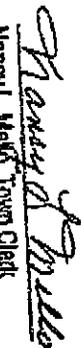
IT IS HEREBY ORDAINED by the Town Council of Tiverton, Rhode Island, that Section 70-3 of the Ordinances of the Town of Tiverton be amended as follows:

Sec. 70-3. Excavations.

(a) Permits. Only excavating contractors or public utility companies (hereinafter "street excavators"), licensed by the town as set forth in subsection (b) below, shall be allowed to dig into or otherwise break the surface of any public street or way in the town. Prior to proceeding with any such digging or excavating in any public street or way in the town, the street excavator shall first obtain from the Director of Public Works a permit which shall be issued only after:

- (1) A plan is filed with the department of public works setting forth the location and extent of the proposed work;
- (2) The applicant has paid the Director of Public Works a fee of \$50.00 to cover the expenses of the issuance of the permit and the requisite inspections;
- (3) The applicant has filed with the town clerk a bond satisfactory to the director of public works in an amount as follows:
 - a. For utility services not exceeding four permits in a calendar year a bond of \$10,000 shall be sufficient. For each additional utility service permit, the bond shall be increased by \$2,500.00.
 - b. For utility main replacements, utility main extensions, or similar large projects, a bond or certified check equal to the estimated cost of the street repair as determined by the director of public works, but in no event less than \$10,000.00 shall be filed with the town clerk by the applicant.
- (4) The street excavator shall verbally notify the director of public works of any significant deviation from the approved plans prior to performing additional work. The director of public works shall determine if additional bonding is necessary and shall advise the street excavator. The permit and accompanying plans may be modified in writing to allow additional work. Any work performed that significantly deviates from the approved plans, and that has not been approved in writing by the director of public works, shall be grounds for cancellation of the permit. The director of public works or his designee may issue an immediate cease and desist order. The director, upon issuance of such order, shall schedule a hearing, if one is sought in writing by the permit holder, within 48 hours.

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Nancy L. Melillo, Town Clerk

- (5) Permit applications shall be submitted to the director of public works as far in advance as possible, but not less than forty-eight (48) hours in advance of intended project commencement. The applicant shall provide a schedule for the work with the permit application and shall verbally notify the director of public works of any schedule changes. In the event of an emergency, work may commence and/or proceed without a permit, provided that immediate verbal notice is given both to the Officer on Duty of the Tiverton Police Department, and to the director of public works, or if he or she is unavailable, the verbal notice shall be given to the director of public works on the next regularly scheduled business day. A permit application for emergency work shall be submitted to the director of public works within two business days following the emergency work being commenced.

(b) Street Excavators. All persons or corporations, including public utility companies, desiring to be licensed in the town as street excavator shall file an application with the town clerk accompanied by a license fee of \$75.00.

- (1) Submissions required precedent to issuance: As a condition precedent to the issuance of a street excavator's license, the following items must be on file with the town clerk:
- a. A bond issued by a responsible company as set forth in subsection (a) above.
 - b. A certificate of insurance naming the town as an additional named insured with limits of not less than:
 - (a) General liability: \$1,000,000.00/\$2,000,000.00.
 - (b) Workers compensation as required by state law.
 - (c) Vehicle liability: \$1,000,000.00/\$2,000,000.00.
 - (d) The certificate of insurance shall provide 30 days written notice to the town (director of public works) prior to cancellation.
- (2) Term: All licenses shall be for a calendar year or such lesser period as determined by the date of issuance.
- (3) Renewal: All licenses must be renewed annually and will be granted only to those applicants who are in good standing as determined by the town through its director of public works. Prior to renewal, each licensee must pay a \$75.00 fee and show proof that the security bond remains in effect. The licensee must also provide a new certificate of insurance indicating coverage for the succeeding calendar year.
- (4) Approval: All applications will be submitted to the town council for approval with a recommendation on the application provided by the director of public works. A public hearing shall not be required.
- (5) Fine or revocation: Any infraction of this section will be grounds for action by the public works director and/or the town administrator. Such action may be any or all of the following:
- a. Revocation of license;
 - b. Fine of up to \$500.00 for each and every infraction, with each day that the infraction continues constituting a separate offense; or

Nancy L. Mend
Nancy L. Mend, Town Clerk

A True Copy
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- c. Compensation equivalent to cost to rectify error or breach of rule or regulation;
- d. Suspension of any other outstanding permits, and/or disapproval of issuance of any future permits until the infraction is rectified.
- e. Any party aggrieved of action of the director or administrator may appeal to the town council. The action of the town council shall be final.

(c) Finished or hard-surfaced streets. When digging is done in a so-called finished or hard-surfaced street or way, the contractor must comply with the following:

- (1) All excavations in paved street surfaces shall be cut in a neat, straight line. No trench will remain open overnight and the contractor shall schedule his operations accordingly.
- (2) Backfill material shall be suitable sand or gravel, shall be placed in lifts of eight inches and thoroughly compacted by an approved mechanical compactor. Excavated material may be used if approved by the director of public works or a professional engineer. Within 12 inches of the subgrade of the pavement, the backfill material shall be good, clean bank run or processed gravel, compacted in lifts of six inches.
- (3) Temporary pavement or cold mix shall be used and shall be rolled or tamped in place so that the top of the refilled excavation is even with the surrounding road level. No refilled excavation is to be left overnight without some form of approved temporary patch.
- (4) Within a period of not less than two, nor more than three months after excavation is filled, as specified herein, the contractor must remove the temporary patch and replace it with hot bituminous plant mix.
- (5) The patch material shall be equivalent in thickness to the existing abutting pavement, but not less than three inches thick, applied in layers and extended one foot beyond the preceding layer. The surface layer shall be one and one-half inches of bituminous concrete, compacted separately. Under no circumstances will the trench be left overnight without a bituminous material cover.
- (6) Where indicated on the drawings or where directed by the director of public works, the roadway surface shall be repaired by the infrared method. Specifications will be supplied by the department of public works.

(d) Unpaved or unfinished streets, ways or shoulders: When digging in unpaved streets or ways or along unpaved or unfinished shoulders of hard-paved streets or ways:

- (1) All fills is to be tamped down in layers as it is installed so that the finished work will be brought back to the original height of the road or shoulder.
- (2) The top twelve inches of backfill shall be a good clean bank run or processed gravel compacted in lifts.

(e) Large projects and curb-to-curb excavations. When a road will be excavated for utility main

Nancy L. Meilo, Town Clerk

Nancy L. Meilo

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replacements, utility main extensions, or similar large projects, the contractor shall provide a curb-to-curb overlay after patching. The director of public works shall prescribe the thickness and method of applying the overlay. The director of public works shall also have the discretion to waive curb-to-curb overlay for good cause.

(f) Traffic control. All work done on town streets is to be planned and scheduled so that a minimum of one lane of the flow of traffic is not interrupted along the street. Excavated material, if interfering with traffic, is to be immediately picked up and removed from the site. When directed by the director of public works or the chief of police, the contractor is to request and pay for the services of a policeman.

Adopted by vote of the Tiverton Town Council on Monday, July 24, 2006.

A True Copy
Attest:


Nancy L. Mead, Town Clerk