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**VIA HAND DELIVERY**

September 17, 2012

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

RECEIVED  
2012 SEP 17 PM 3:05  
PUBLIC UTILITIES COMMISSION

Re: The Narragansett Electric Company d/b/a National Grid  
v. The Town of West Warwick, 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 West Warwick. 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



*Law Offices*

BOSTON

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NEW LONDON

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WHITE PLAINS

NEW YORK CITY

ALBANY

SARASOTA

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PVL:blv  
Enclosures

cc: West Warwick Town Clerk  
West Warwick Town Solicitor  
Leo J. Wold, Esq.  
Cindy Wilson Frias, Esq.  
Patricia S. Lucarelli, Esq.  
John Spirito, Jr., Esq.

11882040-v1

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 WEST WARWICK; :  
ANGELO A. PADULA, JR.; DAVID :  
GOSSELIN, JR.; EDWARD GIROUX; :  
FILOMENA GUSTAFSON; and MARK :  
BOURGET in their official capacities as :  
members of the West Warwick Town :  
Council. :

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 nullification of a recent amendment to Chapter 16, Article IV, Section 16-68 and Section 16-70 of the West Warwick Code of Ordinances, which was enacted by the West Warwick Town Council on September 4, 2012.

**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 of Rhode Island.

5. Upon information and belief, on September 4, 2012 the West Warwick Town Council enacted Ordinance No. 2012-11 (the “**Amendment**”), which amends Chapter 16, Article IV, Section 16-68 and Section 16-70 (a copy of Ordinance No. 2012-11 is attached as Exhibit A).

6. National Grid has not received formal notice of the Amendment from the Town of West Warwick, however, a National Grid employee learned of the Amendment on Thursday, September 13, 2012.

7. Prior to September 4, 2012, Section 16-68 of the West Warwick Code of Ordinances allowed public utilities to make a payment to the town in lieu of completing a permanent repair.

8. The amended Section 16-68 will require National Grid to immediately repair any excavation and be held liable for any settling of the repair for a period of one year.

9. Prior to September 4, 2012, Section 16-70 of the West Warwick Code of Ordinances did not require “curb to curb” repaving in all excavation projects.

10. West Warwick’s paving requirement imposes unwarranted and significant economic costs upon National Grid and its customers.

#### LEGAL CLAIMS

11. The Amendment 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.

12. The Amendment violates R.I. Gen. Laws § 45-6-1(a), which grants to cities and town 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 West Warwick to

impose unduly burdensome and improper requirements relating to the locating, replacing, repairing, or installing underground gas or other utility lines.

13. The Amendment unreasonably interferes 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.

14. 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 . . . .”

15. The Town of West Warwick’s unreasonable and unexplained Amendment constitutes an unlawful exercise of authority. Town of East Greenwich v. O’Neil, 617 A.2d 104 (R.I. 1992).

16. The Amendment is arbitrary, capricious, and serves no reasonable purpose.

17. The Town of West Warwick seeks to impose unreasonable and unjustified repaving 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:

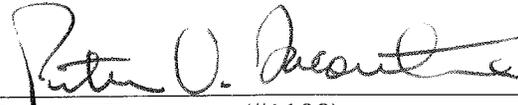
- (a) review and nullify, or in the alternative, modify, the Amendment; and
- (b) issue such other and further relief as is within its power and is just and proper.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC CO.  
d/b/a NATIONAL GRID

By its attorneys,

ROBINSON & COLE LLP



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280 Melrose Street  
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(401) 784-7667  
(401) 784-4321 (fax)

Dated: September 17, 2012

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via first class mail or courier on this 17<sup>th</sup> day of September, 2012 to the following counsel:

West Warwick Town Clerk  
West Warwick Town Hall  
1170 Main Street  
West Warwick, RI 02893

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

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

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

Timothy A. Williamson, Esq.  
West Warwick Town Solicitor  
West Warwick Town Hall  
1170 Main Street  
West Warwick, RI 02893



**EXHIBIT A**

TOWN OF WEST WARWICK

ORDINANCE

OF THE

TOWN COUNCIL

ORDINANCE NO. 2012-11

**AN ORDINANCE AMENDING THE WEST WARWICK CODE OF ORDINANCES, CHAPTER 16, STREETS AND SIDEWALKS, ARTICLE IV. EXCAVATIONS, SECTIONS 16-68 AND 16-70.**

**WHEREAS:** The Town Council desires to require all persons making excavation in any street or public way responsible for the repair and restoration of such street or public way upon completion of the excavation, and

**WHEREAS:** The Town Council desires to eliminate the responsibility of the town to perform such repair and restoration,

**NOW, THEREFORE, IT IS HEREBY ORDAINED** that the Town Council of the Town of West Warwick hereby amends the West Warwick Code of Ordinances as follows:

**Sec. 16-68. Repair of defectively filled excavations, and excavations in general.**

(a) ~~Repair an of excavations, by those other than a public utility.~~ Any person making an excavation that has been approved by the director of public works, shall, immediately upon closing of the excavation, repair the entire area of the excavation to the satisfaction of the director of public works. Any settlement of earth over an excavation in any street or public way occurring within one year of the closing of the trench shall be repaired, within five days after written notice from the director of public works, to his satisfaction and at the expense of the person making the excavation.

(b) ~~Repair and excavations by public utilities.~~ If agreed upon by the parties, the public utility may make a payment to the town in lieu of completing a permanent repair. Unless the parties agree otherwise, they will perform as follows:

(1) ~~The public utility will install a temporary patch, which shall be maintained by the public utility for a period of 90 days. At the expiration of the 90-day period, the town will assume maintenance of the temporary patch and indemnify the public utility against any claims made relating to the temporary patch, which maintenance and indemnity shall continue until the entire road is permanently restored.~~

(2) ~~Upon completion of the permanent repair by the town, the public utility will make payment to the town in a mutually agreed upon amount equal to the estimated cost~~

~~of the permanent restoration of that portion of the road on which the temporary patch has been installed and the town will be responsible for the cost of restoration of the balance of the road.~~

~~(3) — If the town does not complete the permanent repair within 180 days from the date of the temporary repair, the public utility may within its sole discretion complete the permanent repair in lieu of payment to the town.~~

~~(4) — Public utilities will not be required to utilize an infrared heating process.~~

**Sec. 16-70. Road openings over 50 feet for other than public utilities – Generally.**

(a) All roads surrounding areas that were disturbed shall be repaired to as good or better condition as prior to the excavation.

~~(b) Unless agreed upon by the parties after consultation, the public utilities agrees to permanently restore the area of the road worked upon.~~

~~(c)~~ (b) Any road opening over 50 feet in length for other than public utilities shall require a permit application fee of \$75.00 and an additional \$32.00 per hour for inspection services. Anticipated inspection time will be pre-established and the applicant will provide a certified check to be deposited and used as a draw down to cover inspection costs. The unexpended balance will be returned to the applicant upon completion of the work. Any road opening over 50 feet in length shall also require curb-to-curb repaving under the direction of the public works director.

**AN ORDINANCE AMENDING THE WEST WARWICK CODE OF ORDINANCES, CHAPTER 16, STREETS AND SIDEWALKS, ARTICLE IV. EXCAVATIONS, SECTIONS 16-68 AND 16-70.**

**POSTED: AUGUST 17, 2012**

**FIRST READING AT COUNCIL MEETING ON: AUGUST 21, 2012**

**SECOND READING AT COUNCIL MEETING ON: SEPTEMBER 4, 2012**

**COUNCIL PRESIDENT: \_\_\_\_\_**

**TOWN CLERK: \_\_\_\_\_**

**ADVERTISED IN:**

**THIS ORDINANCE WILL TAKE EFFECT ON:**