

ROBINSON & COLE^{LLP}

PETER V. LACOUTURE

One Financial Plaza, Suite 1430
Providence, RI 02903-2485
Direct (401) 709-3314
Fax (401) 709-3377
placouture@rc.com

VIA HAND DELIVERY

August 7, 2009

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

Re: The Narragansett Electric Company d/b/a National Grid
v. The Town of Hopkinton, 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 regarding the Town of Hopkinton. I am also sending this document to you electronically.

Please acknowledge receipt of the enclosed Petition by date and time stamping the enclosed copy and returning it with my messenger to my office. Thank you.

Sincerely,

Peter V. Lacouture
Peter V. Lacouture



Law Offices

BOSTON

PROVIDENCE

HARTFORD

NEW LONDON

STAMFORD

WHITE PLAINS

NEW YORK CITY

ALBANY

SARASOTA

www.rc.com

PVL:lgo
Enclosures

cc: Patricia A. Buckley, Esq.
Hopkinton Town Clerk
Leo J. Wold, Esq.
Patricia S. Lucarelli, Esq.
John Spirito, Jr., Esq.
Joel Norwood, Esq.

PROV1-614141-1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a NATIONAL GRID, :
Plaintiff, :

v. :

Docket No. _____

THE TOWN OF HOPKINTON and BRAD :
R. WARD, in his official capacity as the :
Building and Zoning Official of the Town :
of Hopkinton, :
Defendants. :

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 reversal or preemption of the decision of the Building and Zoning Official of the Town of Hopkinton to reject National Grid’s request for a determination that electric substations are an accessory use to transmission lines.

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, franchise, and obligation to maintain and upgrade its electric infrastructure in the State, including building electric substations.

5. Prior to July 20, 2009, the Zoning Ordinance of the Town of Hopkinton (the “Ordinance”) did not list electric substations or other electric utility uses in its table of uses for any zone.

6. Ordinance § 5 provides that “all uses not so permitted in a district are thereby prohibited therein.”

7. On March 17, 2009, National Grid applied to the Hopkinton Town Council to amend the Ordinance to add electrical substations as a use permitted by special-use permit in the RFR-80 and other zones.

8. As part of its application, National Grid explained that it sought the regulation amendment to apply for permission to construct an electrical substation on 8 acres of a 12-acre parcel it owns, located on Main Street (Route 3), at Assessor’s Plat 22, Lot 19 (the “Property”), which is zoned RFR-80.

9. National Grid’s 115 kV 1870 transmission line crosses over a portion of the Property.

10. By locating the substation on the Property, National Grid would be able to connect it to the existing transmission line with a short tap line consisting of one pole structure.

11. On July 20, 2009, the Hopkinton Town Council amended the Ordinance to add “Electrical Substations (115 kV or less)” to the list of uses in the use table but specified that the use would be prohibited in all districts except the Manufacturing zone, where it is allowed by special-use permit (the “Ordinance Amendment”).

12. The Hopkinton Town Council further amended the Ordinance to add a new footnote 7 to Ordinance § 6, which imposes the following requirements for electrical substations: 200-foot setbacks from residential uses, maximum lot coverage of 12%, and a 12-acre minimum lot size.

13. Upon information and belief, there are only a few vacant parcels of land in Hopkinton which meet the Ordinance requirements. All are located 3 to 4 miles from the nearest point of access to the existing 115 kV transmission line ROW.

14. The Ordinance Amendment prohibits National Grid from building a substation at the Property or on other sites adjacent to the existing electric transmission right-of-way in Hopkinton.

15. National Grid separately petitioned to the PUC for review from the Ordinance Amendment. This petition is PUC Docket No. 4076.

16. By letter dated July 24, 2009, National Grid requested that Brad Ward, the Building and Zoning Official for the Town (the "Zoning Official"), determine that electric substations are an accessory use to the electric transmission lines on the Property. A copy of National Grid's letter is attached as Exhibit A.

17. In the letter, National Grid explained that electric substations are accessory uses to the transmission lines because they are generally located on or adjacent to the transmission line right-of-way and are required to reduce the voltage of the electricity from transmission levels to distribution levels for distribution to customers.

18. Ordinance § 2(3) provides that accessory uses are those "customarily incidental and subordinate to the principal use of the land or building."

19. As a necessary component to allow transmission lines to distribute electricity to customers, electric substations are customarily incidental and subordinate to transmission lines.

20. In the letter to the Zoning Official, National Grid explained that if substations were determined to be accessory uses to the transmission lines on the Property, it would apply to the Zoning Board for a special-use permit to add the substation as an accessory use to the transmission lines on the Property, which are existing nonconforming uses.

21. Ordinance § 8(C) allows nonconforming uses to be added to, enlarged, expanded, replaced, or intensified by special-use permit.

22. By letter dated July 29, 2009, the Zoning Official denied National Grid's request, asserting that the transmission lines are not the principal use of the Property and that an electric substation cannot be an accessory use to a purportedly nonexistent principal use (the "Request Denial"). A copy of the Request Denial is attached as Exhibit B.

LEGAL CLAIMS

23. The Request Denial adversely “affect[s] the mode or manner of operation or the placing or maintenance of the plant and equipment of [National Grid]” and is therefore subject to the PUC’s review under R.I.G.L. § 39-1-30.

24. 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”

25. In conjunction with the Regulation Amendment, the Request Denial effectively prohibits National Grid from constructing a substation on or adjacent to its existing transmission line right-of-way in Hopkinton, and is therefore unreasonable and constitutes an unlawful exercise of authority. See Town of East Greenwich v. O’Neil, 617 A.2d 104 (R.I. 1992).

26. The Request Denial is an unreasonable interpretation of the Ordinance and is arbitrary, capricious, and serves no reasonable purpose.

27. By effectively prohibiting National Grid from constructing a substation on the Property or adjacent to the right-of-way in Hopkinton, the Request Denial attempts to usurp the PUC’s exclusive power to regulate National Grid and is therefore preempted by the PUC’s regulatory authority.

28. By effectively prohibiting National Grid from constructing a substation on the Property or adjacent to the right-of-way in Hopkinton, the Request Denial attempts to regulate electric substations, which as essential components of the regional and statewide electric infrastructure, have profound extraterritorial implications outside Hopkinton, and the Zoning Official’s actions to issue the Request Denial are therefore *ultra vires* and invalid.

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

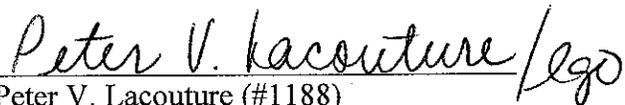
- (a) review and reverse the Request Denial and issue a determination that electric substations are an accessory use to the electric transmission lines on the Property;
- (b) issue a judgment preempting the Town of Hopkinton's zoning authority in this instance as an illegal attempt to interfere with the PUC's exclusive regulatory authority over National Grid and an *ultra vires* act involving extra-territorial impacts on the State's electrical infrastructure, and order the Zoning Official and the Town to approve National Grid's construction of a substation on the Property; 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,

ROBINSON & COLE LLP


Peter V. Lacouture (#1188)
Joel C. Norwood (#7845)
One Financial Plaza, Suite 1430
Providence, RI 02903-2485
(401) 709-3314
(401) 709-3377 (fax)
Email: placouture@rc.com

Dated: August 7, 2009

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via courier on this 7th day of August, 2009 to the following counsel:

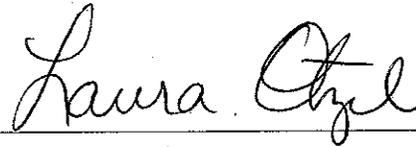
Patricia A. Buckley, Esq.
Hopkinton Town Solicitor
Bengtson & Jestings, LLP
1 Turks Head Place, Suite 400
Providence, RI 02903

Patricia Lucarelli, Esq.
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Hopkinton Town Clerk
Hopkinton Town Hall
One Town House Road
Hopkinton, RI 02833

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

Leo Wold, Esq.
Assistant Attorney General
150 South Main Street
Providence, RI 02903



One Financial Plaza, Suite 1430
Providence, RI 02903-2485
Direct (401) 709-3314
Fax (401) 709-3377
placouture@rc.com

July 24, 2009

Mr. Brad Ward
Building and Zoning Official
Town of Hopkinton
Charles Niles Public Works Complex
395 Woodville Road
Hopkinton, RI 02833

Re: National Grid – Request for Determination that an Electrical Substation is an Accessory Use to a Transmission Line

Dear Mr. Ward:

On behalf of National Grid, I request a determination that an electrical substation is currently permitted in the RFR-80 zoning district as an accessory use to the existing 115 kV electric transmission line, which is a preexisting nonconforming use.

As you know, National Grid has proposed building an electrical substation on property it owns on Main Street (Route 3), located at Assessor's Plat 22, Lot 19 (the "Property"), which is zoned RFR-80. National Grid's 1870S 115 kV electric transmission line currently crosses the Property and is a preexisting nonconforming use. A substation is an accessory use to a transmission line because it is generally located on or adjacent to the transmission line right-of-way and it is required to reduce the voltage of the electricity from transmission levels (e.g., 115,000 volts or 115 kV) to distribution voltages (e.g., 12,000 volts or 12 kV) for distribution to customers. Accordingly, the substation is an accessory use to the transmission line under the Zoning Ordinance because it is "customarily incidental and subordinate to the principal use of the land or building," namely, the transmission of electricity. Zoning Ordinance § 2(3).

Under the Hopkinton Zoning Ordinance, nonconforming uses may be added to, enlarged, expanded, replaced, or intensified by special-use permit. Zoning Ordinance § 8(C). Therefore, if you determine that the substation is an accessory use to the transmission lines on the Property, National Grid intends to apply to the Zoning Board for a special-use permit to add the substation as an accessory use to the transmission line.



Law Offices

BOSTON

PROVIDENCE

HARTFORD

NEW LONDON

STAMFORD

WHITE PLAINS

NEW YORK CITY

ALBANY

SARASOTA

www.rc.com

PROV1-614066-2

ROBINSON & COLE^{LLP}

Mr. Brad Ward
July 24, 2009
Page 2

Thank you for your attention to this matter and please feel free to contact me if you would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter V. Lacouture". The signature is fluid and cursive, with a large initial "P" and a long horizontal stroke at the end.

Peter V. Lacouture

Cc: Patricia Buckley, Esq.
Hopkinton Town Solicitor





Town of Hopkinton
Building & Zoning Department
Hopkinton, Rhode Island 02833

July 29, 2009

Mr. Peter Lacouture
One Financial Plaza, Suite 1430
Providence, RI 02903-2485

Re: **National Grid Electrical Substation**
Plat 22, Lot 19

Dear Mr. Lacouture:

Please be advised, I am in receipt of your request dated July 24, 2009 to construct an electrical substation on the above referenced property as an accessory use to an existing 115KV electrical transmission line presently situated on said parcel. The subject lot is vacant land and is currently zoned RFR-80.

This 115 KV transmission line is located in a dedicated easement which extends several miles through the Town and crosses many individual lots. The fact that the lines are situated in an easement which happens to cross the referenced parcel does not constitute a principal use of this or any lot encumbered by said easement.

Accordingly, I cannot justify the proposed substation as an accessory use for an operation which clearly is not a principal use. Regrettably your request is hereby denied.

If you have any questions please call me (401) 377-7771.

Respectfully;

Brad R. Ward
Building and Zoning Official
Town of Hopkinton

Cc: Patricia Buckley, Esq.