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November 6, 2008

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 Cranston, 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: Vito Sciolto, Esq. (City Solicitor)
John Spirito, Jr., Esq.
Cindy Wilson Frias, Esq.
Patricia Lucarelli, Esq.
Paul J. Roberti, 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 CRANSTON; and
ANTHONY M. SYLVIA, P.E., in his
official capacity as Director of Public
Works. Defendants.

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 one or more inspectors of the City of Cranston (“Cranston”) “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 October 29, 2008, the City of Cranston’s Director of Public Works issued a Street Opening Permit to National Grid relating to the utility’s gas main project on Cranston

Street and Cleveland Avenue. (A copy of the permit is attached as Exhibit A). As a condition of the permit's issuance, Cranston is requiring that National Grid must undertake curb-to-curb repaving during the project.

6. Upon information and belief, Cranston is imposing the curb-to-curb repaving requirement based upon Section 12.04.100 of the Code of Cranston, which states that utility roadway excavation work must conform to "Specifications for Utility Company Repairs to Streets within the City of Cranston" separately promulgated by the Director of Public Works. Upon information and belief, the Specifications purport to give the Director of Public Works unduly wide and undefined discretion to impose "curb-to-curb street resurfacing" whenever the Director deems it "necessary or appropriate."

7. The Director of Public Works' actions violate the PUC's Report and Order (#15919) entered on September 7, 1999 in Docket Nos. 2641 and 2624, which resolved consolidated proceedings whereby, *inter alia*, several utilities sought relief from ordinances enacted by Cranston. The Report and Order approved and adopted a Settlement Agreement in Docket 2624 that was signed by Cranston and several utility companies, including National Grid's predecessors. The Settlement Agreement states that "[p]ermanent paving repairs shall be made to the actual excavation and to an area not to exceed one (1) foot beyond the edges of the trench; provided, however, if the trench is less than two (2) feet from the curb, permanent repairs shall be made from the curb to one (1) foot beyond the trench." *See* Settlement Agreement in Docket No. 2624 attached as Appendix 1 to the Report and Order.

8. Cranston is imposing repaving requirements upon National Grid that are structurally unnecessary and unreasonable.

9. Cranston's repaving requirements will result in unwarranted and significant economic costs to National Grid and its customers.

LEGAL CLAIMS

10. As stated above, Cranston is imposing repaving obligations upon National Grid in breach of the Settlement Agreement entered in Docket No. 2624 and approved by the PUC in its Report and Order dated September 7, 1999.

11. Cranston's actions against National Grid 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 Cranston to impose unduly burdensome and improper requirements relating to the locating, replacing, repairing, or installing underground gas or other utility lines.

12. Cranston's repaving requirements interfere 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. Cranston's repaving requirements constitute an unlawful exercise of authority and are preempted by state law. Town of East Greenwich v. O'Neil, 617 A.2d 104 (R.I. 1992).

15. Cranston's repavement requirements are arbitrary and serve no reasonable purpose.

16. Cranston 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 Cranston's efforts to impose unreasonable curb-to-curb repaving requirements upon National Grid; and
- (b) issue such other and further relief as is within its power and is just and proper.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC
COMPANY d/b/a NATIONAL GRID

By its attorneys,

Of Counsel:

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Dated: November 6, 2008

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent electronically and mailed on this 6th day of November, 2008 to the following counsel:

Vito Sciolto, Esq.
Cranston City Solicitor
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Assistant Attorney General
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Patricia Lucarelli, Esq.
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John Spirito, Jr., Esq.
Chief of Legal Services
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89 Jefferson Boulevard
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EXHIBIT A



CITY OF CRANSTON
STREET OPENING PERMIT
(UTILITY COMPANY)

Date: 10/29/08

Permit No: 6502

- UTILITY COMPANY:
- National Grid Gas Company
 - National Grid Electric Company
 - Providence Water Supply Board
 - Kent County Water Authority
 - Other _____

Permission is hereby granted to the above utility company to open the highway at

Cranston St., Cleveland Ave.

for the purpose of replacing

Notification must be made to Dig Safe 48 hours prior to construction. The phone number for Dig Safe is 1-888-344-7233.

This permit expires in 30 days. The utility company is responsible to repair all damages to city property.

In accordance with Chapter 27 of the Code of the City of Cranston entitled "Streets and Sidewalks", no person, firm corporation or other entity shall in any manner make any opening or excavation on, in, upon or under, nor lay any pipe, drain, wire, line, conduit, cable or the like on, in or under any public highway, street, roadway or sidewalk in the City of Cranston, nor upon any public land (the jurisdiction over which is not legally reserved to another municipal department) without the prior written consent of the Director of Public works or his or her designee.

Permits for the installation of any pipe, drain, wire, line, conduit, cable or the like under any roadway or sidewalk shall be issued only to the owner of said pipe, drain, wire, line, conduit, cable or the like. Permits for the installation of any pipe, drain, wire, line, conduit, cable or the like shall likewise be issued in the owner's name only.

No permit shall be issued without payment of the following fees:

Administrative and Engineering Inspection Fee

\$75.00 per opening

All work shall conform to the "Specifications for Utility Company Repairs to Streets Within the City of Cranston".

The Director of Public Works shall promulgate such rules and regulations to provide suitable documents to effect the purpose of this section of Chapter 27 of the Code of The City of Cranston.

NOTE: Contractor to notify Highway Division at (401) 461-1000, 48 hours before construction begins.

Anthony M. Sylvia, P.E.
Director of Public Works

By Carol F. Fazio

xc: Highway Maintenance Division
DPW file