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March 3, 2009

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

Re: Petition for Review Under R.I.G.L. § 39-1-30
City of Newport, et al

Dear Luly:

Enclosed please find an original and nine copies of a Petition for Review under R.I.G.L. § 39-1-30 filed against the City of Newport. I am also sending these documents to you electronically.

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

Very truly yours,



Steven M. Richard

SMR/crp
Enclosures

cc: Joseph Nicholson, Esq.
Christopher J. Behan, Esq.
John Spirito, Jr., Esq.
Cindy Wilson Frias, Esq.
Patricia Lucarelli, Esq.
Leo Wold, Esq.
Thomas Teehan, 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 and
WILLIAM RICCIO, JR., in his capacity
as Director of Public Services,
Defendant.

Docket No. _____

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

1. The Narragansett Electric Company 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”) “affecting the placing, erection, and maintenance” of underground gas lines of 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 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, National Grid has the right and franchise to install its gas and electric lines within public ways of the State.

5. On or about July 9, 2008, Newport, acting through its City Council, enacted an Ordinance titled “An Ordinance In Amendment of Title Twelve of the Codified Ordinances of the City of Newport, Rhode Island, Revision of 1994, As Amended, Entitled ‘Streets, Sidewalks and Public Places’” (the “Ordinance”). *See* Chapter 12.08 of the Newport Ordinances.

12. Newport's repaving requirement interferes with the use of the public right-of-way which National Grid has the right to use in common with the public for its facilities. See R.I. Gen. Laws § 24-1-1.

13. 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"

14. Newport's repaving requirement 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).

15. Newport's repavement requirement is arbitrary, capricious, and serves no reasonable purpose.

16. 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 nullify, Newport's efforts to impose an unreasonable repaving requirement upon National Grid; and
- (b) issue such other and further relief as is within its power and is just and proper.

6. The Ordinance requires curb-to-curb paving of any street in Newport that is excavated for the installation of utility facilities within five (5) years of “the construction, reconstruction, resurfacing or sealing” of the street.

7. On October 3, 2008, promptly after receiving notice of the Ordinance, National Grid filed a Petition for Review Under R.I.G.L. § 39-1-30 requesting that the Commission nullify or, in the alternative, modify the Ordinance. *See* Docket No. 3991. National Grid’s Petition is pending before the Commission.

8. On February 23, 2009, National Grid received a permit from the Office of Newport’s Director of Public Services, Defendant William Roccio, Jr., relating to emergency corrosion repair to a gas main that the utility performed on November 11, 2008. The Director seeks to impose upon National Grid special paving requirements under the challenged Ordinance. (A copy of the permit is attached as Exhibit A).

9. The repaving demanded by Newport is structurally unnecessary.

10. Newport’s paving requirement imposes unwarranted and significant economic costs upon National Grid and its customers.

LEGAL CLAIMS

11. Newport’s issuance of the permit pursuant to the Ordinance violates 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 costs and requirements relating to the locating, replacing, repairing, or installing underground gas or other utility lines.

Respectfully submitted,

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

By its attorneys,

Of Counsel:

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(401) 454-1030 (fax)

Dated: March 3, 2009

CERTIFICATION

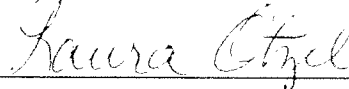
I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via First Class Mail and E-mail on this 3rd day of March, 2009 to the following counsel:

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





Permit No. 2009-0035

City of Newport, RI

ENGINEERING DEPARTMENT

Date: 2/4/2009

Contractor National Grid is hereby authorized to open

Address 83 Memorial Blvd on Rhode Island Avenue
Street

for the purpose of Emergency corrosion repair to the gas main on 11/1/08 (3'x5') Special Paving Required
as provided under Chapter 12.08 of the Newport City Ordinances.
Special Conditions _____

Fee: \$107.50 Paid? No

DigSafe Number _____

SAD

Director of Public Services
Date: 2/10/09