

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

<b>IN RE: THE NARRAGANSETT ELECTRIC</b>	:	
<b>COMPANY d/b/a NATIONAL GRID,</b>	:	
<b>Plaintiff,</b>	:	
<b>V.</b>	:	<b>DOCKET NO. 4076</b>
<b>THE TOWN OF HOPKINTON; THOMAS</b>	:	
<b>E. BUCK; SYLVIA THOMPSON;</b>	:	
<b>BARBARA CAPALBO; BEVERLY</b>	:	
<b>KENNEDY; and WILLIAM FELKNER, in</b>	:	
<b>their official capacities as members of the</b>	:	
<b>Hopkinton Town Council,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

On July 27, 2009, the Narragansett Electric Company, d/b/a National Grid (“NGrid”) filed a petition pursuant to R.I. Gen. Laws §39-1-30 and Rule 1.10 of the Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure seeking review and preemption or modification of a zoning ordinance amendment relating to Electrical Substations, which was enacted by the Hopkinton Town Council on July 20, 2009. Prior to the passage of the amendment and on March 17, 2009, NGrid applied to the Town Council for permission to construct an electrical substation on 8 acres of a 12 acre parcel that its existing transmission line crosses and that it owns which is zoned RFR-80<sup>1</sup>. The amendment to the ordinance added Electrical Substations or other electric utility uses in its table of uses for any zone and prohibits the use of Electric Substations (115 kV or less) in all districts except the Manufacturing zone, where they are allowed by special-use permit. Additionally, a footnote to the amended ordinance requires a 200-foot setback from residential uses, maximum lot coverage of 12%, and a 12-acre minimum lot size for Electric Substations. NGrid asserted that because there are only a

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<sup>1</sup> This zoning designation is for neighborhood business, commercial and manufacturing zones.

few vacant parcels that meet the requirements of the ordinance, the Town Council's amendment is tantamount to a denial of its petition as it prohibits NGrid from constructing a substation on its property or any other site adjacent to the existing transmission right-of-way in the Town of Hopkinton.<sup>2</sup>

NGrid asserted in its Petition to the Commission that the amendment to the ordinance is arbitrary and capricious and serves no reasonable purpose. Additionally, NGrid noted that R.I. Gen. Laws §39-1-1(c) gives the Commission the exclusive authority to regulate NGrid. Additionally, the Petition asserted that the Ordinance Amendment attempts to usurp the Commission's exclusive authority to regulate NGrid and will have "profound extraterritorial implications" beyond the Town's borders. As such, the Ordinance Amendment is *ultra vires* and invalid.<sup>3</sup> On September 29, 2009, the Commission held a public comment hearing in the Town of Hopkinton to elicit comments from individuals wishing to be heard.

The Commission's authority to hear this matter is set forth in R.I. Gen. Laws §39-1-30 which reads in pertinent part:

Every ordinance enacted, or regulation promulgated by any town or city affecting the mode or manner of operation or the placing or maintenance of the plant and equipment of any company under the supervision of the commission, shall be subject to the right of appeal by any aggrieved party to the commission within ten (10) days from the enactment or promulgation. The commission, after hearing, upon notice to all parties in interest, shall determine the matter giving consideration to its effect upon the public health, safety, welfare, comfort, and convenience.

On September 24, 2009, NGrid filed the testimonies of Michael Rook, Alan LaBarre, Scott Ryder and Susan Moberg. Mr. Rook explained the design of the Project

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<sup>2</sup> NGrid Exhibit 1, Petition for Review filed July 27, 2009.

<sup>3</sup> *Id.*

and described it as servicing the southwestern Rhode Island area. He noted that NGrid owns the site proposed for the construction of the substation and that the site is located where the existing 115 kV line crosses Route 3. He described how the metal substation will be located in the central portion of the site and will contain a 115kV/13.2 kV transformer and switches, controls, and other electrical equipment. Once the new Hopkinton substation is complete, Mr. Rook represented that the Ashaway substation will be retired and dismantled. At the time of the filing, the new substation was still in the preliminary design phase. In order to minimize environmental impacts, he stated that NGrid will establish a 100 foot buffer zone between an existing wetland area and the substation fence and will construct a rain garden for treatment of runoff from the proposed paved driveway. Mr. Rook asserted that the facility is being constructed in accordance with the National Electric Safety Code and in accordance with sound engineering practices. He further described how the area around the substation will be enclosed with a seven foot chain link fence topped with three strands of barbed wire which will be set back at least 100 feet from the abutting property lines. He stated that existing vegetation will provide a natural screen and that testing revealed that no archeological resources exist on the site. He also noted that very low noise transformers will be used.<sup>4</sup>

Mr. Rook explained the various alternatives to the Hopkinton site that were considered by NGrid and set forth why each of these alternatives were not viable. Mr. Rook noted that he testified before the Hopkinton Town Council in support of NGrid's petition to allow electric substations in the RFR-80 district by way of a special permit at which time NGrid proposed a six acre lot minimum. His written testimony stated that the

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<sup>4</sup> NGrid Exhibit 2a, Prefiled Testimony of Michael Rook, P.E. at 1-5.

Council amended the use table to allow electric substations only in the manufacturing zone and that there are only nineteen sites in Hopkinton that would satisfy the requirements of the ordinance. Mr. Rook explained that the proposed site is located immediately adjacent to the 115 kV transmission line ROW, and that the substation can be connected to the transmission line with a short tap line. All of the other sites, he pointed out, would require acquisition of new ROW by purchase or condemnation and the construction of substantial new transmission and substation facilities to the site.<sup>5</sup>

Alan LaBarre provided testimony to summarize the planning process by which NGrid identified the need for the development and to describe the specific Study Area in which the Project is located. Additionally, he explained the benefit of the Project to the customers and why other alternatives were not viable. He noted that the 2007 Annual Capacity Plan identified a number of thermal overloading concerns in the area and recommended the new Hopkinton substation to address the concerns. Mr. LaBarre asserted that the 2009 Annual Capacity Plan indicated loading was approaching normal capabilities and was exceeding emergency capabilities during system contingencies in many locations which if not addressed could cause equipment failure resulting in interruptions in service. He stated that because the electric grid was interconnected overloads on transformers in Westerly and feeders in Charlestown could affect Hopkinton customers as those customers are served from the Westerly and Charlestown facilities. Mr. LaBarre represented that the 2009 Annual Capacity Plan identified new supply and distribution capacity and recommended the installation of a new 115/12.47

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<sup>5</sup> *Id.* at 6-9.

kV substation and three distribution feeders in Hopkinton as a solution to the above problems.<sup>6</sup>

Mr. LaBarre noted that the recommended plan is superior to the alternative<sup>7</sup>, because the new distribution capacity would be introduced where the load is developing and where there the existing distribution and transmission systems can be accessed. He pointed out that because of old and outdated equipment, the Ashaway substation will eventually require replacement. He explained that the new substation will resolve the area transformer, feeder and supply line overloads resulting in a more reliable electric system to support load growth and customer expansion in Hopkinton.<sup>8</sup>

Scott Ryder provided testimony discussing the advantages of constructing a substation adjacent to a transmission line as opposed to constructing a substation at a remote location, noting that the adjacent construction is central to the local supply area to be served. He also discussed the disadvantages to using the alternative Diesel site that was suggested by the Town which includes additional and significant cost because of the distance transmission line and the inability of the existing line that is currently out of service, in disrepair and inadequate in size to accommodate a required tap line. Mr. Ryder noted that it is highly desirable to construct the substation immediately adjacent to the transmission line, as there is no necessity to acquire an additional ROW. Mr. Ryder is familiar with the transmission facilities that will be required to connect the substation to the line. Mr. Ryder also reviewed the other manufacturing zoned sites and noted that NGrid would be required to acquire either title to or easements over a strip of land and

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<sup>6</sup> NGrid Exhibit 2b, Prefiled Testimony of Alan T. LaBarre, P.E. at 1-7.

<sup>7</sup> The alternative plan would require the replacement of both Westerly transformers and the Wood River Supply transformer, the development of the Westerly 16F4, 16F5, and 16F6 feeders and upgrades to the Wood River supply lines.

<sup>8</sup> NGrid Exhibit 2b, Prefiled Testimony of Alan LaBarre, P.E. at 7-9.

have to add a tap line of approximately \$1 million per mile for between \$3.0 and \$4.8 million.<sup>9</sup>

Finally, Susan Moberg provided testimony on the environmental assessment of the proposed site and an alternate site. Ms. Moberg described the environmental conditions including the surface topography, surficial geologic deposits, site soils and wetland area. She examined the potential direct and indirect environmental impacts and noted that the project was developed employing mitigation techniques that would render the impact on environmental resources negligible. She identified mitigation techniques such as a project layout that avoids environmentally sensitive areas, a rain garden for treatment of runoff from the site driveway and the planting of a vegetative buffer between the facility and surrounding wetlands. She evaluated the alternative Diesel site concluding that construction of the substation at that site would result in significant impact to the existing wetland because of the fill that would be required in order to construct the substation. Additionally, she pointed out that the ROW at the Diesel site was not maintained and would require the clearing of mature trees which would ultimately impact the wetland and the abutting property owners. In Ms. Moberg's opinion, the project will not cause significant environmental impact.<sup>10</sup>

On October 20, 2009, NGrid requested that the Commission hold the docket in abeyance in order that it have the opportunity to conduct an investigation into and to assess the feasibility of constructing the substation on an alternative site. On July 2, 2012, NGrid and the Town entered into a Settlement Agreement agreeing to a location for the construction of the substation and thus resolving the issues presented in this

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<sup>9</sup> NGrid Exhibit 2c, Prefiled Testimony of Scott H. Ryder, P.E. at 1-5.

<sup>10</sup> NGrid Exhibit 2d, Prefiled Testimony of Susan Moberg, PWS at 1-6.

matter. Specifically, NGrid and the Town requested that the Commission approve the terms of its Settlement Agreement and invalidate the Hopkinton zoning amendment only as it applies to the property located at Ashaway Road, Plat 2, Lot 38.

The Settlement Agreement set forth the travel of the matter and noted that NGrid had engaged in efforts to locate an alternative site upon which to construct the substation, sites that both complied with the Zoning Amendment and those that did not comply with the Zoning Amendment but had been suggested for review by the Town of Hopkinton as well as other individuals. After review, NGrid determined that only one alternative was suitable for the substation, the Cook property on Ashaway Road, specifically identified as Plat 2, Lot 38. On May 7, 2012, NGrid presented its proposal to the Hopkinton Town Council at which time, the Council heard comments from its residents. After debate and consideration, the Town Council approved NGrid's proposal at its May 21, 2012 meeting. Approval was conditioned upon NGrid's compliance with the terms of the Settlement Agreement. Those terms are as follows:

1. National Grid will use reasonable efforts to locate the Substation towards the rear of the Property, away from Ashaway Road.
2. National Grid will locate the Substation so as to maintain a setback of at least fifty (50) feet between the substation fence and the property line along the sides and rear of the Property.
3. The footprint of the Substation itself, within the fencing, shall be no greater than approximately one acre.
4. National Grid will use reasonable efforts to minimize the clearing of trees on the site in connection with the construction of the Substation, although vegetation will have to be cleared to construct transmission tap lines between the Substation and the existing 115 kV transmission line, the "1870 Line".
5. National Grid shall consult with the Hopkinton Planning Board, the town planner, and the abutters to the Property, on the design of screening for the Substation.

6. The Substation will have lighting that is illuminated only when personnel are working at the Substation (i.e., it will not be lighted 24/7).
7. National Grid shall provide periodic updates to the Hopkinton Town Manager as to the progress on design, engineering, permitting and construction of the Substation.
8. National Grid shall make reasonable efforts (i) to use existing transmission poles where possible, and (ii) to minimize large truck traffic where possible.<sup>11</sup>

The Settlement Agreement also requested that the Commission invalidate the Zoning Amendment only as it applies to the Ashaway Road property specifically, Plat 2, Lot 38. Additionally, the parties agreed that once the new substation is in service, it shall retire the Ashaway Substation located on Oak Street in Hopkinton and the Hope Valley Substation located on Main Street in Hope Valley and remove all existing equipment from those sites. The Town agreed to fully cooperate with NGrid as it secures permits, licenses, and any other approvals required for construction of the substation.<sup>12</sup>

On July 26, 2012, the Commission considered the Settlement Agreement at an Open Meeting. Finding that the Settlement Agreement is in the best interest of public health, safety, welfare, comfort and convenience, the Commission approved the same.

Accordingly, it is

(20793) ORDERED:

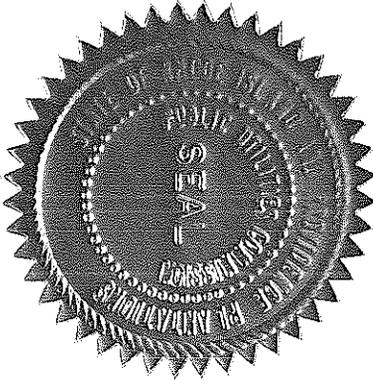
1. The Petition seeking nullification of the Town of Hopkinton Ordinance is dismissed.
2. The terms of the Settlement Agreement are hereby approved.
3. The Town of Hopkinton Zoning Amendment is invalid only as it relates to the property on Ashaway Road, specifically, Plat 2, Lot 38.

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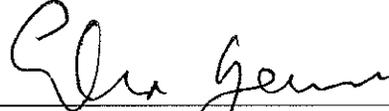
<sup>11</sup> Joint Motion for Approval of Settlement Stipulation and Settlement Agreement filed July 18, 2012.

<sup>12</sup> *Id.*

EFFECTIVE AT WARWICK, RHODE ISLAND ON JULY 26, 2012 PURSUANT TO  
AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED AUGUST 10, 2012.



PUBLIC UTILITIES COMMISSION

  
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Elia Germani, Chairman

  
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Mary E. Bray, Commissioner

  
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Paul J. Roberti, Commissioner