

**NIXON PEABODY**<sup>LLP</sup>  
ATTORNEYS AT LAW

One Citizens Plaza  
Suite 500  
Providence, RI 02903  
(401) 454-1000

Steven M. Richard  
Direct Dial: (401) 454-1020  
Direct Fax: (866) 947-1332  
E-Mail: srichard@nixonpeabody.com

August 30, 2007

**VIA HAND DELIVERY**

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

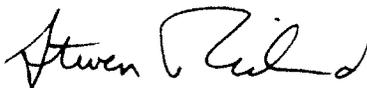
Re: Petition of THE NARRAGANSETT ELECTRIC COMPANY d/b/a  
NATIONAL GRID for Review of an Ordinance Enacted by the City of  
Warwick (Filed Pursuant to R.I.G.L. § 39-1-30)

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.  
John Spirito, Jr., Esq.  
Peter D. Ruggiero, Esq.  
John G. Earle, Esq.  
Laura S. Olton, Esq. ✓

2007 AUG 30 PM 3:08

DELIVERED

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

Petition of THE NARRAGANSETT :  
ELECTRIC COMPANY d/b/a :  
NATIONAL GRID for Review :  
of an Ordinance Enacted by the :  
City of Warwick :  
(Sec.70-78 – Removal of utility poles:  
no longer in service) :

Docket No. \_\_\_\_\_

**PETITION FOR REVIEW UNDER R.I.G.L. § 39-1-30**

**INTRODUCTION**

The Narragansett Electric Company d/b/a National Grid (“Narragansett”) files this Petition pursuant to R.I.G.L. § 39-1-30 and Rules 1.10 and 1.31 of the Rules of Practice and Procedure of the Public Utilities Commission (“Commission”) to nullify the City of Warwick’s recent amendment to Section 70-78 of its Ordinances (“Amended Ordinance”), which imposes a daily fine of Five Hundred Dollars (\$500.00) for a utility’s failure to remove wires or appurtenances attached to any utility pole no longer being utilized within ten days of termination of service of the pole or replacement of the pole with a new pole. The Amended Ordinance was approved by Warwick’s Mayor on August 20, 2007.

As stated herein, the Amended Ordinance is preempted under state law and by the Commission’s exclusive statutory power to regulate the conduct of utility companies. Moreover, the ten-day time limit in the Amended Ordinance falls far short of a minimum amount of time that Narragansett reasonably requires in order to ensure the prudent and safe removal or transfer of wires and appurtenances. Further, the strict time limit does not reasonably promote any

2007 AUG 30 PM 3:17

PROVIDENCE

legitimate need of Warwick to maintain its highways. The Amended Ordinance is unduly and unnecessarily burdensome in its impact upon Narragansett and its customers.

### JURISDICTION AND FACTS

1. Narragansett is a Rhode Island chartered public utility under the supervision of the Commission.
2. Narragansett serves approximately 475,000 electric customers in 38 towns and cities and approximately 245,000 natural gas customers in 33 towns and cities in Rhode Island.
3. As a Rhode Island chartered public utility, Narragansett has the right and franchise to install its electric lines, including poles and wires, within public ways in the State.
4. The Commission has jurisdiction over this matter pursuant to R.I.G.L. § 39-1-30.
5. The Amended Ordinance allows Narragansett just ten days to remove wires and appurtenances attached to any utility pole no longer being utilized and imposes a daily fine of \$500 for non-compliance. Specifically, the Amended Ordinance provides as follows:

Any utility pole erected pursuant to this article or by any state agency regulation, upon, adjacent to or in any city owned or maintained highway, including the roadway, sidewalk, curbing, median or buffer thereof, which is no longer in use for its intended purposes, or which had been replaced by a new pole, shall be removed by the utility company which has ownership or control of the pole which is no longer in service, or, in the case of a replacement pole, by the utility company which has caused its replacement within ten (10) days of its termination of service, or of its replacement, as the case may be. Any utility or entity other than the utility or entity having ownership of the pole, which has wires or other appurtenances attached to the pole no longer being utilized shall remove said wires and/or appurtenances within the same ten (10) day period.

Any violation of this section shall be punishable by a fine of \$500.00. Each day in which the violation occurs shall constitute a separate offense.

See Code of Ordinances of Warwick of Warwick, § 70-78 (emphasis added to the recently amended language) (copy attached hereto as Exhibit A). The Amended Ordinance states that it “shall take effect upon passage and publication.”

## LEGAL CLAIMS

6. Warwick's enactment of the Amended Ordinance constitutes an unlawful exercise of power contrary to R.I.G.L. § 39-1-1(c), which vests in the Commission "the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy . . . services...."

7. Warwick's enforcement of the Amended Ordinance against Narragansett violates R.I.G.L. § 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 Warwick to impose fees or fines regarding the timing of withdrawal or removal of utility lines. The Amended Ordinance, which addresses the timing of the removal of utility wires and appurtenances, is unreasonable and falls outside the scope of any local authority that Warwick may have to regulate the manner in which its roadways are maintained, repaired or reconstructed.

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

9. The Amended Ordinance's ten-day requirement is arbitrary, capricious and unreasonable in light of the amount of work that must be coordinated, performed and completed, most often by multiple pole owners, attachers and licensees, after a new pole is installed and before the old one can be replaced. Once a new pole is in the ground, the many attachments on the old pole must be transferred to the new one. As a practical matter, this process must be coordinated and completed among several companies. Due to the amount of labor involved, the availability and scheduling of crews for each of the users of the pole and the need to coordinate

the efforts of multiple pole users, ten days is simply not a reasonable amount of time for the proper and safe completion of this work.

10. Narragansett is committed to the prompt, efficient and safe removal or transfer of its wires and appurtenances attached to utility poles that are no longer being utilized. However, a blanket and inflexible ten-day requirement would compel Narragansett to reallocate substantial sectors of its workforce and redeploy equipment away from critical work that is necessary for the public health and safety, such as emergency services and other repairs and installations. Moreover, the anticipated additional costs imposed by Amended Ordinance, which may be passed along to Narragansett's customers, may be significant and would far outweigh any benefit to Warwick from such immediate removal of wires and appurtenances.

11. The temporary presence of wires and appurtenances on poles that are no longer in service beyond ten days poses no risks to the public health, safety and welfare and has no significant adverse effect on the use of Warwick's streets by the public or on the maintenance, repair or reconstruction of the roadways.

WHEREFORE, Narragansett requests that the Commission enter an order: (1) nullifying the Amended Ordinance and declaring it void; (2) finding that the Amended Ordinance and enforcement thereof by Warwick is preempted by state law; and (3) granting such other and further relief as the Commission deems just.

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.  
280 Melrose Street  
Providence, RI 02907  
(401) 784-7667  
(401) 784-4321 (fax)

NIXON PEABODY LLP

*Peter V. Lacouture (B, SMR)*  
*Steven M. Richard*

Peter V. Lacouture (#1188)  
Steven M. Richard (#4403)  
One Citizens Plaza, Suite 500  
Providence, RI 02903  
(401) 454-1000  
(866) 947-1235 (fax)

Dated: August 30, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via courier to 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; John Spirito, Jr., Esq. Chief of Legal Services, Rhode Island Division of Public Utilities, 89 Jefferson Boulevard, Warwick, RI 02888; John G. Earle, Esq., Breslin, Sweeney & Earle, 222 Jefferson Boulevard, Suite 300, Warwick, RI 02888; and Peter Ruggiero, Esq., Ruggiero, Orton & Brochu, 200 Centerville Road, Level 1, Warwick, RI 02886 on this 30th day of August, 2007.

*Steven M. Richard*

THE CITY OF WARWICK  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 70  
STREETS AND SIDEWALKS

No. 0-07-20 Date 8/20/07  
Approved *[Signature]* Mayor

AN ORDINANCE REGARDING REMOVAL OF UTILITY POLES

Be it ordained by the City of Warwick.

1 SECTION I. Section 78 of Chapter 70 of the Code of Ordinances of the City of Warwick is  
2 hereby amended as follows:

3 Sec. 70-78. Removal of utility poles no longer in service.

4 Any utility pole erected pursuant to this article or by any state agency regulation, upon,  
5 adjacent to or in any city owned or maintained highway, including the roadway, sidewalk, curb-  
6 ing, median or buffer thereof, which is no longer in use for its intended purposes, or which has  
7 been replaced by a new pole, shall be removed by the utility company which has ownership or  
8 control of the pole which is no longer in service, or, in the case of a replacement pole, by the util-  
9 ity company which has caused its replacement within ten (10) days of its termination of service,  
10 or of its replacement, as the case may be. Any utility or entity other than the utility or entity hav-  
11 ing ownership or control of the pole, which has wires or other appurtenances attached to the pole  
12 no longer being utilized shall remove said wires and/or appurtenances within the same ten (10)  
13 day period.

14 Any violation of this section shall be punishable by a fine of \$500.00. Each day in which  
15 the violation occurs shall constitute a separate offense.

16  
17 SECTION II. This Ordinance shall take effect upon passage and publication as prescribed by  
18 law.

SPONSORED BY: COUNCILMAN PLACE  
COUNCILMAN CUSHMAN

COMMITTEE: ORDINANCE