

# 3889

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October 19, 2007

RECEIVED  
2007 OCT 19 PM 3:35  
PUBLIC UTILITIES COMMISSION

**VIA HAND DELIVERY**

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

Re: The Narragansett Electric Company v. City of Newport, et al.,

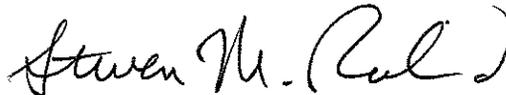
Dear Luly:

Enclosed please find an original and nine copies of the following document:

1. Petition for Review Under R.I.G.L. § 39-1-30.

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

Very truly yours,



Steven M. Richard

SMR:crp  
Enclosures

cc: Joseph Nicholson, Esq.  
John Spirito, Jr., Esq.  
Cindy Wilson Frias, Esq.  
Patricia Lucarelli, Esq.  
Paul J. Roberti, Esq.  
Laura Olton, Esq.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

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

v. :

THE CITY OF NEWPORT; STEPHEN :  
C. WALUK; CHARLES Y. DUNCAN; :  
JUSTIN S. McLAUGHLIN; MARY C. :  
CONNOLLY; STEPHEN R. COYNE; :  
JEANNE-MARIE NAPOLITANO and :  
KATHRYN E. LEONARD, in their :  
official capacities as members of the :  
Newport City Council; and :  
JULIE FORGUE, in her official capacity :  
as Director of Public Works. :  
Defendants. :

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

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**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 actions by one or more inspectors of the City of Newport (“Newport”) “affecting the placing, erection, and maintenance” of underground gas 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. On September 6, 2007, Narragansett undertook emergency repairs of a gas leak on Kay Street in Newport, Rhode Island.
6. On September 17, 2007, Narragansett undertook emergency repairs of a broken gas main on Almy Street in Newport, Rhode Island.
7. Following each of the above-described emergency repairs, Narragansett applied for permits relating to the work.
8. On October 11, 2007, Narragansett received a permit issued by the City of Newport's Engineering Department imposing a requirement that the utility must undertake curb-to-curb pavement restoration on Kay Street. (A copy of the permit is attached as Exhibit A).
9. On October 16, 2007, Narragansett received a permit issued by the City of Newport's Engineering Department imposing a requirement that the utility must undertake curb-to-curb pavement restoration on Almy Street. (A copy of the permit is attached as Exhibit B).
10. Newport seeks to compel Narragansett to pave areas substantially greater in total square footage than the areas of the above-described emergency repairs on Kay and Almy Streets.
11. Upon information and belief, Newport bases its demands for curb-to-curb paving upon section 12.08.050 of its Ordinances ("Excavations and obstructions of public ways-- Permits required-Barricades--Emergencies") and/or section 12.08.070 ("Responsibilities of permit holders"). Neither section supports the unreasonable curb-to-curb paving requirements that Newport seeks to impose upon Narragansett.
12. The curb-to-curb paving demanded by Newport is structurally unnecessary.

13. Newport's curb-to-curb paving requirements impose unwarranted and significant economic costs upon Narragansett and its customers.

#### LEGAL CLAIMS

14. Newport's actions against Narragansett violate R.I. Gen. Laws § 45-6-1(a), 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," but does not authorize Newport to impose unduly burdensome and improper requirements relating to the locating, replacing, repairing, or installing underground gas or other utility lines.

15. Newport's imposition of curb-to-curb paving requirements 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. Newport's imposition of curb-to-curb paving requirements constitutes an unlawful exercise of authority and is preempted by state law. Town of East Greenwich v. O'Neil, 617 A.2d 104 (R.I. 1992).

18. Newport's imposition of the curb-to-curb pavement requirements is arbitrary, capricious, and serves no reasonable purpose.

19. Newport seeks to impose unreasonable and unjustified 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 Newport's efforts to impose unreasonable curb-to curb pavement requirements upon Narragansett;
- (b) issue an Order prohibiting Newport from imposing requirements that Narragansett must undertake curb-to-curb pavement 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.  
280 Melrose Street  
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(401) 784-7667  
(401) 784-4321 (fax)

NIXON PEABODY LLP

*Peter V. Lacouture (B, S.M.E.)*

*Steven M. Richard*

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Steven M. Richard (#4403)  
One Citizens Plaza, Suite 500  
Providence, RI 02903  
(401) 454-1000  
(401) 454-1030 (fax)

Dated: October 19, 2007

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via courier on this 19th day of October, 2007 to the following counsel:

Joseph Nicholson, Esq.  
Newport City Solicitor  
Newport City Hall  
45 Broadway  
Newport, RI 02840

Cindy Wilson Frias, Esq.  
Patricia Lucarelli, Esq.  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Paul J. Roberti, Esq.  
Assistant Attorney General  
150 South Main Street  
Providence, RI 02903

John Spirito, Jr., Esq.  
Chief of Legal Services  
Rhode Island Division of Public Utilities  
89 Jefferson Boulevard  
Warwick, RI 02888

  
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# City of Newport, RI ENGINEERING DEPARTMENT

Permit No. 2007-0279

Date: 10/2/2007

Contractor National Grid is hereby authorized to open

Address 24 Kay Street in Bull Street

for the purpose of EMERGENCY CRS 3x5' on 9/6/07 SPECIAL PAVING REQUIRED

as provided under Chapter 12.08 of the Newport City Ordinances.

Special Conditions See attached conditions

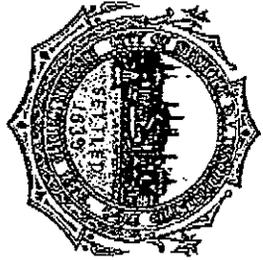
Fee: \$60.00 Paid?  No

DigSafe Number \_\_\_\_\_

*[Signature]*  
Director of Public Works  
Date: 10/3/07

*[Signature]*  
DOXAL CRES DOCS  
(Last period (year ago))

*[Signature]*



# City of Newport, RI ENGINEERING DEPARTMENT

Permit No. 2007-0286

Date: 10/3/2007

Contractor National Grid is hereby authorized to open

Address # 60 Army Street at County Street

for the purpose of EMERGENCY M/M 3"x7" on 9/17/2007

as provided under Chapter 12.08 of the Newport City Ordinances.

Special Conditions

See attached conditions SPECIAL PAVING REQUIRED

Road Resurfaced Aug 2007

Fee: \$60.00 Paid?  No

DigSafe Number                     

Julius [Signature]  
Director of Public Works

10/5/07  
Date:

