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December 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. City of Newport, et al.,

Dear Luly:

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

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

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. :

Docket No. _____

THE CITY OF NEWPORT and :
GUY WESTON, in his official capacity :
as Zoning Official for the Newport :
Zoning Board of Review, :
Defendants. :

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

1. The Narragansett Electric Co. d/b/a National Grid (“National Grid”) 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 the City of Newport (“Newport” or the “City”) “affecting the placing, erection, and maintenance” of electrical systems by National Grid, “a company under the supervision of the commission.”

JURISDICTION AND FACTS

2. National Grid is a Rhode Island chartered public utility under the supervision of the PUC.

3. National Grid serves approximately 475,000 electric customers in 38 towns and cities and 245,000 natural gas customers in 33 towns and cities in Rhode Island.

4. As a Rhode Island chartered public utility, National Grid has the right and franchise to install electric systems and equipment in the State.

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PUBLIC UTILITIES COMMISSION

5. The Cluny Sisters School (the “School”) in Newport, Rhode Island is engaged in the expansion of its facilities. As part of the ongoing construction, National Grid, at the School’s request, converted an overhead electrical system at the property to an underground system. Upon information and belief, this conversion occurred primarily for aesthetic reasons because the School is located in an historic district. National Grid accommodated the School and installed the underground system at considerable expense to the utility and the School.

6. In an underground electrical system, the voltage on the street (usually 13 kilovolts) is converted to a lower voltage through a padmount transformer placed on the customer’s property. The customer grants National Grid an easement to place the transformer, which is owned by the utility. To ensure that National Grid will have quick access for maintenance and emergency repairs, the padmount transformer must be placed within ten (10) feet of the street.

7. National Grid has been engaged in discussions with the City, primarily through its Zoning Official, Guy Weston, regarding the installation of the padmount transformer at the School. Upon Mr. Weston’s advice, the City takes the position that National Grid must obtain a setback variance from the Newport Zoning Board of Review in order to place the transformer at the School within ten feet of the street.

8. The City contends that the padmount transformer constitutes an “accessory use” of the School’s property as that term is defined in § 17.08.010 of the Zoning Ordinance. Specifically, an “accessory use” is defined as “a use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use shall be restricted to the same lot as the principal use, and shall not be permitted without such principal use.”

9. National Grid disputes that the padmount transformer constitutes an “accessory use” that is subject to setback requirements prescribed by the Newport Zoning Ordinances. The underground electric system at the School is interconnected and serves other properties. In addition, the transformer is owned by National Grid, not the School. Further, the City’s imposition of setback requirements on utility structures would lead to unreasonable, expensive and impractical results, particularly because it could be require the placement of a transformer at a location significantly removed from the street.

10. On December 17, 2007, Newport’s Solicitor confirmed to National Grid that the City supports the Zoning Official’s view that the transformer constitutes an “accessory use” subject to setback requirements. National Grid has attempted to resolve this matter in good faith, but it must now seek relief under R.I. Gen.. Laws § 39-1-30 based upon the City’s position.

LEGAL CLAIMS

11. Newport’s actions against National Grid violate 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 Newport to impose unduly burdensome and improper requirements relating to the locating, replacing, repairing, or installing utility lines and equipment.

12. Newport’s actions contravene and infringe upon the regulatory authority vested in the PUC pursuant R.I. Gen. Laws § 39-1-1 *et seq.*

13. Newport’s position that the padmount transformer constitutes an “accessory use” subject to setback 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).

14. Newport's position regarding the placement of the transformer at the School is arbitrary, capricious, and serves no reasonable purpose.

15. Newport seeks to impose unreasonable and unjustified burdens, costs and requirements upon National Grid, its facilities, and its customers.

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

(a) review and reject Newport's efforts to compel National Grid to seek a setback variance from the Zoning Board in order to place the padmount transformer at the School to service the underground electrical system; and

(b) issue such other and further relief as is within its power and is just and proper.

Respectfully submitted,

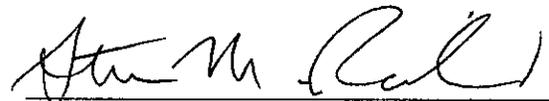
THE NARRAGANSETT ELECTRIC CO.
d/b/a NATIONAL GRID

By its attorneys,

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Dated: December 27, 2007

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via courier on this 27th day of December, 2007 to the following counsel:

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