

April 17, 2015

BY HAND DELIVERY AND ELECTRONIC MAIL

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

RE: Docket 4539 - National Grid's Proposed FY 2016 Electric Infrastructure, Safety, and Reliability Plan
Memorandum Regarding the Application of R.I. Gen. Laws § 39-1-30 to Municipal Policies or Decisions Regarding Police Details

Dear Ms. Massaro:

On behalf of National Grid,¹ I have enclosed ten (10) copies of the Company's memorandum regarding the application of R.I. Gen. Laws § 39-1-30 to municipal policies or decisions regarding police details.

Thank you for your attention to this matter. If you have any questions, please contact me at 781-907-2121.

Very truly yours,



Raquel J. Webster

Enclosures

cc: Docket 4539 Service List
Steve Scialabba, Division
Greg Booth, Division
Leo Wold, Esq.

¹ The Narragansett Electric Company d/b/a National Grid (National Grid or the Company).

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

Copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and the Rhode Island Division of Public Utilities and Carriers.

Joanne M. Scanlon

April 17, 2015

Date

Docket No. 4539 National Grid's FY 2016 Electric Infrastructure, Safety and Reliability Plan - Service List as of 2/27/15

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

**FY 2016 Electric Infrastructure, Safety,
and Reliability Plan**

Docket No. 4539

**NATIONAL GRID’S MEMORANDUM REGARDING THE
APPLICATION OF R.I. GEN. LAWS § 39-1-30 TO MUNICIPAL POLICIES OR
DECISIONS REGARDING POLICE DETAILS**

I. INTRODUCTION

This memorandum addresses whether R.I. Gen. Laws § 39-1-30, Zoning Review Approval of Ordinances and Regulations (Act), applies to municipal policies or decisions made by municipalities and/or their police chiefs regarding the necessity and cost of police details.

The Rhode Island Public Utilities Commission (PUC) has authority to supervise and regulate public utilities and make orders governing the conduct of utilities, and the general purpose of the Act is to ensure that municipalities do not enact orders, rules, ordinances, or regulations¹ that unduly interfere with the conduct of business by utilities under the PUC’s supervision². Based on the plain language of the Act and existing legal precedent, it is clear that the Act applies to decisions of zoning boards and municipal inspectors as well as municipal ordinances and regulations if those decisions, ordinances, and regulations affected, among other

¹ A regulation is “a rule or order, having legal force, issued by an administrative agency or a local government.” Blacks Law Dictionary, 532 (Pocket Edition 1996).

² The Act has different standards for PUC review of (i) a decision or order of a zoning board or inspector (“weighing the consideration of public convenience, necessity, and safety against the consideration of public zoning”) and (ii) a municipal ordinance (“giving consideration to its effect upon the public health, safety, welfare, comfort, and convenience.”) *See* R.I. Gen. Laws § 39-1-30.

things, the mode or manner of operation of companies under the PUC's supervision. However, a utility challenging a policy, decision, or ordinance that specified the size or cost of a police detail for a utility construction project, would have to overcome the holding of the Rhode Island Supreme Court in *In re: Petition for Review Pursuant to -39-1-30 of Ordinance Adopted by the City of Providence*, 745 A.2d 769,775 (2000) in which the Court held that "[a] mere incidental burden whether financial or otherwise is not enough to support the nullification of an ordinance."

II. ANALYSIS

A. The PUC Has Broad Authority Under the Act to Review Municipal Ordinances, Regulations, Zoning Orders, and Inspector Decisions That Affect the Conduct of Any Company Under the PUC's Supervision.

Under the Act, the PUC has jurisdiction to review decisions, rulings, and orders of municipal zoning boards and inspectors as well as municipal ordinances and regulations that affect the operations and conduct of companies under the PUC's supervision. *See* R.I. Gen. Laws § 39-1-30, which provides that:

Every ruling, decision, and order of a zoning board of review and of a building, gas, water, health, or electrical inspector of any municipality affecting the placing, erection, and maintenance of any plant, building, wires, conductors, fixtures, structures, equipment, or apparatus 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 giving of notice of the ruling, decision, or order. The commission, after hearing, upon notice to all parties in interest, shall as speedily as possible determine the matter in question, weighing the consideration of public convenience, necessity, and safety against the consideration of public zoning, and shall have jurisdiction to affirm or revoke or modify the ruling, decision, or order to make any order in substitution thereof. 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 a 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.

R.I. Gen. Laws § 39-1-30 (emphasis added).

Notwithstanding this broad statutory authority, the Rhode Island Supreme Court has held that the PUC's authority under the Act must be weighed against the municipality's interest in promulgating the ordinance or regulation at issue. *See In re: Petition for Review Pursuant to - 39-1-30 of Ordinance Adopted by the City of Providence*, 745 A.2d 769,775 (2000) (emphasis added) (quashing the PUC's nullification of a city ordinance regulating excavations and reconstruction of city streets and stating: "the jurisdiction to review does not permit the PUC [to] arbitrarily . . . discount the compelling interest of the municipality in favor of the utility company. The PUC must accord due deference to the authority of the municipality to regulate the maintenance of its highways when it evaluates the effect of an ordinance upon a public utility. In order to nullify an ordinance, the PUC must find facts that are competent to establish that the ordinance is unduly and unnecessarily burdensome in its impact upon the business and services of the utility companies.")

1. The PUC Would Have Jurisdiction Over an Appeal of a Municipal Ordinance That Mandated Police Details.

The Act would apply to municipal ordinances that mandated police details because such an ordinance would affect the manner in which the utilities conduct their operations. Indeed, a utility would be prohibited from conducting its work in areas that mandated police details if it refused to comply with the ordinance and secure a police detail. A utility appealing an ordinance that mandated police details must (1) appeal the ordinance with the PUC within ten days of the date on which the ordinance was enacted; and (2) establish that the ordinance affected the mode

or manner of operation of the company or the way in which the company placed or maintained plant and equipment. *See* R.I. Gen. Laws § 39-1-30; *Town of E. Greenwich v. Narragansett Elec. Co.*, 651 A.2d 725, 728 (noting that the utility waives its right to contest the enactment if it fails to do so within the ten-day period). A municipal ordinance is presumed to be valid, and parties appealing ordinances have the burden of proving by a fair preponderance of the evidence that the ordinance is an unreasonable or undue burden. If the appealing party makes this showing, then the burden shifts to the municipality to show that the ordinance is not unreasonable or burdensome. *In re: Petition for Review Pursuant to -39-1-30 of Ordinance Adopted by the City of Providence*, 745 A.2d at 775. When reviewing an appeal of an ordinance, the PUC would consider the ordinance's effect upon the public health, safety, welfare, comfort, and convenience. *See* R.I. Gen. Laws § 39-1-30. As previously noted, a utility that challenged an ordinance mandating police details must overcome the Rhode Island Supreme Court's holding that financial or other incidental burdens are not enough to support the nullification of an ordinance. *In re: Petition for Review Pursuant to -39-1-30 of Ordinance Adopted by the City of Providence*, 745 A.2d at 775.

2. The PUC Arguably Has Jurisdiction Over Claims Involving Challenges to Municipal Policies or Decisions Regarding Police Details.

Municipal policies and decisions of police chiefs regarding police details could have the same effect on the conduct and operations of utilities as would police detail ordinances. As such, the PUC arguably has jurisdiction over appeals involving municipal policies or police chief decisions regarding police details even though such decisions and policies are not ordinances, regulations, zoning orders, or inspector rulings or decisions. This is because regardless of how the municipal action is labeled, the Act equips the PUC with jurisdiction to review municipal

orders and decisions that unduly interfere with the conduct of business of utilities under the PUC's supervision. *See Town of East Greenwich v. Narragansett Electric Co.*, 651 A.2d 725, 729 (R.I. 1994). In *Narragansett Electric Co.*, the Court refused to quash a PUC order that invalidated certain amendments that East Greenwich made to its comprehensive plan to limit the exposure of electromagnetic fields emanating from the construction of new high voltage power lines within the boundaries of the town. *Id.* at 727. In reaching this decision, the Court rejected the town's argument that its comprehensive plan was not an "ordinance enacted, or regulation promulgated," under the Act's definition, but rather, was merely a statement of long-range goals. *Id.* The Court reasoned that a comprehensive plan is not simply an innocuous general-policy statement but is, instead, a binding framework or blueprint that dictated town and city promulgation of conforming zoning and planning ordinances. *Id.* Therefore, the Court held that the local interests embodied in the town's amendment to its comprehensive plan yielded to the state's interest in the uniform conduct of public utilities, the authority for which rested exclusively in the PUC by statute. *Id.* at 729. This same reasoning could arguably apply to municipal policies and decisions of police chiefs regarding police details.

A utility appealing municipal policies or police chief decisions regarding police details with the PUC would likely be challenged based on the fact that the clear and unambiguous language of the Act does not include the terms "policies" or "police chief decisions." General principles of statutory construction would guide this analysis. *See State v. Santos*, 870 A.2d 1029, 1032 (R.I. 2005) (noting that it is axiomatic that the "[c]ourt will not broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent or [in] defining the terms of the statute."); *Ward v. Town of Narragansett Pension Bd.*, 2013 R.I. Super. Lexis 88 at *7 (Superior Court of Rhode Island,

May 10, 2013) (citations omitted) (“[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.”)

III. CONCLUSION

Based on the existing legal precedent, R.I. Gen. Laws § 39-1-30 arguably applies to municipal policies or decisions made by municipalities and/or their police chiefs regarding the necessity and cost of police details. However, as explained in this memorandum, the Rhode Island Supreme Court has held that incidental burdens, whether financial or otherwise, are not enough to support the nullification of an ordinance, which is presumed to be valid under Rhode Island law. Therefore, a utility or company challenging municipal policies or decisions regarding the necessity and costs of police details must overcome this holding and establish by a fair preponderance of the evidence that the decision, policy, order, ordinance, or regulation at issue is an unreasonable or undue burden.

Respectfully submitted,

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