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August 3, 2023

**VIA HAND DELIVERY & ELECTRONIC MAIL**

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

**RE: The Narragansett Electric Company Appeal to PUC of Amendment to Chapter 15,  
Section 15 of the City of Cranston Code of Ordinances**

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company (the “Company”), I have enclosed the Company’s Petition re Appeal Pursuant to R.I. Gen. Laws §39-1-30 of the Amendment to Chapter 15, Section 15 of the Cranston Code of Ordinances.

Thank you for your attention to this matter. If you have any questions, please contact me at (401) 709-3351.

Sincerely,



George W. Watson III

Enclosures

cc: Celia B. O’Brien, Esq., Associate General Counsel  
Tracy Nelson, Cranston City Clerk  
Christopher Millea, Esq., Cranston City Solicitor

STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION

IN RE: THE NARRAGANSETT ELECTRIC COMPANY Docket No. \_\_\_\_\_

APPEAL BY THE NARRAGANSETT ELECTRIC COMPANY  
PURSUANT TO R.I. Gen. Laws § 39-1-30

1. The Narragansett Electric Company (“TNEC”) brings this Petition under R.I. Gen. Laws § 39-1-30 and Rule 1.11 of the Public Utilities Commission’s (“PUC”) Rules of Practice and Procedure seeking review and nullification of a recent amendment to Chapter 15, Section 15 of the Cranston Code of Ordinances, 2005, entitled “Buildings and Construction,” which was enacted by the Cranston City Council on July 24, 2023.

JURISDICTION AND FACTS

2. TNEC is a Rhode Island chartered public utility under the supervision of the PUC.
3. As a Rhode Island chartered public utility, TNEC has the right to install its gas and electric lines within public ways of the State of Rhode Island.
4. Upon information and belief, on July 17, 2023, the City of Cranston Public Works Committee convened for its regular meeting and unanimously approved proposed ordinance 2-23-02, Ordinance in amendment of Chapter 15 of the Code of the City of Cranston, 2005, entitled “Buildings and Construction” (Poles Relocation) (the “Amendment”).
5. Upon information and belief, on July 24, 2023, the Cranston City Council convened for its regular meeting, unanimously voted to approve, and enacted the Amendment. A true and accurate copy of the Amendment is attached hereto as **Exhibit A**.
6. TNEC has not received formal notice of the Amendment from the City of Cranston.

7. The Amendment states: “It shall be unlawful for any public utility or private company to place any pole, wire, or similar infrastructure in a location which substantially interferes with a property owner’s means of ingress and egress to the property. This includes, but is not limited to, walkways, driveways, and/or other areas of ingress and egress.”

8. The Amendment further requires the responsible utility or company, upon a determination by the City that said infrastructure substantially impedes property ingress and egress, to file with the City within sixty (60) days a plan for relocation of the subject infrastructure for approval. After receiving City approval, the utility is required to implement the plan and relocate the infrastructure within sixty (60) days. Failure to timely file a relocation plan or implement an approved relocation plan is subject to a \$100 daily fine.

#### LEGAL CLAIMS

9. R.I. Gen. Laws § 39-1-1(c) vests the PUC with “the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy[.]”

10. Pursuant to R.I. Gen. Laws § 39-1-30, “[e]very 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.”

11. In exercising its ordinance review powers under R.I. Gen. Laws § 39-1-30, “[t]he 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.” The Rhode Island Supreme Court’s decision in *In re Petition for Rev. Pursuant to*

*Section 39-1-30 of Ordinance Adopted by the City of Providence, 745 A.2d 769 (R.I. 2000),* further tasks the PUC, in reviewing city ordinances under R.I. Gen. Laws § 39-1-30, with determining “whether the ordinance unduly or unreasonably burdens or restricts the operation of utilities.”

12. The Amendment adversely “affect[s] 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” and, therefore, is subject to the PUC’s review under R.I. Gen. Laws § 39-1-30.

13. The Amendment unduly and unreasonably burdens and restricts the operation of utilities and interferes with the use of the public right-of-way which TNEC has the right to use in common with the public for its facilities.

14. The Amendment will impose unwarranted and significant economic costs upon TNEC and its Rhode Island customers. As a result of the Amendment, TNEC will be forced to expend substantial resources into the relocation of poles and utility lines throughout the City of Cranston, disrupting the health, safety, welfare, comfort and convenience of Cranston residents.

15. TNEC, upon request, will relocate poles, utility lines and other related infrastructure in the City, with the expense being borne by the party requesting relocation. With the passage of the Amendment, the cost of relocation will now be borne by TNEC and its Rhode Island customers.

16. Additionally, the Amendment violates R.I. Gen. Laws § 45-6-1(a) which grants municipalities in the State of Rhode Island the power to adopt ordinances to “regulate the putting up and maintenance of telegraph and other wires and appurtenances,” but does not authorize

Cranston to impose unduly burdensome and improper requirements relating to relocating utility lines. Thus, the Amendment constitutes an unlawful exercise of the City's legislative powers.

17. Accordingly, TNEC is filing this appeal with the PUC so that it will be in compliance with the ten (10) day appeal period set forth in R.I. Gen. Laws § 39-1-30.

WHEREFORE, TNEC respectfully requests that the PUC, pursuant to its review powers under 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.

Dated: August 3, 2023

Respectfully submitted,  
The Narragansett Electric Company  
By its attorneys,



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**EXHIBIT A**

THE CITY OF CRANSTON

IN AMENDMENT OF CHAPTER 15 OF THE CITY OF CRANSTON CODE OF ORDINANCES, 2005, ENTITLED "Buildings and Construction"

Ordinance No. 2023-

Amended in Committee 3/16/2023 and 7/13/2023

Passed:

Jessica Marino, Council President

Approved:

Kenneth J. Hopkins, Mayor

It is Ordained by the City of Cranston City Council as follows:

Section 1. Chapter 15, Section 15 (Electricity Poles and Wires) is hereby amended by adding the following:

.090 Relocation of Existing Poles

~~Upon a reasonable demonstration to the Council by an existing property owner that an existing pole interferes with any existing or permitted means of ingress and egress to the owner's property, which shall include walkways to a door and driveways, a formal request, made by the appropriate department of the City, shall be made of the utility responsible for the pole to move such pole.~~

It shall be unlawful for any public utility or private company to place any pole, wire or similar infrastructure in a location which substantially interferes with a property owner's means of ingress and egress to the property. This includes, but is not limited to, walkways, driveways and/or any other areas of ingress and egress.

.091 Enforcement

~~Failure of the utility to provide a relocation plan to the Public Works Committee of the Council, to include a date on which the pole will be relocated, within sixty (60) days of the Council finding such relocation reasonable shall subject the utility to a fine of two hundred fifty (\$250) dollars for every day of non-compliance. An inspector in the building department shall be charged with issuing fines and the Cranston Municipal Court shall have authority to adjudicate all enforcement actions in relation thereto.~~

Upon a determination by the City that said infrastructure impedes ingress and egress as aforesaid, the City shall direct the responsible utility or company to submit a plan to relocate the subject infrastructure. Said relocation plan shall be filed with the City no later than (60) days after receipt of notice from the City.

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Failure of the utility or company to comply with the aforesaid requirement may result in the imposition of a fine in the amount of up to one hundred dollars (\$100) for every day that the relocation plan is not filed.

Upon receiving approval of the plan by the City as aforesaid, the utility shall have Sixty (60) days within which to implement said plan and relocate the subject infrastructure.

Failure of the utility company to implement said plan and relocate the subject infrastructure as aforesaid may result in the imposition of a fine in the amount of up to one hundred dollars (\$100) per day for every day that the infrastructure is not relocated.

An inspector in the Building Department or Code Enforcement shall be charged with issuing notices of violations which shall be adjudicated by the Cranston Municipal Court.

**Section 2.** This ordinance shall take effect upon its final adoption.

Positive Endorsement:

Negative Endorsement: (Attach reasons)

\_\_\_\_\_  
City Solicitor

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Solicitor

\_\_\_\_\_  
Date

Sponsored by Councilman Donegan  
Referred to Public Works Committee on March 16, 2023 (cont'd to 4/13/23, 5/11/23, 6/15/23 & 7/13/23)