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November 6, 2013

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

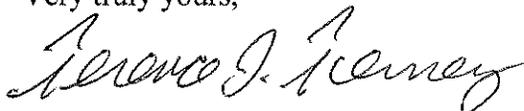
Re: In Re: Commission Investigation Relating to Stray and Contact Voltage (Docket 4237-A)

Dear Luly,

Enclosed for filing in the above-referenced Docket please find Power Survey Company's Reply to Objections to Motion to Intervene filed by National Grid and the Division of Public Utilities and Carriers.

Thank you.

Very truly yours,



TERENCE J. TIERNEY

Attorney at Law

cc: Service List

BEFORE THE RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: COMMISSION INVESTIGATION RELATING
TO STRAY AND CONTACT VOLTAGE OCCURRING
IN NARRAGANSETT ELECTRIC TERRITORIES

DOCKET # 4237-A

**POWER SURVEY COMPANY'S REPLY TO
OBJECTIONS TO MOTION TO INTERVENE**

Power Survey Company (Power Survey) replies to the objections to its Motion to Intervene filed by the Division of Public Utilities and Carriers (DPUC), and National Grid as follows:

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I. THE COMMISSION'S RULES EXPRESSLY PERMIT POWER SURVEY COMPANY TO PARTICIPATE AS A PARTY IN THIS PROCEEDING

Because it has shown an interest of such a nature that intervention would be both appropriate, and in the public interest, Power Survey is entitled to intervene in this proceeding under the Commission's rules it has cited. The Commission has discretion to allow the requested intervention, and should do so, notwithstanding the DPUC's attempt to shut experts in the field out of the process, and prevent a robust analysis of the results of the new program. DPUC's assertion that the request to intervene "must be denied" is contradicted by the express terms of the very rule it cites. Rule 1.13(b) states that the type of interest that provides adequate grounds for intervention includes an interest of such nature that the movant's participation "may" be in the public interest. Power Survey's participation as a party to this proceeding would clearly assist the Commission, and would be in the public interest.

II. DPUC'S OBJECTION LACKS MERIT AND SHOULD BE REJECTED

The reliance by the DPUC on the decision rendered in Island Hi – Speed Ferry, LLC, 746 A.2d 1240 (R.I. 2000), undercuts, rather than supports its position. There, the court rejected the

same arguments now advanced by DPUC to the effect that the Intervenors were acting solely out of their own “financial self-interests,” and that their interests were “adequately protected by the Division and the Attorney General.” Id., p. 1244. In that case our Supreme Court noted that PUC Rule 1.13(b) governing intervention requests “is liberally drawn in order to ensure that the interests of interested parties are met through the adversarial process,” and concluded that “... the Commission’s order allowing the Town and Interstate to enter into rate proceedings was neither unlawful nor unreasonable.” Id., p. 1245-6. As applied to the facts of this matter, the Island Hi-Speed Ferry, LLC decision supports Power Survey’s position that it would be reasonable for the Commission to permit it to intervene, and contradicts the DPUC’s claim that the motion to intervene “must” be denied.

Nor does the holding in Blackstone Valley Chamber of Commerce v. Public Utilities Commission, 454 A.2d 931 (RI 1983), advance DPUC’s position. There, the R.I. Supreme Court pointed out that: “The right of a party to intervene and to present evidence to the commission is quite different from standing to obtain judicial review. One who seeks review has the burden of setting the judicial machinery in motion by establishing that he is aggrieved and has a right to redress whereas one who intervenes before the commission is not setting machinery in motion but is trying to influence the course of action that is already in progress.” Id., p. 934 (citing 3 Davis, Administrative Law Treatise, 22.08 (1958).

The other cases relied upon by the DPUC for the proposition that Power Survey “lacks standing” demonstrates that the entire thrust of the DPUC’s arguments simply misapplies the rules governing standing to seek *judicial review* of Commission decisions to the different, and more lenient, standard governing intervention before *the PUC*.

III. RULE 1.13(f) ALLOWS THE ISSUES RAISED BY POWER SURVEY TO BE CONSIDERED

Power Survey Company's motion asserts that there are important lessons to be learned from the results of National Grid's initial attempt to detect and repair electrocution hazards in Rhode Island, and that it is uniquely positioned to contribute to a thorough review of the effectiveness (and possible expansion) of that program. Rather than attempting to dispute such factual contentions, the DPUC instead asserts that Power Survey's goal is to "re-open" Docket 4237, and to "re-litigate" that matter. Obj., p. 6. No factual basis for the Division's speculation was cited as support for this claim, and the content of Power Survey's Motion to Intervene demonstrates that it is not attempting to rehash the matters decided in Docket 4237. Instead, Power Survey's request for party status cited the substantial experience the company has in the area of contact voltage detection, and the unique ability it has to provide data and analysis to aid the Commission and National Grid in reviewing National Grid's Report, and also in making a decision on the recommendations contained therein.

In any event, even if Power Survey's participation as a party could lead to a broadening of the limited scope of this Docket, such a result is permitted by the applicable rules of procedure. For good reason, Commission Rule 1.13(f) sensibly allows for the "broadening of issues" in a docket whenever the public interest requires it, and where no undue prejudice or hardship will result to other parties to the proceeding. Whether the public interest may require a broadening of the issues in this Docket is yet to be decided, but if Power Survey's claims (e.g., that National Grid's testing contractor missed seven times as many contact voltage risks as it discovered) are substantiated by reliable evidence the Commission may wish to broaden the scope of this Docket

as it is allowed to do under the Rules in order to protect the public from preventable harms. National Grid would certainly not be prejudiced if the Commission decided to broaden the scope of this proceeding in order to consider whether the new testing program is grossly ineffective as claimed, or to consider ways to improve the effectiveness of the testing and repair program that Power Survey will present evidence on. The other parties to the case will be able to confront and refute such evidence, but such evidence should be allowed to be presented in order to protect the public from existing risks of electrocution that allegedly have not been detected.

III. NATIONAL GRID'S OBJECTION IS FLAWED AND UNPERSUASIVE

The objection filed by National Grid suffers from the same defective arguments advanced by the DPUC, and it should be deemed to be unpersuasive under the circumstances presented in this matter.

This Docket's goal is to determine if National Grid's first Annual Report is consistent with the program the Commission previously approved. Whether or not the selected testing equipment performed as the Commission and National Grid were led to believe it would in detecting public safety risks, and if not, the magnitude of the hazards remaining undetected, is clearly within the ambit of this docket. Moreover, even if consideration of such issues are somehow not within the scope of the proceeding as it is now framed, the Commission has the authority under its rules to "broaden the scope" of the proceeding to consider such basic questions. See: Rule 1.13(f).

Contrary to National Grid's position, "the adequacy of the mobile technology used by National Grid in its contact voltage program" has not "already been decided." Grid Obj., p.1. That question is squarely before the Commission under the scope of this proceeding. The Commission has approved the use of mobile testing technology, but has not yet determined if the particular type of mobile testing technology that has been used by such vendor satisfies the

requirement's of its Order. Questioning (through expert testimony) the actual performance of the vendor used by National Grid, and the appropriateness of the type of mobile testing technology that was employed should be allowed in order to protect the public.

National Grid is certainly correct in pointing out that the governing statute requires a contact voltage testing program to employ "adequate procedures" that are designed to "ensure repair of faults in the electrical distribution system that caused any detected contact voltage." The Commission has the discretion to sanction the type of testing technology used by Grid's vendor if it so desires, but also has the power (and responsibility) to ensure that it is indeed "adequate" and effective before allowing it to continue to be used. See: R.I. Gen. Laws 39-2-25 ("The Commission shall review and determine which equipment and technology should be used for the surveying of contact voltage....). National Grid's claim that the type of testing technology being used "is not an issue" is disputed given the Commission's statutory charge.

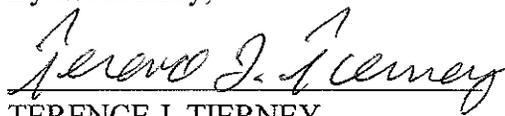
National Grid's claims that the DPUC alone will adequately represent the interests of the public, and that it can determine if the Annual Report is satisfactory "without the contributions of Power Survey" (Id., p.10), should be rejected. Power Survey has provided contact voltage testing for utilities around the world, its staff has authored numerous scholarly papers and given many presentations at industry conferences on the issue, and the company has been the recipient of widespread recognition for its expertise in contact voltage detection and repair. In contrast, the DPUC possesses limited in-house expertise on the topic, and to date has demonstrated only a limited interest in ensuring that the goals of the statute are met. For example, in response to a request for access to records relating to the electrocution of a pet dog that occurred in Providence, the DPUC was unable to produce even a single written report on the incident.

CONCLUSION

In the related Docket (#4237) this Commission was reminded that “the failure to detect contact voltage hazards bears life or death consequences” by the parents of a girl who was killed, at age 14, from exposure to contact voltage, as well as by another witness who was “nearby on Angel Street in Providence when a dog was shocked and killed by contact voltage in January, 2011.” Since this Docket literally involves a matter of life or death in terms of the procedures being used to protect the public from preventable risks, the Commission should welcome the expertise that Power Survey will bring to the proceeding, and should reject the objections that have been raised.

For the reasons cited herein, the Commission should deem the objections to the Motion to Intervene to be unpersuasive, and should grant the request of Power Survey Company to participate in this proceeding.

Power Survey Company,
By its Attorney,



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CERTIFICATION

I certify that a copy of the within Reply was forwarded to the Service List in the above matter on the 18th day of October, 2013.



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