

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 WARREN; :
JOSEPH A. DEPASQUALE; SCOTT F. :
LIAL; P. BRANDT HECKERT; DAVID S. :
FRERICHS; and STEVEN R. THOMPSON :
in their official capacities as :
members of the Warren Town :
Council. :

Defendants. :

PETITION FOR REVIEW UNDER R.I. GEN. LAWS § 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 18, Article 1, Section 18-13 of the Warren Code of Ordinances, which was enacted by the Warren Town Council on September 8, 2015.

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.

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5. Upon information and belief, on September 8, 2015 the Warren Town Council enacted Ordinance O-1 (the “**Amendment**”), which amends Chapter 18, Article 1, Section 18-13 (a copy of Ordinance O-1 is attached as Exhibit A).

6. National Grid has not received formal notice of the Amendment from the Town of Warren. However, a National Grid employee learned of the Amendment on Wednesday, September 16, 2015.

7. Prior to September 8, 2015, Chapter 18 of the Warren Code of Ordinances limited the restoration requirement to the “portion of the roadway which is altered . . .” plus “at least one-foot area on either side of all disturbed pavement areas and underlying cavities associated with the excavation.” See Town of Warren Ordinance Chapter 18, Article 1, Sect. 18-1(d)(1) and 18-1(i)(2).

8. The amended Section 18-13 will require National Grid to expand the repair area on a protected street¹ by repaving “from curb to curb over the excavated area for a distance determined at the discretion of the Director of Public Works. . .”

9. The amended Section 18-13 will require National Grid to expand the repair area on an unprotected street² by repaving from curb to centerline over the excavated area and “fifty (50) feet for a distance determined at the discretion of the [Director of Public Works] on either side of the excavation.”

10. Prior to September 8, 2015, Chapter 18 of the Warren Code of Ordinances did not require repaving from “curb to curb” or “curb to centerline” and there was no requirement for additional distances of repaving at the discretion of the Director of Public Works.

¹ “*Protected street* means a road or street whose pavement surface is less than five (5) years old and which was on the municipality's paving list for a period of eighteen (18) months or more before it was paved.” See Town of Warren Ordinance Chapter 18, Article 1, Sect. 18-1(b).

² “Unprotected street” is not defined in the Town of Warren Ordinance but it is assumed to include any street that is not considered a “protected street.”

11. Warren's paving requirement imposes unwarranted and significant economic costs upon National Grid and its customers.

LEGAL CLAIMS

12. 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. Gen. Laws § 39-1-30.

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

14. 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.

15. 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"

16. The Town of Warren's unreasonable and unexplained Amendment constitutes an unlawful exercise of authority. See Town of East Greenwich v. O'Neil, 617 A.2d 104 (R.I. 1992).

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

18. The Town of Warren 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,

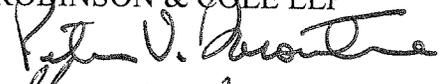
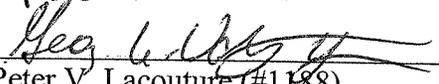
THE NARRAGANSETT ELECTRIC
COMPANY d/b/a NATIONAL GRID

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Dated: September 22, 2015

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under R.I. Gen. Laws § 39-1-30 has been sent via first class mail or courier on this 22nd day of September, 2015 to the following counsel:

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EXHIBIT A

Chapter 18, Article 1, Sec. 18-13. – Streets and Sidewalks
(2nd reading)

Curb to curb Paving on protected Streets. All persons, firms, businesses or utility companies digging or making any excavations in any *protected street* or highway within the Town which has been repaved within five (5) years of the excavation, or who shall cause the same to be done shall make the repair to the street as soon as possible following the procedure described in this section. This may mean on protected streets the street may be repaved across the entire right of way from curb to curb over the excavated area for a distance determined at the discretion of the D.P.W of the excavation including, cold planning, edge matching and tack coat, with a minimum settlement period of three (3) months and a maximum of six (6) months before permanent repairs are made and left in a condition satisfactory to and approved by the Director of Public Works. Excavations that run laterally on unprotected streets shall require that the permanent patch include one full traffic lane (from curb to center line) and fifty (50') for a distance determined at the discretion of the D.P.W on either side of the excavation.