

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

**IN RE: THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a NATIONAL GRID : Docket No. 4036
(requesting an Order permitting the exercise :
of the right of eminent domain – Cottrell) :**

ORDER

On February 17, 2009, the Narragansett Electric Company d/b/a National Grid (hereinafter “NGrid” or “the Company”) filed a Petition with the Public Utilities Commission (hereinafter “the Commission”) pursuant to R.I. Gen. Laws §39-1-31 and Rule 1.10 of the Public Utilities Commission’s Rules of Practice and Procedure seeking authority to exercise the right of eminent domain for the purpose of confirming title to an easement. Prior to the filing of this Petition and on March 13, 2007, the Energy Facilities Siting Board (hereinafter “the ESFB”) issued an order¹ approving NGrid’s Southern Rhode Island Transmission Project (hereinafter “the Project”) which included extending the transmission line which runs through the Right of Way (“ROW”) that was acquired by NGrid in the 1950’s and 1960’s. As part of the ESFB case, the Commission issued an Advisory Opinion finding that the Project was needed to serve NGrid’s customers in southern Rhode Island.²

Between August 1, 1958 and February 25, 1963, NGrid was granted easement rights across property located to the north and south of Kingston Road in South Kingstown by individuals holding title to that property. In 2005, Oliver C. Cottrell

¹ *In Re The Narragansett Electric Company Southern Rhode Island Transmission Project*, Docket No. SB-2005-01, Decision and Order (Order No. 59, March 13, 2007)(hereinafter “EFSB Order”).

² *In re Issuance of Advisory Opinion to the energy Facility Siting Board regarding Narragansett Electric Company d/b/a National Grid’s Application to Construct and alter Major Energy Facilities, Advisory Opinion to the EFSB* (PUC Order No. 18698, August 23, 2006)(hereinafter “PUC Advisory Opinion”).

("Cottrell") through his attorney informed NGrid that neither he nor his predecessors had given NGrid an easement for the ROW. Although efforts have occurred, NGrid and Cottrell have not been able to resolve this dispute concerning the easement rights. Therefore, NGrid filed the instant Petition with the Commission pursuant to R.I. Gen. Laws §39-1-31 to allow it to take by eminent domain that Easement³ that is the subject matter of this Petition.

In support of its Petition, NGrid asserts that the taking of the Easement "is in the public interest and is necessary and desirable in connection with the conduct of National Grid's business in order to enable it reasonably to continue to render adequate electric service to its customers" in order to continue to operate the G185S and L-190 lines. The construction and the continued operation of the G185S line are critical for NGrid to continue to provide service to its southern Rhode Island customers. NGrid also cited the EFSB decision and advisory opinion of the PUC finding that the L-190 extension was necessary to meet Rhode Island's energy needs.⁴

NGrid requested that the Commission find that that the proposed taking is for the benefit of the citizens of the state and in the public interest, that it is necessary in order for NGrid to carry on its business and render adequate service to the public and that the use for which it is taken will not unduly interfere with the orderly and scenic development of the region.⁵

On May 13, 2009, the Commission held a hearing to further investigate NGrid's Petition. The following appearances were entered:

FOR NATIONAL GRID: Peter Lacouture, Esq.

³ The Easement is located between Kingstown Road and the southern boundary of the Cottrell property.

⁴ NGrid Exhibit 1, Petition, filed February 17, 2009, *see also* EFSB Order No. 59 at 12.

⁵ *Id.*

FOR DIVISION: Paul Roberti, Esq.
Assistant Attorney General

FOR MR. COTTRELL: Archibald Kenyon, Esq.

FOR COMMISSION: Patricia S. Lucarelli, Esq.
Chief Legal Counsel

At the hearing, the Commission took administrative notice of the Energy Facility Siting Board's order, EFSB Order No. 59 and the Commission's advisory opinion, Order No. 18698. David Beron, a transmission project manager for National Grid USA Service Company testified on behalf of NGrid. He described the Southern Rhode Island project and the right of way. Mr. Beron testified that he was familiar with the property that is the subject matter of the instant proceeding which he described as "a 200 foot wide section of the easement, approximately 1,600 feet in length starting at Route 138 in South Kingstown and running in a generally southerly direction."⁶

Mr. Beron identified the purpose of the transmission lines that cross the subject property as the "sole sources that provide firm, reliable electric supply to the whole of Southern Rhode Island." He testified that the easement and the lines are necessary to provide reliable service to Southern Rhode Island. When questioned, Mr. Beron confirmed that NGrid's need to maintain and operate the transmission line is a continuing need.⁷

Susan Moberg, a senior project manager and manger of the environmental sciences department in Providence at Vanasse Hangen Brustlin, Inc., provided testimony as an environmental expert about the environmental impacts of the project. Ms. Moberg also testified about the project and noted that there was only a small area of permanent

⁶ Transcript of Hearing, May 13, 2009 at 7-12.

⁷ *Id.* at 15-18.

impact that would result from the construction of the 115 kV transmission line. She noted that construction of the line in the existing right of way would have a localized effect rather than a regional one. She also identified the benefits of improved reliability that would support economic development and growth in the region.⁸

COMMISSION FINDINGS

By law, the Commission can authorize a utility company to exercise the power of condemn of real property. R.I. Gen. Laws §39-1-31(a) provides that

[b]efore exercising any power of condemnation a company shall present a petition to the commission describing the land, right of way, easement, or other interest in property it proposes to acquire, and setting forth why it is necessary to acquire it by eminent domain. The commission shall set a time and place for hearing the petition and shall give such notice as the commission deems the circumstances require. If the commission shall determine that the proposed taking is for the benefit of the people of the state, and that it is necessary in order that the petitioner may render adequate service to the public, and that the use to which the property taken will be put will not unduly interfere with the orderly development of the region and scenic development, it shall issue a certificate authorizing the company to proceed with condemnation.

Even though Cottrell did not object to the condemnation, the Commission is obligated to ensure that the elements of the statute are satisfied. Pursuant to the statute, the Commission must find that

1. the taking proposed in the instant Petition is for the benefit of the people of the state;
2. the taking set forth in the Petition is necessary in order that NGrid may render adequate service to the public; and
3. the use to which the property proposed to be taken will be put will not unduly interfere with the orderly development and the scenic development of the region through which the proposed transmission line will pass.

⁸ *Id.* at 19-25.

As with any Petition filed before the Commission, the Petitioner, in this case NGrid, has the burden of establishing that the elements of the law are satisfied.⁹ The Commission has previously discussed each of the requirements and its interpretation. Regarding the requirement that the proposed taking be for the benefit of the people, the Commission has reviewed the evidence before it independently of the need requirement. Specifically, “for the benefit of the people” has been held to be akin to a requirement that the goal of the condemnation constitute a “public use.”¹⁰ The Rhode Island Supreme Court has held that a taking constitutes “public use” when it is “essential to the service of the public franchise” as opposed to pertaining only the private interest of the utility in the details of its business.¹¹ Public use only has to be suited to the public need, not immediate or materially essential to the utility’s customers.¹² The Commission cited other jurisdictions which held that the promotion of the production, supply and reliability of electric power constituted a public use sufficient to allow the utility to invoke eminent domain powers.¹³ The Rhode Island Supreme Court has held that this “public use” standard used by the Commission was reasonable.¹⁴

The Commission has traditionally considered a number of factors when determining whether the requirement of need is satisfied. First, it has required a clear necessity for the utility’s proposed exercise of eminent domain. Second, it has evaluated whether there is a need to condemn the property to the extent that the utility seeks. In determining whether the extent of the condemnation proposed by the utility is necessary,

⁹*In re Narragansett Electric Company*, 544 A.2d 121, 125 (R.I. 1088) citing *Narragansett Electric Company v. Harsch*, 117 R.I. 395 (1977).

¹⁰ Docket No. 1440, Order No. 11561.

¹¹ *In Re: Rhode Island Suburban Railway Company*, 22 R.I. 457, 461 (1901).

¹² Docket No. 1440, Order No. 11561.

¹³ *Id.* (citations omitted).

¹⁴ *In re Narragansett Electric Company*, 544 A.2d at 125 (1988).

the Commission has relied on common law and held that the route of transmission lines is a matter for the utility which it will not disturb absent a showing that the utility acted in an arbitrary or capricious manner.¹⁵ Finally, the Commission must consider whether the need will materialize in the reasonably foreseeable future.¹⁶ The issue of need in this matter has been previously affirmed by the Commission and the EFSB.¹⁷

The Commission finds that NGrid's Petition adequately described the easement that it seeks to acquire by eminent domain. The unrebutted testimony during the hearing, the exhibits presented to the Commission, and the evidence previously submitted in the EFSB hearing and the Commission hearing on the advisory opinion provide reasonable justification for NGrid's claimed need to acquire the property and support NGrid's assertion that the proposed taking is for the benefit of the people.¹⁸ Specifically, Mr. Beron testified at the hearing that NGrid needs to operate and maintain the transmission line that runs through the property to ensure adequate and reliable electric service to the citizens of the southern part of the State. He noted that this need is continuing.

Additionally, the Commission conducted extensive hearings on whether the property is needed in order to render adequate service to the public and would therefore provide a benefit to the ratepayers/citizens of Rhode Island prior to rendering its Advisory Opinion to the EFSB. Both the Commission and the Energy Facility Siting Board found the need for the project.¹⁹ Finally, the Commission finds that the evidence presented by NGrid, including the testimony of Susan Moberg, that it has been and will

¹⁵ Docket No. 1440, Order No. 11561 (*citations omitted*).

¹⁶ *Id.*

¹⁷ See EFSB Docket No. SB-2005-01, Order No. 59, where the Board held "National Grid's Southern Rhode Island Transmission Project is necessary to meet the needs of the State...for electricity...."; Docket No. 3732, Order No. 18698, where the Commission held that "there is a need to construct the Project...."

¹⁸ The Commission took administrative notice of the filings in Docket No. 3732 and EFSB Docket No. SB02005-01.

¹⁹ See EFSB Docket No. SB-2005-01, Order No. 59; Docket No. 3732, Order No. 18698.

continue using the property in a manner that will not unduly interfere with the orderly development of the region and its scenic characteristics is sufficient. Furthermore, the Commission expects that NGrid continue its obligation to protect ratepayers' interest.

Accordingly, it is hereby

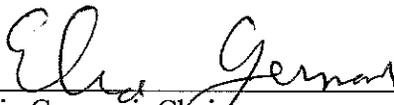
(19674) ORDERED:

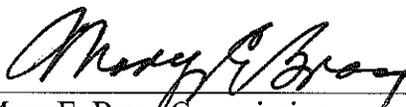
1. National Grid's Petition for authority to exercise eminent domain powers is granted.
2. The issuance of this Report and Order shall constitute the issuance of a "certificate" as described in R.I. Gen. Laws §39-1-31.

EFFECTIVE AT WARWICK, RHODE ISLAND, PURSUANT TO AN OPEN MEETING DECISION ON MAY 13, 2009. WRITTEN ORDER ISSUED JUNE 25, 2009.



PUBLIC UTILITIES COMMISSION


Elia Germani, Chairman


Mary E. Bray, Commissioner