

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

**IN RE: PUC Advisory Opinion Regarding Need of :
The Narragansett Electric Co. d/b/a National Grid :
to Construct and Alter Certain Transmission : PUC Docket No. 4614
Components in the Towns of Portsmouth and :
Middletown (Aquidneck Island Reliability Project) :**

TOWN OF MIDDLETOWN’S POST HEARING MEMORANDUM

INTRODUCTION

National Grid has failed to present sufficient credible evidence to demonstrate the need for its Aquidneck Island Reliability Project (“Project”), as proposed. In this matter, the Public Utility Commission’s (“PUC”) charge is to render an advisory opinion as to the need for Project, which opinion is based on the evidence presented through the hearing process. Unlike National Grid, the Town of Middletown (“Middletown”) presented un rebutted evidence through pre-filed written testimony, and direct testimony and cross-examination testimony during the hearing, showing affirmatively that the Project, as proposed and sited, is not needed. As a result of National Grid’s failure to satisfy its burden of proof and to rebut Middletown’s evidence, the Project application should be denied.

The Project includes relocation of the existing Jepson Substation from the easterly side to the westerly side of Jepson Lane. It is this *relocation* that National Grid has not proven as a necessary component of the Project.

ARGUMENT

I. NATIONAL GRID FAILED TO DEMONSTRATE THAT THE PROJECT, AS PROPOSED, IS NEEDED

The PUC must issue its advisory opinion only on the evidence before it, as the PUC "is charged with the duty of rendering independent decisions" that must be based on "the evidence presented before it by the division and by the parties in interest." RIGL §39-1-1 1. Further, the burden of proof with respect to project need rests with the applicant, National Grid. RIGL §42-98-11(b)(1) (requiring a "finding that the applicant has shown" need). As National Grid failed to supply the PUC with information to satisfy its burden of proof to show why the relocation is necessary, the PUC is precluded from issuing an opinion with a finding of need for the Project.

National Grid proposes to relocate a substation to a new site, an 18.77 acre parcel which currently contains part of the existing overhead electric transmission line. A significant portion of the parcel is regulated wetlands and woodlands, which will be difficult to obtain approval for, as Middletown's expert, Mr. Steven Cabral testified:

"[I]t's been presented throughout the day that the new relocated site is the only viable site. Yet the engineering documents that I was given to review don't conform to the Department of Environmental Management design standards and they don't conform to the Town of Middletown requirements. Without conforming to the DEM standards or the Town of Middletown standards, I don't believe it's a viable option in the manner that it's been presented." Hearing Transcript, p. 136.

The Energy Facility Siting Board's ("EFSB") Environmental Report, Aquidneck Island Reliability Project, dated December 2015, Revised March 17, 2016, states that National Grid has reviewed the physical condition of the Jepson Substation three times within the past decade and each study recommended upgrading and/or replacing specific equipment and components. The three studies also conclude, and the EFSB's Environmental Report states, that it is possible to operate and maintain the existing substation in its current location (EFSB's Environmental Report

Section 3.3.2, page 3-7). In contrast, the pre-filed Direct Testimony of National Grid's witness, Mr. Endrit Fiku (page 5, line 4) states that reuse of the existing Jepson Substation property was rejected due to size constraints which make it impossible to build the substation in the open space between the existing substation and Jepson Lane. This testimony mentions the existing open space land between Jepson Lane and the existing substation, but does not mention the potential to also re-use the significant land within the confines of the existing substation.

During his testimony, National Grid witness Mr. Fiku said that the applicant considered using the existing substation location, as evidenced by its response to the PUC's Division of Utilities and Carriers Data Request No. R-2-1. However, when questioned further as to what that consideration actually was, Mr. Fiku testified that "[t]he only changes are the way the lines come in and out of the substation, whether they're going to be underground or overhead." Hearing Transcript, p. 27. Missing from his testimony is satisfactory information about why the substation must be relocated.

Through the testimony of National Grid's witness Mr. Daniel McIntyre, it became clear that National Grid opted to relocate the substation without first analyzing whether they could develop a configuration for the existing site. Hearing Transcript, p. 95-97. In fact, Mr. McIntyre admitted on cross-examination that National Grid "think[s] there are better alternatives." Hearing Transcript, p. 97. However, an applicant's opinion about a preferred location does not demonstrate project need.

Mr. McIntyre's testimony was that National Grid did not develop a viable construction sequence for the existing site until the Division's expert, Mr. Gregory Booth, concluded that the existing site may be a cost effective and viable alternative. Hearing Transcript, p. 98-99. This practice is backwards. To demonstrate need, National Grid must show that the configuration for

the Project is also necessary. National Grid, however, selected the property it wanted to use and then designed the substation configuration. This is not a showing of need.

II. THE TOWN OF MIDDLETOWN PRESENTED CREDIBLE AND UNREBUTTED EVIDENCE THAT THE PROJECT, AS PROPOSED, IS NOT NEEDED

The un rebutted testimony of Middletown’s expert witness, Mr. Cabral, demonstrates that the Project, as proposed, is not needed. Because this testimony is un rebutted, it is binding on the PUC. *Milliken v. Milliken*, 390 A.2d 934, 936 (R.I. 1978) (“A trier of fact must accept the uncontradicted and unimpeached positive testimony of a witness as probative of the fact that it was adduced to prove when it is free from inherent contradiction or improbability.”)

Through Mr. Cabral’s pre-filed testimony and testimony provided during the hearing, Middletown presented evidence about National Grid’s failure to adequately address project need. Mr. Cabral raised the issue that National Grid failed to show that the Project was necessary in the location selected. Specifically, “National Grid did not adequately consider other alternatives, as the documents provided do not appear to provide a true alternative construction scheme for using the existing Substation site, impacts and its cost.” Pre-filed Direct Testimony of Steven M. Cabral, p. 4.

During the hearing, Mr. Cabral stated:

“Once I looked at the amount of infrastructure that was needed to actually build it and the fact that the stormwater wasn’t designed properly, it was very easy to confirm that it wasn’t viable the way it was designed. Therefore, it became apparent that there should be a more detailed analysis done of the existing Jepson Street substation site to see if it could fit. And based upon the rebuttal testimony today, I did hear that it is physically possible to build a new substation on the existing Jepson Street site.” Hearing Transcript, p. 148.

As part of his pre-filed direct testimony, Mr. Cabral provided the following information:

Q. Do you know why that alternative was not considered?

A. Again, the documents provided by National Grid do not appear to provide a true alternative construction scheme for using the existing Substation site, impacts and its cost.

The conclusion of past studies that state that the substation can be operated and maintained in the existing location contradicts the brief narrative that states that rebuilding the Substation at the existing Substation site is not a viable option. The Needs Assessment Results Summary of the Newport Area (Aquidneck Island) Transmission Study Report, Section 2.1, incorrectly states that the existing Jepson Substation (east side of Jepson Lane) is within the 100-year flood plain and that the flood plain creates reliability concerns. In contrast, the most recent FEMA Flood Maps do not depict the existing Jepson Substation within the 100-year flood plain. The existing site does border a 100 year flood plain and Sisson Pond and is within a Watershed Protection Zone, but common construction measures can mitigate potential impacts, which are mainly associated with stormwater runoff and spill prevention. Pre-filed Direct Testimony of Steven M. Cabral, p. 4.

Mr. Cabral's testimony, as quoted above, was not rebutted by National Grid. In fact, National Grid only addressed Middletown's objections on the relocation issue upon cross-examination of Mr. Fiku. On cross-examination, Mr. Fiku testified that National Grid's response to Data Request No. R-2-1 was the applicant's attempt to address "some of our concerns about building the substation on the existing site. And the second item on that as part of the rebuttal testimony was in response to Mr. Cabral's concern about whether we can reuse or rebuild the Jepson substation on the existing site." Hearing Transcript, p. 24. This attempt to address the necessity of relocation is not adequate. The response to Data Request No. R-2-1 contains only two drawings. National Grid relies upon two drawings to show why the Project needs to be relocated. This practice is completely inadequate.

Middletown also raised concerns with regard to the adequacy of information and materials submitted to the PUC as part of National Grid's application as follows:

"[b]ased upon my comments that were originally dated back in July 2016, I've been told that National Grid proposes to submit all new documents so that I could provide a new analysis of their proposed Jepson Street station. So my prefiled testimony is based upon plans and analyses that I've been told by National Grid are going to be replaced with new documents." Mr. Cabral, Hearing Transcript, p. 134.

“Mr. Fiku only refers, on Page 1, Lines 14-17, to a new alternative analysis document as part of Mr. Daniel McIntyre's rebuttal testimony. No expanded explanation is provided in Mr. Fiku's testimony. As a result, I may need to amend my opinion either in writing or at the hearing for this matter. The Town of Middletown is of the opinion that the application, as submitted to the PUC, is therefore incomplete and deficient.” Pre-filed Surrebuttal Testimony of Steven M. Cabral, p. 3.

To date, National Grid has failed to address the technical comments of Middletown's expert. As quoted above, the application materials are ever-changing, while also being non-responsive on the need for the relocation. Because of the applicant's elusive strategy, Mr. Cabral's testimony has not been contradicted, it is binding on the PUC.

CONCLUSION

In this proceeding, the PUC is tasked with considering whether the Project is needed. Simply stated, the record before the PUC does not support a finding of Project need. Middletown presented evidence that the relocation is not needed, and there is no sufficient evidence in the record to show otherwise.

WHEREFORE, Middletown respectfully requests that the PUC issue its advisory opinion with the conclusion that the record before it does not support a finding of need for the Project.

Respectfully submitted,
Town of Middletown
By its Attorney



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CERTIFICATION

I hereby certify that I filed an original and five (5) copies of the within Memorandum with the PUC and sent a true copy, via electronic mail, of the within Memorandum to the parties listed on the docket service list, on this 14th day of October, 2016.

A handwritten signature in black ink, consisting of stylized cursive letters, is positioned above a solid horizontal line that serves as a signature line.